

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

Reserved on : 14.01.2010
Date of decision : 29.01.2010

+ **CS (OS) 637/2008 &**
 I.A. Nos.4298/2008 , 5316/2009

THE SOCIETY OF THE HOLISTIC CHILD
DEVELOPMENT INDIA Plaintiff
Through: Dr. M.P. Raju, Advocate.

versus

THE CHURCH OF NORTH INDIA SYNOD & ANR Defendants
Through: Ms. Anisha Banerji with Ms. Mrinalini
Gupta, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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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. |

MR. JUSTICE S.RAVINDRA BHAT

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1. The plaintiff in this suit, the Society of the Holistic Child Development India (hereafter called “HCDI”) seeks a decree under Section 6 of the Specific Relief Act, 1963 (hereafter “the Act”) directing the defendants to restore possession of a portion of the building CNI Bhawan, Pandit Pant Marg, occupied by it (hereafter called “the suit premises”).

2. The plaintiff says that it is a registered society, with charitable and non-profit objects, such as upliftment of the poor, destitute, orphaned and abandoned children, irrespective of creed, or religion, AIDS orphans, children of sex-workers, child labourers, rag-pickers, etc. It came into existence with effect from 1-1-1995. It alleges to being the successor of the Church of North

India Council for Child Care (CNI-CCC), which was previously an organ of the first defendant (hereafter “CNI”). The second defendant is a trust, which manages all properties of the CNI. The CNI-CCC, it is stated, used to carry on similar activities as the plaintiff, and was funded by Kindernothilfe of Germany. It is stated that in 1993, due to change in the socio economic scenario, the Kindernothilfe was compelled to change its functioning, and felt the need to terminate its arrangement with all partner organizations, in different countries. It, therefore, terminated the arrangement with CNI-CCC with effect from 31-12-1994 with the objective of entering into an arrangement with a new set up, that was constitutionally well equipped to meet new challenges, that is, to respond to the needs of emerging new groups of oppressed, abused and exploited children. Therefore, CNI resolved to dissolve CNI-CCC and enabled formation of the HCDI. The plaintiff mentions about the CNI’S resolution dated 28/29-9-1994 resolution regarding dissolution of CNI-CCC with effect from 31-12-1994 and a further resolution to gift or donate movable and immovable properties of the CNI-CCC to the new body, i.e. HCDI. It is further stated that HCDI is a new ecumenical body continuing with the work and duties of CNI-CCC, and its successor in interest, to whom all such work was transferred with effect from 1-1-1995. Reliance is placed on the CNI’s resolution dated 23-10-1994, for this purpose. HCDI states that Kindernothilfe started to fund it, after it came into existence, instead of funding CNI-CCC, which it did for the period 1975-1994.

3. The plaintiff states that its head office is in the suit premises; it is a space of 432 sq. feet, which was with the CNI-CCC, when it was in existence; it had spent Rs. 3 lakhs, and relies on a resolution of the CNI dated 24-6-1981, made for the purpose. It is also stated that the plaintiff, through its predecessor in interest, i.e. CNI-CCC took possession of the suit premises when it was allotted, in 1984, and such possession was enjoyed uninterruptedly for 10 years, till CNI-CCC was dissolved, and in its stead, the plaintiff was constituted, and given possession. The plaintiff says that the third defendant was treasurer of CNI, and through his demand and insistence, through the letter dated 6-9-1995, it (the plaintiff) was made to pay contributions towards service charges. Reliance is also placed on a letter dated 4-3-1996, issued for this purpose.

4. The plaintiff says that the defendants, in a most illegal and unwarranted manner started forcing it (the plaintiff) to vacate the premises on one pretext or the other. The plaintiff refers to

letters, exchanged with the defendant No. 3, who by the letter dated 6-4-2004 insisted on dispossessing it (the plaintiff). The plaintiff relies on a letter dated 10-12-2004, indicating its stand that the premises would not be vacated, as demanded. The plaintiff says that the defendants frequently harassed it to vacate the premises, which was always resisted with the reply that it would move out only when alternative space was available. The plaintiff says that the defendants again demanded that it should vacate the premises, by the letter dated 14-2-2008, by end of March, 2008, which was resisted. The defendants, says the plaintiff, then ensured that they were not allowed access to the premises, by their (the defendants) security guards, with effect from 3-3-2008. The plaintiff refers to a letter of 6th March, 2008, by the third defendant, saying that it had been dispossessed from the premises. Another letter or notice too, was issued on 7th March, 2008, by the third defendant stating that the plaintiff would not be allowed to access the premises, and that it (the plaintiff) should remove its furniture and effects from there.

5. The plaintiff says that it was in continuous and settled possession of the premises up-to 1-3-2008. The suit property is its head office, from where all its bank accounts are operated, funds are disbursed to all its 80 projects spread over several states in North India through which about 30,000 poor and neglected children and 10,000 families in 300 villages under different project areas are benefitted. The plaintiff states that all its tax records and other files pertaining to work with Government departments and agencies, are also kept in the head office. On these allegations, the plaintiff claims a decree for restoration of possession.

6. Dr. M.P. Raju, learned counsel for the plaintiff, relied upon Ex.D-1, (filed by the defendants) dated 17-1-1995, which, it is stated, acknowledges that the plaintiff succeeded as the body instead of CNI-CCC, replacing it in its functions. Similarly, he relies on Ex.P-7, a letter dated 6-9-1995, issued by the third defendant, for the first defendant, demanding payment of service charges for the suit premises. He submits that the defendant had asked the plaintiff to vacate the premises, in 2004, to which it (the plaintiff) replied by letter dated 9-3-2004 (Ex. D-3), stating that the time given was insufficient. It is submitted that after this the defendant sought to raise the issue that the plaintiff was not given possession, asking for proof that it was the successor of CNI-CCC, through Ex. D-4, a letter dated 6th April, 2004. Reference is also made to Ex. D-7 and Ex. D-9, to say that the plaintiff never agreed to hand over possession to the defendants, as alleged by the latter. The plaintiff also states that the defendant, in any of the

contemporaneous letters, refers to it (the plaintiff) having acquired alternative accommodation, upon which it would have had to vacate the premises.

