

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.318 of 2009 & CM No.14687/09

% Judgment reserved on: 20th October, 2009

Judgment delivered on: 21st October, 2009

Mr. Vinod Kumar,
S/o Sh. Rajesh Kumar,
R/o Shop No. 1116,
Masjid Kazi Wali Main Bazar,
Pahar Ganj,
New Delhi

....Appellant

Through: Mr. K. S. Bhati, Advocate

Versus

Delhi Wakf Board,
Through its Chief Executive Officer,
5028, Darya Ganj,
New Delhi.

...Respondent

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Appellant by way of present appeal has challenged order dated 14th July, 2009, passed by Additional District Judge, Delhi. Vide impugned order, application of appellant under Order 39 Rule 1 and 2 Code of Civil Procedure (for short as 'Code') has been dismissed by trial court.

2. Appellant's case is that, he is a lawful tenant and is in possession of Shop no. 1116 at Masjid Kazi Wali, Main Bazar, Pahar Ganj, New Delhi, where he is running business of readymade garments since 11th June, 1997. Appellant has taken possession of the said shop from Sh. Mahinder Kumar, who was a tenant in the suit property. Appellant filed an application on 12th February, 1998, for transfer of tenancy rights in his favour, but no decision has been taken as yet by respondent.

3. All of a sudden on 24th January, 2007, appellant received an eviction order dated 22nd January, 2007, under Section 54 of the Wakf Act, 1995 (for short as 'Act'), in which it was stated that appellant is an encroacher in the said suit property. Appellant made representation to respondent stating that he was a lawful tenant in the property. Respondent passed an order dated 24th February, 2007 asking him to vacate the said property within 15 days.

4. Respondent in its written statement took the plea that appellant is in illegal occupation of the suit property and possession of shop was taken by him without prior permission and consent of respondent. Appellant has no document to support his case and is simply an encroacher.

5. It is contended by learned counsel for appellant that respondent has passed the eviction order without giving sufficient opportunity to the appellant, while it

is admitted fact that respondent accepted/received arrears of rent from appellant.

6. Other contention is that appellant is in possession since 1997 as sub-tenant of the respondent. In 1997, tenant Mahinder Kumar filed an application for transfer of tenancy and handed over the possession to appellant. Appellant has not been given due opportunity for consideration of his application for change of tenancy. Application of the appellant for change of tenancy, is pending with respondent. Without disposing of the same, eviction order has been passed, against the appellant. Under these circumstances, impugned order is liable to be set aside.

7. Principles for grant of temporary injunction are well settled. There has to be,

- (i) Prima facie case;
- (ii) Balance of convenience should be in favour of party seeking injunction and;

(iii) Irreparable loss would be caused if injunction prayed for is not granted.

8. It is appellant's own case, that he is a sub-tenant in the property. However, there is nothing on record to show that appellant took possession of shop in question from the previous tenant Mr. Mahinder Kumar, with prior permission and consent of the respondent.

9. Appellant has nowhere stated as to on what rate of rent, he has taken the shop in question and to whom he is paying the rent and upto what period rent has been paid.

10. Appellant himself has placed on record copy of eviction order dated 22nd January, 2007, passed under Section 54 of the Act. As per this eviction order, appellant is an unauthorized occupant of Wakf property, that is shop in question. A show cause notice was issued to him. Father of appellant appeared on several dates and was heard. He could not show any

authority under which appellant was occupying the Wakf property. Appellant did not file any reply to the show cause notice.

11. However, appellant made representation against the eviction order taking the plea that, he took the possession of shop from Mr. Mahinder Kumar, in the year 1997 and filed an application before Wakf Board on 12th February, 1998 for becoming tenant of the Board. Appellant also filed photo copy of receipt of Rs.21,000/- which was paid by appellant in the name of tenant. As per photocopy of the receipt it was issued in the name of Mr. Mahinder Kumar, the previous tenant and not the present appellant.

12. There is no document on record to show that appellant is a sub-tenant in the shop in question or has taken possession of the shop, with prior permission or consent of the respondent.

13. Trial court also observed that appellant has no documents to show in his favour, ever issued by

respondent. The appellant is not having prima facie case or balance of convenience in his favour.

14. In ***Shiv Kumar Chadha Vs. Municipal Corporation of Delhi***, (1993)3 SCR522, Supreme Court observed that;

“A party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him”.

It further observed;

“the court should be always willing to extent its hand to protect a citizen who is being wronged or is being deprived of

a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court”.

15. As appellant is an unauthorized occupant of shop of respondent, prima facie, he has no legal right to remain in possession. I do not find any reason to disagree with the findings of the trial court.

16. Present appeal is thus not maintainable and same is dismissed with costs of Rs.5,000/-. Appellant is directed to deposit the costs, with trial court, within one month from today, failing which it shall recover the same in accordance with law.

CM NO. 14687/2009

17. Dismissed.

18. Copy of this order be sent to trial court for compliance.

October 21, 2009
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V.B.GUPTA, J.