

(2020) 09 DEL CK 0191

In the Delhi High Court

Case No : Civil Writ Petition No. 4426, 4427, 4428, 4429, 4436, 4438 Of 2020

Jai Gopal Bedi Through Lrs Shri Anil Bedi & Ors

APPELLANT

Vs

Delhi Development Authority & Anr

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Specific Relief Act, 1963 — Section 6
Public Premises (Eviction Of Unauthorized Occupants) Act, 1971 — Section 2(e),
2(e)3(ii), 2(g), 2(g)(3), 4, 4(1), 4(2)(b)(ii), 5, 5(1), 7, 7(2), 9, 15
Delhi Development Act, 1957 — Section 22
Land Acquisition Act, 1894 — Section 6, 7, 9, 11, 11A, 2
Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24
Public Premises (Eviction Of Unauthorised Occupants) Act, 1958 — Section 7(i)

Citation : (2020) 09 DEL CK 0191

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : N.P. Singh, Shekhar Budakoti, Dhanesh Relan

Final Decision : Dismissed

Judgement

Najmi Waziri, J

W.P. (C) 4426/2020, CM APPLs. 15937/2020 & 18511/2020 W.P. (C) 4427/2020, CM APPLs. 15941/2020 & 18513/2020 W.P. (C) 4428/2020, CM APPLs. 15945/2020 & 18514/2020 W.P. (C) 4429/2020, CM APPLs. 15950/2020 & 18519/2020 W.P. (C) 4436/2020, CM APPLs. 15973/2020 & 18510/2020 W.P. (C) 4438/2020, CM APPLs. 15980/2020 & 18512/2020

1. The hearing was conducted through video conferencing.
2. The petitioners impugn the common order dated 03.07.2020 passed by the learned District Judge, Tis Hazari Courts, Delhi (West), Delhi in PPA Nos. 13/2016, 14/2016, 15/2016, 16/2016, 17/2016 and 18/2016, under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('the PP

Act'). The said order upheld the eviction order dated 22.8.2016, passed by the Estate Officer, under Section 5(1) of the PP Act.

3. It is the contention of the petitioners that the impugned order is replete with errors, inasmuch as:

(i) The Delhi Development Authority ('DDA') never proved that it was the owner of the land.

(ii) The DDA knew from 1984 itself that the petitioners were in possession of the land, and therefore, its cause for seeking eviction in the year 2016 is dubious. Furthermore, if the first notice was issued in the year 1984 and if the DDA knew all along that the petitioners were in possession of the land, they ought to have taken immediate action for eviction, as the petitioners were occupying the property despite the full knowledge of the DDA.

(iii) The land does not vest with the DDA because there was no notification under Section 22 of the Delhi Development Act, 1957 ('the DDA Act').

4. The learned counsel for the petitioners emphasises that the DDA permitted the petitioners to continue in possession of the land from 1984 onwards, therefore impliedly it condoned their possession: in a way viewing them as 'authorised' occupants. Therefore, now after 37 years to suddenly call them unauthorised occupants would need an adjudication of rights accrued in favour of the petitioners by 'continuous permissive user' beyond 30 years. In the documents presented before the Estate Officer, the petitioners have been shown as encroachers on DDAs land, so DDA knew full well that they were 'encroachers', why did it allow them to stay on for 37 years and to build large permanent buildings, which have been abodes for many families for over two generations? why did the DDA not take any action to any evict them, right from the beginning of the alleged encroachment? Not having done so within the prescribed period of eviction of unauthorised occupants, bars the present action by limitation. The petitioners rely upon the dicta of the Supreme Court in *Ravinder Kaur Grewal & Ors. v Manjit Kaur and Ors* 2019 SCC Online SC 975 and argues that eviction proceedings after the passage of 32 years are clearly barred by limitation. In the said judgment, it has been held, inter alia, as under:

"...1. The question of law involved in the present matters is quite significant. Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person? In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to

recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?

2. Historically, adverse possession is a pretty old concept of law. It is useful but often criticised concept on the ground that it protects and confers rights upon wrongdoers. The concept of adverse possession appeared in the Code of Hammurabi approximately 2000 years before Christ era. Law 30 contained a provision

"If a chieftain or a man leaves his house, garden, and field and someone else takes possession of his house, garden and field and uses it for three years; if the first owner returns and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it."

However, there was an exception to the aforesaid rule: for a soldier captured or killed in battle and the case of the juvenile son of the owner. In Roman times, attached to the land, a kind of spirit that was nurtured by the possessor. Possessor or user of the land was considered to have a greater "ownership" of the land than the titled owner.

