

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 595/2008 & CM No. 1154/2008

RAKESH JAIN

..... Petitioner

Through Ms. Anjali Chopra, Advocate.

versus

M.C.D. & ORS. Respondents

Through Mr. Ajay Arora, Advocate for MCD.

Mr. Raman Duggal, Advocate for respondent No. 4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 20.02.2008

1. Late Mr. Shanti Prasad Jain was tenant of a portion of property bearing No. 2076, Roshan Dolla Street, Kinari Bazar, Chandni Chowk, Delhi. The petitioner is one of the legal representatives of late Mr. Shanti Prasad Jain and claims that he is in occupation of two rooms, kitchen, bathroom, latrine and open courtyard.

2. Mr. P.N Mathur had filed eviction proceedings against Mr. Shanti Prasad Jain. During the pendency of the proceedings, Mr. Prakash Chand Khatri purchased the property from Mr. P.N. Mathur. Mr. Shanti Prasad Jain has also expired and his legal representatives have been brought on record.

3. It appears that the building is very old and in a dilapidated condition. Gurutegh Bahadur Khalsa Senior Secondary School is occupying adjoining premises and shares a common wall. They have made number of complaints to the MCD since 2001 that the plaster and the bricks of the common wall keep on falling and cause injuries. The said school has filed some photographs in their writ petition W.P. (C) No. 905/2008. MCD had inspected the property and thereafter two orders dated 20th February, 2004 have been passed against Mr. P.N. Mathur, the erstwhile owner, Mr. Rakesh Jain and one Mr. Prabhat Jain stating, inter alia, that the building in question is dilapidated and in a dangerous condition and, therefore, the same should be vacated. These orders have been passed under Sections 348(4) and 349(2) of the DMC Act, 1957. These orders have not been challenged and have become final.

4. Since 2004, MCD has been issuing show cause notices and reminders to the owner and occupants of the said building to carry out repairs and vacate the same. Last such reminder was sent on 9th January, 2008. Reminder dated

9th January, 2008 refers to earlier orders dated 20th February, 2004, wherein directions were given to demolish/strengthen and repair the property within three days.

5. During the course of hearing, the petitioner Mr. Rakesh Jain and the respondent No. 4, Mr. Prakash Chand Khatri in W.P. (C) 595/2008 have agreed and consented as under:-

i) Mr. Prakash Chand Khatri will apply for sanction of building plans within ten days.

ii) Learned counsel for the MCD assures this Court that the building plans will be sanctioned expeditiously and preferably within a period of one month from the date plans are submitted. The plans will be sanctioned under the policy, if any, relating to demolition under Section 348 of the DMC Act, 1957.

iii) The petitioner will vacate the premises within a week after building plans are sanctioned by MCD.

iv) Respondent No. 4 will file an undertaking in this Court that the building will be completed within a period of 14 months after sanction of building plans and the building will not be occupied by any one including any third party till possession of the area, which is presently in occupation of the petitioner, is

given to the petitioner. The petitioner will be given the same area, which is presently in his occupation.

v) To determine the area presently in occupation of the petitioner, Ms. Sangeeta Chandra, Advocate is appointed as the Local Commissioner to visit the property in question and demarcate the area in occupation of the petitioner. She shall be paid Rs.10,000/- by the petitioner. She will also be entitled to take help of an architect/draftsman, if required.

vi) The landlord respondent No. 4 will take steps to ensure that falling of the plaster and bricks do not injure students of the school by putting up tin plates/sheets. Assistance in this regard will be provided by Gurutegh Bahadur Khalsa Senior Secondary School and, if required, protection/scaffolding can be put on their side.

6. This Court is not expressing any opinion on the eviction proceedings, which are pending against the petitioner. The Rent Controller will decide the eviction proceedings on merits without being influenced by this order. The question of area in occupation of the petitioner will also be determined by the Rent Controller. Eviction decree, if passed, can be executed in accordance with law without any party being prejudiced by the order passed today. The petitioner will have right to file an appeal against eviction decree as per law. It is also clarified that this order is passed with the consent of the parties. This order will

not affect mutual rights or disputes between legal representatives of late Mr. Shanti Prasad Jain.

7. Liberty is also granted to the parties to file an application in this Court, if required. It is clarified that orders passed by the MCD on 20th February, 2004 have not been set aside and quashed by this order. MCD is also given liberty to approach this Court for further direction in case the respondent No. 4 does not adhere to the time schedule and does not demolish the property. Both the parties will file undertakings within ten days from today.

The writ petition is disposed of.

DASTI.

SANJIV KHANNA, J.

FEBRUARY 20, 2008

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