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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No.5492/2004

Sudhir Chandra Jain

...Petitioner through
Mr. Sanjay Jain, Adv.

Versus

State of Haryana and Anr.

...Respondents through
Mr. Manish Bishnoi, Adv.

Date of decision: January 20, 2006

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

1. Whether reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN. J. (Oral)

1. Briefly stated, the annal of this litigation is that a Suit for Possession and Damages had been filed by the Respondent No.1 in the Civil Court. It appears that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'PP Act') had been made applicable to these premises in 1997. The contention of learned counsel for the Respondent is that for this reason the Suit for Possession and Damages had

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been withdrawn. It is contended that leave to agitate the question of damages had been left open. To ascertain whether leave was reserved, I have perused the Order whereby that Civil Suit was permitted to be withdrawn on 5.8.1999 which reads as follows:-

In the present suit an application had been moved on behalf of the plaintiff U/s 151CPC on 15.3.99 for withdrawal of the suit. In the present application it has been stated that the plaintiff do not want to pursue the suit and the same may be dismissed as withdrawn.

Proxy Cl. for the plaintiff has stated that the representative of the plaintiff Sh. Jyoti Marwah also wants to withdraw the present suit and the same may be dismissed as withdrawn. Sh. Jyoti Marwah also made his statement in this regard.

In view of the above set of facts, the present application of the plaintiff is allowed and the present suit is dismissed as withdrawn, as prayed. Let file be consigned to record room.

2. The inescapable consequence of this Order was that the claim for mesne profits stood abandoned. It is also possible to contend that even the claim for possession had stood abandoned since liberty on this question had not been reserved. Fortunately.

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the second issue does not arise since the proceedings under the P.P. Act eventually culminated in eviction orders being passed against the present Petitioner. Against these eviction orders he unsuccessfully filed an Appeal before the Additional District Judge, and eventually filed a Writ Petition in this Court when the Appeal was dismissed.

3. Learned counsel for the Respondent contends that it is possible to claim damages/mesne profits even under the PP Act. If this is so, then these claims stand legally barred by virtue of Order II Rule 2 of the CPC.

4. In the writ proceedings the following Order was passed by S.K. Mahajan, J. :

Undertaking given by the petitioner is accepted. The petitioner shall hand over vacant possession of the land, mentioned in the petition, to respondent No.2 on or before 31st December, 2002 and will not sublet, assign or part with possession of the same to any other person. The petitioner will also pay to respondent No.2. damages @ Rs.2,000/- per month from 14th April, 1999 till the date of vacating the premises by him. The arrears of damages from the date of the order of eviction till 31st March, 2002 be paid within two months from the date of this order. The future damages will be paid every month

in advance by the 15th day of each month. In case, the arrears are not paid within the time granted by this court or the current arrears are not paid within the time given by the court, the respondent will be at liberty to execute the order of eviction.

With these observations, the petition is dismissed as withdrawn. The order of eviction, subject to the aforesaid will not be executed till 31st December, 2002. Petitioner shall remain bound by the undertaking given to the court today.

5. Till the time of the filing of the Writ Petition the claim which has now been raised in the impugned Show Cause Notice had not been ventilated. During the pendency of the proceedings under the PP Act damages has been paid as per Court Orders. The matter, therefore, stood concluded, even so far as the claim for damages was concerned, on the Petitioner paying a sum of Rs.2,000/- per month. If it was open to the Respondent to keep alive claims of damages for any prior period that ought to have been clearly stated and reserved when the Writ Petition was being disposed of in terms of the compromise. The Petitioner has vacated the premises in compliance with his obligations under the compromise. He cannot now be faced with a claim for

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damages for the period 1989-99.

6. Learned counsel for the Respondent has relied on *Special Director vs. Mohd. Ghulam Ghouse*, (2004) 3 SCC 440. In that case the Supreme Court had not approved of the passing of a three word Order which had wide ramifications and results. Those Order were - "Rule. Status quo." This decision is not relevant for the present purposes since on the above analysis it is palpably clear that there is no legal foundation for even the issuance of the vexatious Show Cause Notice. Learned counsel for the Respondent has also relied on *Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh*, (1996) 1 SCC 327. What the Court was dealing with in that case was a finding by the Writ Court of the existence of a relationship of a landlord and tenant, and consequently directing resort to eviction proceedings. The contention of the Board that there was no tenancy had, therefore, been settled by the High Court at the Show Cause Notice stage. The situation before this Court in these proceedings is altogether different in that three Orders have been passed - firstly of the Civil Court, secondly of the Authority/Court under the PP Act and thirdly of the Writ Court.

7. The impugned Show Cause Notice is devoid of all merits. It

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has been repeatedly held by the Supreme Court that the writ powers are so wide as to enable the Court to reach out and remove any injustice wherever it may be found. The claim for damages now raised flies in the face of the withdrawal of the suit for possession and mesne profits; of the failure to claim damages/mesne profits in the PP Act proceedings; and most significantly of the compromise recorded in Court and fully complied with by the Petitioner. The claim is therefore mala fide. The Writ Petition is allowed with costs of Rs.3,000/-

January 20, 2006
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(VIKRAMAJIT SEN)
JUDGE