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59. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, "de jure possession", constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after

the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfilment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

63. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

64. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

65. Let the matters be placed for consideration on merits before the appropriate Bench..."

5. Mr. Dhanesh Relan, the learned Standing Counsel for the DDA, submits that this case has a long and chequered history. The land had been acquired by the Government of India (GoI) under the Land Acquisition Act, 1894 ('LAA'). The Gazette notification dated 02.06.1970 in this regard, has been annexed to the petition as Annexure P-3. Thereafter, the land was transferred to the DDA for an amount of Rs.30 crores vide letter dated 02.09.1982. The said document clearly acknowledges that there was some encroachment on the land in question. The particulars of the suit land are mentioned at Sl.No.1 of the possession letter dated 02.09.1982, as land behind Bungalow Plot No.33 to 36, South Patel Nagar, New Delhi, measuring 845 sq. yards. The said land is marked as encroached upon by temporary huts, khokhas and workshops. The possession letter further specifies that these encroachments are occupied by D.S. Automobiles, Parko Motors, Gurgachan Automobiles, Niranjana Automobiles, Birdi Motors, Chandro, Payara Singh, Bachchan Singh, Dwarka Dass, Babu Lal Singh and others.

6. An order was passed by this Court in W.P.(C) No.16/2009 on 20.10.2009, observed as under:

"1. Perusal of the record shows that respondent no. 3 escaped service while respondent no. 4 stand served. In this background, they have been duly noticed in the matter. None appears on their behalf nor counter affidavit has been filed.

In this view of the matter, the case qua respondent nos. 3 and 4 is proceeded ex-parte.

2. The petitioners in this writ petition have claimed to have been inducted as tenants of one Sh. Narain Singh on different portions of what has been numbered as plot no. 3400, Ranjeet Nagar, Near Pusa Gate, New Delhi. It is further submitted that Sh. Narain Singh has expired and is survived by his sons Sh. Shiv Charan Singh, Sh. Rounaq Singh and Sh. Balwant Singh (since expired in 1981).

3. The petitioners have submitted that the Municipal Corporation of Delhi i.e. respondent no. 1 herein has filed eviction petition under section 4, 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972 before the Estate Officer, MCD against the petitioners and several others on 27th June, 1979. The MCD had claimed herein that the said plot no. 3400 stood transferred to it by the

Ministry of Rehabilitation through a lease deed executed on 31st December, 1970 having retrospective effect from 27th December, 1962. Claiming rights under this lease deed, submitted by the MCD that the subject property is a public premise within the meaning of the expression as defined under sub- section (e) of section 2 of the said enactment. Alongwith other persons arrayed in these proceedings, it was asserted that the petitioners were unauthorised occupants of the subject land within the meaning of the expression under section 2(g) of the statute.

4. The petitioners appeared to have contested these proceedings. My attention is drawn to an order dated 23rd October, 1990 passed by the Estate Officer holding that the subject premises did not fall within the ambit of public premises under the provisions of 2(e) of the Act. In support of the connivance recorded by the learned Estate Officer, the principle ground for so holding by the Estate Officer is premised on the fact that there was no site plan with the lease deed which has been sought to be proved by the MCD. It has further been recorded in this order that pursuant to a resolution dated 28th August, 1976 passed by the Corporation, rates of damages sought to be recovered from unauthorised occupants were not approved. The petitioner appears to have also placed reliance on an order of attachment of the rent passed by the MCD towards payment of the arrears of house tax. Strong reliance appears to have been placed on the fact that the property was assessed to house tax and the petitioners paid the house tax claimed by the MCD.

5. The order dated 23rd October, 1990 also reflects that Sh. Narain Singh the claimed landlord had expired in the year 1981. The petitioners had taken a plea before the Estate Officer that for the reason that no succession certificate was produced by his heirs, no rent has been paid by them since his demise.

6. Yet another factor which has weighed with the Estate Officer was the statement made by counsel for the MCD in a suit which was stated to have been filed by Sh. Narain Singh against the MCD in the year 1966. The order of Estate Officer records that in this case Sh. M.L. Verma has made a statement before Sh. H.L. Sub-Judge, Delhi that the land in question has not been cleared by the MCD and it was not interested in the land, the corporation would not interfere in the land in question except under due process of law till acquisition. The order of the Estate Officer further records that the same counsel during cross-examination has expressed being unaware of the lease deed executed between L&DO and the MCD in the year 1970.

7. The appeal filed by the Municipal Corporation of Delhi was dismissed by the learned Additional District Judge by an order passed on 13th March, 1997. The MCD assailed the two orders against it by way of W.P.(C) No. 3271/1998 which came to be dismissed for non-prosecution on 28th July, 2003 by this court.

