
(2008) 10 DEL CK 0064

In the Delhi High Court

Case No : L.P.A. 467 of 2006 and C.M. No. 12066 of 2008

Ram Kishan

APPELLANT

Vs

Commissioner of MCD and Others

RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Citation : (2008) 10 DEL CK 0064

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Jitender Kumar, for the Appellant; Ajay Arora and Kapil Dutta for MCD Amit Mehra, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

CMA No. 12066/2008

With the consent of both the parties, present application is allowed and appeal is restored to its original number. Accordingly, application stands disposed of.

With the consent of parties the Appeal is taken up for hearing and disposal.

LPA No. 467/2006

1. The present Letters Patent Appeal has been filed against the judgment and order dated 24th August, 2005 whereby learned Single Judge had been pleased to dismiss the Appellant's writ petition not only on the ground that the Appellant had suppressed the Division Bench's order dated 27th September, 1991 as a consequence of which the Appellant's earlier Writ Petition bearing No. 1637/1991 had been dismissed, but also on the ground that the Appellant's new writ petition amounted to re-litigation/re-agitation of same question involved in the initial writ petition.

2. Learned Counsel for the Appellant has contended that the earlier Division Bench's order dismissing the WP(C) No. 1637/1991 could not be the basis for dismissal of the present writ petition as the earlier petition was filed in a

representative capacity whereas the present petition had been filed solely in the Appellant's individual capacity and was espousing his personal cause.

3. Learned Counsel for Appellant further submitted that earlier writ petition has been dismissed on the failure of the Appellant to show that he had filed the petition in a representative capacity. Learned Counsel re-emphasised that dismissal of the earlier writ petition was on the ground of locus standi and / or lack of representative capacity but not on merits of the Appellant's personal case.

4. We are of the view that the Appellant's submissions are misconceived on facts and untenable in law. The earlier writ petition was not dismissed only on the ground of Appellant's locus standi or Appellant's lack of representative capacity but also on merits of the Appellant's case. This would be apparent from the following findings of the earlier Division Bench's judgment:

... In the cause title of the writ petition he does not give his residential address but in Annexure-I the address given is, House No. T-31 in the village. In the ration card, copy of which has been filed by Ram Kishan, the address given is House No. T-231. The claim in the petition is that the land shown in red in the plan filed by the Petitioner is in occupation of the Petitioner and the Petitioner should not be evicted without due process of law. In the plan which has been filed, neither House No. T-31 nor House No. T-231 is shown. The Petitioner has also not been able to show us any document of title to any parcel of land in the said village.....

.... This petition is nothing more than an individual grievance of Ram Kishan who has not made good the claim that he is occupying any part of the disputed land. The Petitioner not having filed any document of title or proof of ownership or valid allotment of land and in view of the fact that in the so-called disputed land shown in red, neither House No. T-31 nor House No. T-231 is shown, we find no merit in this writ petition.....

5. In any event, we are of the view that learned Single Judge was also justified in dismissing the Appellant's writ petition on the ground that the Appellant had suppressed the earlier Division Bench's order dated 27th September, 1991. The Appellant's defence that the earlier order dated 27th September, 1991 was not filed as the Appellant was not in possession of the same, does not inspire confidence as the new writ petition was filed after a gap of 13 years and in the new writ petition an interim order of the earlier writ petition had been placed on record. It is pertinent to mention that there is no ground in the present appeal dealing with non filing of the earlier judgment and order dated 27th September, 1991.

6. It is settled law that writ courts exercise equitable jurisdiction and grant discretionary relief only when it subserves the ends of justice. Denial of relief by a writ court on the ground of suppression of facts and documents by a Petitioner is an accepted proposition of law. In our opinion, in the present case non filing of earlier Division Bench's judgment and order dated 27th September, 1991

disentitles the Appellant from seeking any relief from a writ court.

7. Consequently, the present appeal is dismissed with costs of Rs. 2,500/- to be paid to Delhi High Court Legal Services Committee on the grounds of suppression and re-litigation.