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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

IN

S. B. Civil Writ Petition No. 18956/2012

With

Stay Application No. 15556/2012

Society of Prabhudasi Sisters, Ajmer
and Another Vs. Union of India and
Another

Date of Order ::: 30.11.2012

Present

Hon'ble Mr. Justice Mohammad Rafiq

Shri H. K. Chaturvedi, counsel for petitioners

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By the Court: -

This writ petition seeks to challenge the order passed by the Estate Officer and Divisional Engineer (East), North Western Railway, Jaipur, dated 1st November, 2012. The Estate Officer has, in proceedings under Section 6 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, rejected the objections raised by petitioners about maintainability of eviction proceedings before him.

It is contended that the land in dispute though originally belonged to Railway but petitioners are in possession on the same for last more than fifty years, therefore, they have acquired title by way of adverse possession. Respondent Railways filed objections before the court of Civil Judge (Junior Division) Bandikui, Dausa, under Order 7 Rule 11 of the Code of Civil Procedure that the suit was not maintainable before the civil court for the reasons, firstly the land in dispute is a revenue land and, therefore, the suit can be filed only in a revenue court, secondly that the

suit would not be maintainable without impleadment of Union of India and its functionaries as also the State Government, thirdly the plaint does not indicate any cause of action in favour of plaintiff and, fourthly the land in dispute is an agriculture land whereupon no title can be acquired by adverse possession. All those objections were rejected by order dated 30.07.2012 therefore learned counsel argued that parallel proceedings in two courts cannot be allowed to go on.

Learned counsel referred to the judgment of the Supreme Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another – AIR 1982 SC 1081 and, referring to its para 9, argued that if there is a bona fide dispute regarding title of the Government to any property, a citizen cannot in summary manner be dispossessed from the land/premise.

Perusal of aforesaid judgment of the Supreme Court indicates that in that case there was indeed a bona-fide claim to the property in dispute, which was claim for long possession of the petitioner and their predecessor in title of the plots raises a genuine dispute between them and between the person concerned and the government on the question of title considering especially the fact that the property admittedly belonged originally to the family of Nawab Habibuddin from whom the respondents claimed to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. Here the petitioner does not

claim to have purchased the land in question from any one. As the facts of the cited case reveal, three disputed plots were included in the acquisition notified by the Government of Nijam, the Osmania University contended that they were so included and that they were acquired for its benefit whereas the owner Nawab Habibuddin contended that three plots were not acquired. The Osmania University filed a suit on 13.02.1956 against Nawab Habibuddin in the City Civil Court, Hyderabad, claiming that the three plots of lands were acquired by the Government for its benefit and asking for his eviction of the respondents. The suit was dismissed in 1959 on the ground that plot No.111 was not acquired by the Government and that though plots Nos.94 and 104 were acquired, the University failed to prove its possession thereof within twelve years before filing of the suit. It was in those facts that the Supreme Court held that summary proceedings of eviction in the A.P. Land Encroachment Act, 1905, cannot be applied. In the present case, the suit filed by the petitioner is still pending.

Learned counsel for the petitioner failed to point out whether the suit filed by the petitioner for declaration and permanent injunction is still pending before the civil court. Learned counsel for petitioner has failed to point out as to what was the fate of the application for temporary injunction. At one point of time, learned counsel submitted that interim injunction order was passed but when pointedly asked to point out the same from the pleadings, he could not point out any such pleading anywhere in whole of the writ petition. Therefore, if the petitioner has not been able to

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persuade the civil court for grant of appropriate temporary injunction order in his favour pending disposal of the suit and petitioner has not been able to show any right or title of the disputed land except claiming that they are in possession of the land for last more than fifty years. This court cannot preempt the issue by interfering in the matter that the proceedings Act of 1971 should not be continued.

With those observations, writ petition is dismissed. Consequent upon dismissal of writ petition, stay application, filed therewith, does not survive and same is also dismissed.

(Mohammad Rafiq) J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Giriraj Prasad Jaiman
PS-cum-JW