8. The present writ petition has been necessitated for the reason that despite the foregoing facts, the Delhi Development Authority appears to have intervened and is taking action against the petitioners. It is contended by learned counsel for the

petitioner that the petitioner is since paying rent to the legal heirs of the landlord Sh. Narain Singh. It is further submitted that the Estate Officer once having held that subject premises are not public premises and such order having been contested and the challenge thereto having been rejected, it is not open to any person or authority to once gain reagitate the issue and contend that the subject premises are public premises.

9. My attention has been drawn to a counter affidavit which stands filed by the DDA arrayed as respondent no. 2 herein. The DDA has submitted that the subject land occupied by the petitioners is government land and belongs to the Delhi Development Authority. It is submitted that the land was transferred to the Delhi Development Authority by the Department of Rehabilitation under the package deal vide a letter no. 4(19)/78-SS-II dated 2nd September, 1982. The land was handed over to the representative of the DDA by the Department of Rehabilitation on 8th May, 1984 and the Additional Commissioner Land and Management; DDA; Land Officer of the Ministry of Works and Housing were notified by the same vide letter no. 1(20)SURVEY/CSC84 dated 25th June, 1984. Copies of these letters have been placed on record by the respondent no. 2. It is to be noted that the letter dated 2nd September, 1982 relates to transfer of unutilised land to the DDA against payment of public money to the tune of Rs.30 crores. The details of land have been mentioned in annexure A to the affidavit.

10. Based on these pleas, the DDA has contended that the petitioners are unauthorised occupants and encroachers of the subject property since 1984 and are liable to be evicted. A categorical stand is taken that the property falls under the definition of public premises within the meaning of the expression under section 2(e) of the act of 1972.

11. So far as the apprehensions of the petitioners are concerned, it has been submitted that in the month of October, 2008, the officials of the MCD went to the subject land only in the capacity of the land owning agency making an official visit to the premises. The DDA has completely disassociated itself from the stand as taken by the Municipal Corporation of Delhi with regard to the land in question and has assailed the locus standi of the MCD to make a claim inasmuch as the land deed stands transferred to the Delhi Development Authority. The counter affidavit has however filed by the DDA takes a categorical stand that the petitioners are liable to be evicted by due process of law.

12. Having considered the above noticed submissions, it needs no elaboration that the petitioners can claim no right further than an opportunity to contest a claim by authority seeking the eviction. Prayer 2 in the writ petition is to this effect. A vague allegation with regard to connivance of respondent nos. 3 and 4 has been made. Respondent nos. 3 and 4 are stated to be sons of late Sh. Narain Singh. Respondent no.2 DDA who is claiming right, title and interest in the land has completely disassociated itself from the respondent nos. 3 and 4 as well as from respondent no. 1.

13. So far as the proceedings which were initiated by the Municipal Corporation of Delhi are concerned, the same have stand long concluded in favour of the petitioners. While there was no adjudication on the issue as to whether the petitioners were in lawful occupation of the subject premises, however the finding that the MCD had no claim on the subject premises and the stand taken by the Estate Officer in his order dated 23rd September, 1990 was upheld in appeal before the learned District Judge. Merely because a finding is recorded that the MCD has no right, title and interest in the subject land would not preclude the DDA from claiming ownership over the land. There has been no adjudication over the claim of the DDA in this regard. It is trite that both the DDA and the MCD are statutory authorities who have been constituted by separate enactments and are exercising jurisdiction under statutory provisions.

14. The petitioner has placed strong reliance on several documents to establish their occupation of the premises. Such documents in any case would require to be proved before the authority which shall considered a prayer made by the DDA seeking eviction. The DDA has stated that it is entitled to evict encroachers after following due process. Such an action certainly cannot be faulted or interdicted. Needless to say in case the DDA brings such proceedings, it shall be open to the petitioner to take appropriate action to defend itself. It is required to prove its claim by time as well as occupation the subject premises. It needs no elaboration that while the documents relating to a house tax etc. may facilitate the petitioner in establishing a case of possession, however make deposit of property tax by itself does not create any right, title or interest in the subject property.

15. Even the statement made by learned counsel for the MCD, does not bind the DDA which was not a party to the proceedings before the earlier Estate Officer or the District Judge or this court. Orders, if any, passed against the MCD do not bind the DDA which was not a party to those proceedings and asserting an independent right.

In view of the above, having regard to the stand of the respondents, no orders are called for. If and yet, the DDA decides to take action against the petitioners, it shall ensure that it abides by due process. This writ petition is disposed of in the above terms..."

7. A review petition against this order was filed by Paramjit Singh, one of the present petitioners, but it was dismissed.

8. Eviction proceedings were initiated by the DDA in the year 2010 under the PP Act, and culminated in an eviction order which was challenged by the petitioners before the learned District Judge. These first set of proceedings were deemed non-est on account of a procedural error, as noted in the order of the learned District Judge dated 12.05.2016.

9. Thereafter, a second round of proceedings were initiated by DDA under the PP Act and the petitioners were issued notices under Section 4(1) in the format

prescribed. The petitioners filed their replies and on the relevant date, they appeared before the Estate Officer. Their reply dated 02.08.2016 reads thus:

" Dated: 2.8.16

The Estate officer

DDA

Subhash Nagar New Delhi

Reg: Notice dated 11-7-16

No. THC/LM/22333 1238707 16/2/

Sir,

Regarding the above said notice we have to say that documents required by DDA are already submitted by as above. Please take Note

Thankyou

Your faithfully

S/d

Anil Bedi on behalf of Paramjit & Ors.

Anil Bedi for Shri Jai Gopal & Vinay Bedi

S/d 9811199188

Jagjeet Singh - 9811303310

Paramjeet Singh - 25840482

Balwinder Singh - 9891088827

Joginder Singh - 9811206765..."

10. The Court would note that the section 4 notice clearly provided an opportunity to the petitioners to appear before the authority under section 4(2) (b)(ii); in effect, the noticees had the opportunity to be heard; it was for the noticees to make their submissions as deemed appropriate. What they said on the day is mentioned in the aforementioned letter; if they wanted a separate hearing, they could have asked for it, but they chose not to. Be that as it may, it cannot be said that procedure prescribed by the PP Act was breached or that the petitioners were not granted the opportunity to be heard. An order of eviction was passed under section 5(1) of the PP Act and impugned before the learned District Judge. The appeal was dismissed, hence the present proceedings.

11. The petitioners have claimed a right in the property as tenants of one Narain Singh, and subsequently, of his legal heirs. They claimed to be paying rent to the latter. Narain Singh seems to be shrouded in mystery, as he has never appeared

in any of the proceedings. Yet, the petitioners continued to pay rent to him. His legal heirs were served notice in the writ petition, but they chose to neither appear nor contest before the court. The aforementioned order dated 20.10.2009 passed by this Court in W.P.(C) No.16/2009, has held that as purported tenants, the petitioners cannot claim rights beyond an opportunity to contest a claim, made by the authority seeking their eviction. The order also noted that payment of municipal taxes would show only that they were in possession of the property; it would, however, not be any proof of a substantive right or interest in the said property.

12. Narain Singh never proved his right, title or interest in the property. The tenants now seek to challenge the very right of the government in the land. They state that insofar as there is no Section 22 notification vesting the land with the DDA, no right, title or interest is created in its favour. As a consequence, they contend that the DDA has no right in the property in the first instance, therefore without authority it cannot seek to evict them and surely not after the petitioner have occupied the land for the past 32 years. They also contend that the PP Act would not be applicable.

13. However, Mr. Dhanesh Relan, the learned Standing Counsel for the DDA, submits that there is no extraordinary delay in initiating eviction proceedings. He submits that this issue has been duly addressed in the now impugned order, which has held inter alia, as under:

".....PUBLIC PREMISES

19. First thing first, I shall deal with the plea by the appellants that the property in question is not "public premises". Section 2(g)(3) of the PP Act provides that the expression "public premises" "in relation to the National Capital Territory of Delhi means -

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;

20. The expression "belonging to" came up for discussion in the case of Nandram vs. Union of India. 2000 SCC OnLine Del 901, and a reference was invited to "Stround's Judicial Dictionary" where the word "belonging" has been defined as "property "belonging" to a person, having two general meanings, (1) ownership, and/or (2) the absolute right of user". The legal purport of such expression was dealt with as under:

"By way of illustration, it has been stated that a road may be said with perfect propriety to belong to a man who has the right to use it as of right, although the soil does not belong to him. In Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur and another, AIR 1965 SC 1923, Apex Court held that though the expression "belonging" no doubt is capable of denoting an absolute title, it is nevertheless not confined to connoting that sense. That word could signify even possession of an interest less than that of full ownership. Scheme of the Act is

that it confers on the Estate Officer power to issue notice to person, who are in unauthorized occupation of any public premises to show cause, why an order of eviction should not be made. "Unauthorized occupation" under the Act, as defined in Section 2 (g) in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

21. In the light of the said proposition of law, reverting to the instant case, I have no hesitation in holding the subject property is "belonging" to the DDA and the Ld. Estate Officer has rightly relied on letter No. 4(19)/78-SS.II(Vol.II) of the Ministry of Supply and Rehabilitation, Government of India dated 02.09.1982, whereby the Government of India under a "package deal" transferred some un-utilized lands within the Urban and Urbanizational Limits of Delhi/New Delhi under the charge of Department of Rehabilitation to the Delhi Development Authority viz. a total 1020 acres of property/lands to the DDA on a payment of Rs. 30 crores and the details of the 'surveyed' and "un-surveyed lands" were given in Annexure "A" and Annexure "B". Para (3) of the said letter dated 02.09.1982 reflects that the details of the lands shown in the Annexures "A" & "B" were based on the result of various joint surveys carried out by the officials of the Department of Rehabilitation and the DDA from 1978 onwards. A bare perusal of Annexure "A" titled "Total Undeveloped Lands" vide serial No.8 shows that in so far as "Patel Nagar - East, West and South" is concerned total land measuring 10.40 acres was transferred to the Delhi Development Authority.

22. Further, there can hardly be any challenge to the findings of the Ld. Estate Officer that vide letter No. 1(20)/Survey/CSC/84 dated 25.06.1984 issued by the Department of Rehabilitation, Settlement Wing, Government of India at Jaisalmer House, New Delhi, addressed to the Land Commissioner (Land & Development), DDA, physical possession of land in "East. South and West Patel Nagar" had been transferred on 08.05.1984 and the tabular annexures to the subsequent notification dated 25.06.1984 vide serial No. 1 shows that the lands behind Bungalow Plot No. 33 to 36, South Patel Nagar measuring 845 Sq. yards on inspection were found to have been encroached with temporary huts, khokhas and workshops and the remarks column read "occupied by D. S. Automobiles, Parko Motors, Gurcharan Automobiles, Niranjani Automobiles Birdi Motors, Chandro, Pyare Singh, Bachehan Singh, Dwarka Dass, Babu Lai, Umrao Singh and others., which incidentally are some of the appellants before us.

23. It is pertinent to mention here that the property in question was subject matter of litigation in Writ Petition (Civil) No. 16/2009 titled Paramjit Singh vs. MCD & Others and perusal of the record of the Ld. Estate Officer would show that an order dated 20.10.2009 was passed by Hon'ble Ms. Gita Mittal, Judge, High Court of Delhi, that would show that initially the MCD had laid claim over the

property in question and the appellant Paramjeet Singh and others were sought to be evicted by recourse to proceedings under the PP Act but during the pendency of the Writ Petition, the DDA intervened and referred to the aforesaid letter by the Government of India dated 02.09.1982 and the subsequent notification regarding handing over of the possession on 08.05.1984 confirmed vide letter dated 25.06.1984.

24. In para (11) of the judgment, it is recorded that the MCD had merely went to the subject land for an official visit and the DDA completely disassociated itself from the stand taken by the MCD inter alia assailing locus standi of the MCD and vide para (12) of the said judgment, the Writ Petition was disposed of holding that the documents placed on record by the petitioners in the nature of continuous possession and payment of property tax did not create any right, title or interest in the subject property with the direction to the DDA to take actions against the petitioners as per the due process of law. It is also borne out from the voluminous record of the case that a review petition No. 471/2009 was filed by the petitioners and the same also came to be dismissed vide order dated 03.12.2009 by the Hon"ble Judge of the High Court of Delhi.

25. It is in the said context that an earlier order dated 30.06.2010.wasi passed under Section 5(1) of the PP Act but for some inexplicable reasons, the DDA kept the proceedings in limbo for an inordinate long period of time, which probably led to filing of another Writ Petition bearing No. 1752/2015 titled South Patel Nagar (IX Block) & Ranjit Nagar Residents Welfare Association vs. DDA & Others, in which, it was claimed that the appellants herein and some other persons had encroached upon a piece of land which was meant for a "park" and the same came to be disposed of vide order dated 23.02.2015 by Hon"ble Mr. Justice Suresh Kait, Judge, High Court of Delhi, whereby the DDA was directed to expedite the disposal of the Eviction proceedings pending against the appellants under the PP Act.

26. The sum and substance of the aforesaid discussion is that consequent to the notification dated 03.09.1970 issued under Section 6 & 7 of the LA Act, and presumably subsequent proceedings under the LA Act, the subject property viz. 3400 measuring 845 Sq. yards (898/489 min) vested with the Chief Commissioner of Delhi i.e. Central Government or the Provincial Government of Delhi free from all encumbrances. The land did not cease to be property of the Central Government in the absence of delivery of possession or non taking of actual or physical possession. It, therefore, continued to be the property of the Central Government and was therefore, "public-premises" within the meaning of Section 2(e) of the Act. Even assuming for the sake of convenience that no proceedings took place culminating in award under Section 9, 11, 11A &12 of the LA Act subsequent to notification dated 03.09.1970, the appellants have no locus standi to challenge the acquisition proceedings at such a belated stage.

14. Thereafter, the issue of unauthorised occupants was also dealt with extensively, as under: -

"UNAUTHORISED OCCUPANTS"

27. That brings us to another plea canvassed at the Bar that the appellants are occupying the property as per the Ld. Estate Officer as "encroachers" or "rank trespassers" and thus it is urged that they as encroachers or trespassers per se do not fall within the definition of the expression "unauthorized occupation". The said expression is defined vide section 2(g) of the PP Act as follows:

(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

28. In the case of Jain Ink Mfg. Co. v. LIC. (1980) 4 SCC 435 the said provision came up for discussion and it was held that before a person could be said to be in an unauthorized occupation, the Act required the following conditions: '

(1) that the occupant had entered into possession before or after the commencement of the Act,

(2) that he had entered into such possession otherwise than under and in pursuance of any allotment, lease or grant.

29. Further, observing that section 2(g) is an inclusive definition, it was held:-

"To begin with, it is manifest that Section 2(g) does not use the word "possession" or the words "entry into possession" at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus viz. the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises. What is germane for the purpose of interpretation of Section 2(g) is whether or not the person concerned was in occupation of the public premises when the Premises Act was passed."

30. In the light of the said proposition of law, reverting to the instant case, it may be reiterated that the plea of the appellants about their rightful occupation in the nature of being tenant or owner of their respective portion was not found sufficient enough so as to displace the claim of the DDA to proceed against the appellants by due process of law in Writ Petition No. 16/2009 vide order dated 20.10.2009 (review order dated 03.12.2009) followed by directions in Writ Petition No. 1752/2015 vide order dated 23.02.2015. Indeed, apparently it appears that the Ld. Estate Officer in the impugned common Eviction order dated 22.08.2016 has not cared to discuss the individual objections of the appellants and a sweeping reasons are assigned that the appellants have failed to show any right, title or interest in the property in question. Be that as it may, the

foundation of such reasoning can be conveniently culled out by this Court in appeal u/s 9 of the PP Act. It must be appreciated that gist of the claim of appellant Paramjeet Singh in PPA No. 16/2016 and that of the other appellants in PPA Nos. 12/2016, 14/2016, 15/2016, 17/2016 and 18/2016 is that they have been in continuous and uninterrupted possession of their respective portions falling in the subject property by virtue of lease agreement in their favour executed by the erstwhile owner Narain Singh, which claim is untenable in law. It is not their claim that as on the date of notification under Section, 6 and 7 of the LA Act dated 03.09.1970, they were occupying the premises in question as a tenant. Further, their claim that they came to occupy the property as the possession of the subject property was not taken over by the Central Government, is hopelessly fallacious in law. It is well settled that transfer of Nazul property under Section 22 of the Delhi Development Act, 1957 with respect to Section 2(e)3(ii) of the PP Act is applicable to the exclusion of the Property Act, 1982, for which reference can be had to decision in PDA vs. Anant Raj Agencies (Pvt.) Ltd.. (2016) 11 SCC 406.

31. The letter dated 02.09.1982 of the Ministry of Supply and Rehabilitation, Government of India is a document, which is more than 30 years old and coming from the Government records and it shows that the subject property had been inspected and certain persons had unauthorisedly encroached upon the subject property at the time of handing over its, possession to the DDA on 08.05.1984. At no stage of the case, either in the previous Writ proceedings or otherwise, any claim has been* preferred or lodged by the appellants/occupiers that they have not been given any notice of acquisition of land and/or compensation and the submission made by the Id. Standing counsel for the DDA that the proceedings under Section 9, 11, 11A & 12 of the LA Act were not required to be initiated in respect of a land already acquired on taking over symbolic possession by the DDA cannot be faulted in law. was also rightly urged by the Id. Standing counsel for the DDA that the claim of the appellants with regard to their tenancy rights cannot be agitated and no inquiry into the same can be conducted after the lapse of a reasonable period of time and the beneficial provisions of Section 24 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not available to stale claims. Reference in this regard can be had to decision in the Writ Petition No. 3641/ 2016 and CM No. 6380/2019 titled Raghubir Sinha vs. Union of India decided by the Hon"ble High Court of Delhi vide order dated 11.02.2019 and in another decision in Writ Petition No. 2791/2015 titled Manish Gupta vs. Government of NCT and Others dated 18.01.2019.

15. What is to be seen is that the DDA has consistently been pursuing its rights and attempting to evict the encroachers, whose only claim is that they are tenants. The landlord of the property in question has never appeared. The right of a tenant cannot be better than that of a landlord.

16. The Court is informed that few weeks ago i.e. in 2020 itself, the heirs of

Narain Singh have filed a suit for right title and interest in the property claiming adverse possession, and this is only on the basis of their allegedly learning that some orders have been passed regarding eviction of 'their tenants'. The plea made by the landlord echoes the story of Rip Van Winkle. The first eviction proceedings were initiated in 2009 (MCD), then by DDA in 2010, resulting in an eviction order in 2015. The second eviction order was passed on 22.08.2016; it was under challenge for 5 years before the learned District Judge, and the appeal of the tenants/petitioners was dismissed on 03.07.2020. It is difficult to believe that the alleged landlord, who was receiving monies/rental all along from the petitioners, had no knowledge of what was transpiring. It is also difficult to believe that the petitioners never informed him of the pendency of the proceedings in which they had all participated as tenants. That being the position, surely, Narain Singh, who is claimed to be the landlord, knew fully well about DDA pursuing its claims.

17. The property has been vested in the DDA through a transfer document.

The said document, inter alia, reads as under:

"..... I am directed to say that in 1967, the Cabinet approved the proposal of the Ministry of Works & Housing in regard to large- scale acquisition and development and disposal of land in Delhi (vide case no. 14/2/1967, dated the 17th January, 1967) that inter-alia provide that unutilised lands with the Department of Rehabilitation within the urbanisable limits of market value on negotiated basis to be fixed by the Department of Rehabilitation. It was considered that since the Delhi Administration itself was transferring all its lands to the Delhi Development Authority, the lands in question should be consultation with the Ministry of Works & housing.

2. Negotiations were held with the Ministry of Works & Housing and the Delhi Development Authority to arrive at a mutually agreed cost formula. The Delhi Development Authority has agreed to take over those lands on "as-is-where -is" basis on payment of Rs. 30 crores.

3. I am accordingly to convey the sanction of the President to the transfer of unutilised lands (both developed and undeveloped) measuring approximately 1020 acres to the Delhi Development Authority on payment of Rs. 30 crores, subject to the condition laid down in paras 4 to 7 below. The broad details of the surveyed and un-surveyed lands are given in Annexure "A" and Annexure "B" respectively. The particulars of lands not being transferred to Delhi Development Authority and retained by the Department of Rehabilitation are given in Annexure "C". The details shown in these annexures are based on the result of the joint survey carried out by this Department and the Delhi Development Authority from 1978 onwards in respect of the surveyed colonies and on the basis of this Department"s record in respect of unsurveyed colonies.

There are likely to be some omissions/ variations in the areas shown against different colonies. The exact area transferable to the Delhi Development

Authority under this sanction will be as per physical handing over/ taking over of the lands. Rupees 30 crores has been agreed as a package deal and this amount shall not be changed if the variations are found in the actual area of the land either on plus or minus side.

4. Where the Department of Rehabilitation is required to allot/ transfer some land in pursuance of the existing or future judgements of the Courts, Arbitrators, Tribunals, etc., such cases/ judgments will be fully honoured/ implemented by the Delhi Development Authority.

5. If any case of commitment made by the Department of Rehabilitation comes to the notice later on, such cases will be examined on merits and decided in consultation with the Delhi Development Authority.

6. The Delhi Development Authority shall pay to this Department a sum of Rs. 30/- crores (Rupees Thirty Crores) only in three equal instalments. The first instalment of Rs. 10/- crores will be paid by the Delhi Development Authority by October 1982 and the subsequent instalments will be paid by 31st October 1983 and 31st October 1984. In default, the Delhi Development Authority will be liable to pay interest for the unpaid amount at the rate fixed by the Central Government from time to time.

7. Full particulars of the land, the broad details of which are given in Annexures "A" and "B", together with sketch plans etc. will be furnished by the Deputy Chief Settlement Commissioner (M) from the date of issue of this sanction. The Delhi Development Authority shall render all assistance to ensure speedy process of handing over/ taking over the lands and for preparing the sketch plan.

8. The transfer of the lands in question shall take effect on the payment of first instalment of Rs. 10/- crores. The Delhi Development Authority shall maintain, develop and dispose of these lands under the provisions of the Delhi Development Authority.

9. The payment to be made by the Delhi Development Authority under this package deal will be made to the Department by way of a Demand Draft drawn in favour of "Deputy Controller of Accounts (Rehabilitation), New Delhi" for being credited under the following Head:-

"088 - Social Security and Welfare - Relief and Rehabilitation of Displaced Persons- Displaced Persons from former West Pakistan - Receipt on account of Acquired Evacuee Properties adjustable by the Deputy Controller of Accounts (Rehabilitation), New Delhi."

10. This sanction issued with the concurrence of the Finance Branch vide their U.O. No. 2510/Fin/82, dated 02.09.1982.

...."

18. The contention of limitation apropos the PP Act is refuted by DDA. It is contended that the arguments is untenable because the unauthorised occupation

is a continuing cause of action and the Government can step in at any stage to evict the unauthorised occupants from lands meant for public purposes; that the unauthorised occupants who knew all along that the Government is emphasising its claim over the land first through MCD and then through the DDA, but the petitioners never claimed any independent rights in the land through adverse possession. A case for adverse possession can be made only when the claim of the owner is challenged through possession of the property by another person, and the latter asserts this right in spite of the claim of the owner, and the owner knowing of the adverse claim and possession does nothing to reclaim the property within time. But the petitioners have not claimed a right on the basis of their possession alone and adverse to the claim of DDA. The learned Standing Counsel for the DDA, relies upon the dicta of the High Court of Madhya Pradesh in *L.S. Nair vs Hindustan Steel Ltd, Bhilai and others*, AIR 1980 M.P. 106. It held, *inter alia*, as under:

" 10. It was also submitted that the recovery of damages for a period beyond 3 years was time barred. The Limitation Act has no application to proceedings before the Estate Officer who is not a Court. Learned counsel for the petitioner relied upon the case of *Kalu Ram v. New Delhi Municipal Committee*, (1965) 67 Pun LR 1190 in support of his submission. There is nothing in Section 7(2) which authorises the Estate Officer to assess the damages on account of the use and occupation of the premises and by order require the person to pay the damages, to show that there is any rule of limitation by which the Estate Officer is governed. As the Limitation Act has no application to proceedings before the Estate Officer and as the jurisdiction of Civil Court is entirely barred in matters governed by the Public Premises Act, it is difficult to accept the argument that there is any period of limitation for recovery of damages. The Punjab case on which reliance was placed, construed the words "rent payable" as they occurred in Section 7 (i) of the Public Premises Act, 1958, and construed them to mean "rent legally recoverable by a suit." The case has no application for construing Section 7(2) of the Public Premises Act, 1971, which deals with the power to assess and order payment of damages and where the language used is entirely different. Further, Section 15 of the 1971 Act now bars a suit and the remedy under the Act is the only remedy which can be availed of. In such a situation, the Limitation Act cannot be inferentially applied to proceedings before the Estate Officer."

19. The petitioners contend that in terms of the notification of acquisition, this particular land was never acquired by the Government of India nor was it transferred to the DDA; that after the notification under Section 6 of the Land Acquisition Act, 1970, gazetted on 03.09.1970, no award was passed vesting the said land in the GoI or thereafter purportedly transferring the same to the DDA on 02.09.1982.

20. However, the petitioners have not shown that their landlord Narain Singh, had any right in the property. The landlord himself has not come forth ever. The

petitioners knew full well that the DDA and GoI were asserting their title in the property on the basis of the transfer document and acquisition proceedings under ss.4 and 6 of the Land Acquisition Act. If the petitioners or their landlord claimed any right, title, or interest in the said property, they could have challenged the said notifications; the alleged transfer to DDA for Rs.30 crores and/or the possession letter. The Estate Officer was not required to look beyond the transfer document which granted right to the GOI and subsequently to the DDA under the acquisition notifications. It may be contested that the acquisition proceedings were never complete but that contest could only be made by the 'landlord' Narain Singh and not by his tenants - the petitioners. The latter have also not set up a case of adverse possession against DDA or GOI. They did not do so in the proceedings initiated by the MCD or any time ever against the DDA. They claimed protection under a landlord, who never contended in any proceedings despite having been served notice in the W.P.(C) No.16/2009. It is odd that a landlord will not assert his right, title or interest apropos land he possibly claimed his own, albeit he and later his 'heirs' were allegedly receiving rents from the tenants/petitioners. His not doing anything in this regard could lead to only one conclusion, that he never actually had a claim or did not wish to assert it against the DDA in view of the s.6 acquisition notification. Perhaps the petitioners too have not taken any steps to dispute the same. Therefore, there is a presumption in favour of the validity of the said government documents. A tenant's rights cannot be more than that of the landlord. The tenant cannot challenge the government documents which the landlord himself has not challenged. The landlord's, suit now filed after 38 years seeking adverse possession, after the aforesaid transfer to DDA in 1882, has yielded no results in his favour thus far. The petitioners have not claimed protection under any other statute.

21. The petitioners have not been able established any right in the property which they could claim to supersede the claim of their landlord. No error is shown in the procedure adopted by the Estate Officer. The eviction order is reasoned; the appellate/impugned order, has extensively dealt with each of the contentions raised by the petitioners. These petitions are without merit and are accordingly dismissed, along with pending applications.

22. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.