7. The plaintiff relies on the rulings reported as *Rame Gowda v. M. Vardappa Naidu*, 2004 (1) SCC 769, *Krishna Ram Mahale v. Shobha Venkat Rao*, AIR 1989 SC 2097 for the argument that when a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property, except by recourse to law. It was argued that even if there is controversy about the plaintiff being the real or true successor of CNI-CCC, the documentary evidence on the record establish beyond any doubt, that the defendants had given possession to the plaintiff, as far back as in January 1995, later, insisted that the plaintiff pay service charges and contributions, and started harassing it to vacate the premises. The documents also establish that the plaintiff was in continuous and peaceful possession, and there was no agreement that the right to continue in the premises would end, as is being projected by the defendants, in the present case.

8. The defendants, in the written statement, contest that the plaintiff was in possession of the premises. It is argued that the plaintiff is trying to set up a false case of being the successor in interest of CNI-CCC, whereas there is no material suggesting such inference or fact. It was emphasized that the decision to dissolve CNI-CCC was taken in September, 1994, whereas the plaintiff, contrary to its pleadings, is now trying to say that it was set up or established in August, 1994, even before the decision was taken in that regard.

9. The defendants submit that the possession of the premises was always with them, and never with the plaintiff, as claimed by the latter. Such being the case, the plaintiff had agreed to vacate the suit premises as soon as it acquired its alternative space or premises. The defendants argue that this is evident from the correspondence between the parties, exchanged in 2004, which establishes that the defendants were all along asking that the premises be vacated, and the plaintiff had agreed to the proposal. Learned counsel emphasized that the documents relied on by the plaintiff, themselves point to the defendants never accepting that it (the plaintiff) was in possession, and in fact questioning its unfounded claims made for the first time.

10. The defendants submit that the plaintiff, though not successor of CNI-CCC, was permitted to continue occupying the suit premises, on the specific assurance that this would

cease, the moment it (the plaintiff) obtained alternative accommodation. It is submitted that the plaintiff did not even pay the electricity charges after 2005. It is further submitted that the plaintiff had been requested, ever since 1995, to stop using the premises, and it had been assuring to do so. It is contended that the plaintiff also stopped paying the service charges, at a nominal rate of Rs. 2/- per square feet, after 2003.

11. It is argued by Ms. A. Banerjee, for the defendants, that the plaintiff was never in possession, and it cannot rely on the use of that expression, in stray documents. The plaintiff, she says, has never proved how it came by possession, as understood in law. It was argued that the protection, and relief afforded by Section 6 is only to those who complain of being dispossessed from some property, the possession of which was lawfully given to them.

12. The defendants rely on the decision reported as *M. C. Chockalingam & Ors v. V. Manickavasagam* 1974 (1) SCC 48, where it was held *inter alia*, that:

“Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it”.

13. Counsel also relied on the decision reported as *East India Hotels Ltd. –v- Syndicate Bank*, 1992 (Supl2) SCC 29, where it was held that:

“Those cases deal with tenants holding over after the expiry of the term of lease and such possession after holding over is entirely different from the case of a licensee remaining in occupation after the expiry of the term of licence. The position of such licensee is not better than a trespasser and if the true owner comes into possession of the premises without using any force or on account of fire or other act of vis major, in my view it would not be in the interest of justice to grant a decree for possession in favour of such licensee under Section 6 of the Act.”

The defendants argue that on an overall reading of the materials, what has to be concluded is that the plaintiff was never given possession of the premises, as understood in law. It is seeking to set up a non-existent case of being in possession as successor in interest, of CNI-CCC, which is contrary to the record, and not established in the suit. Further, the plaintiff had assured to vacate

its occupation of the premises, time and again, but not complied with such assurance. It is argued that the plaintiff had indeed, acquired alternative premises, at Baptist Anand Bhawan, 21, Raj Niwas Marg, Delhi 54. Ms. Banerjee emphasized that this averment was not specifically traversed by the plaintiff, in the rejoinder (to the written statement). She also highlighted the fact that Mr. Thomas Rajkumar, who deposed as the authorized representative of the plaintiff, in the suit, had indicated the same address in the verification part of the plaint, which establishes that the premises were acquired, as alleged by the defendants, in January, 2008. In the circumstances, say the defendants, the plaintiff cannot claim any relief, and the suit has to be dismissed.

14. It is well established that in a proceeding under Section 6 of the Specific Relief Act, the Court does not conduct a regular and elaborate trial, but adopts a summary procedure. In this case, the evidence led by the parties is concededly documentary in nature; neither party led oral evidence. These documents have been exhibited.

15. The plaintiff's claim in the suit was premised on its being a successor to the erstwhile CNI-CCC, which concededly was wound up with effect from 31-12-1994. Although it traces its possession in the suit premises from 1984, (through its predecessor CNI-CCC) there is no

material on the record. Ex. D-14, shows an anxiety not to call the new body contemplated

Request from Holistic Child Development India to continue to use the space used by CNI-CCC till such time that the HCDI locates a suitable place for its office premises:

The Office-Bearers considered the request and noted that:

- 1. CNI-CCC has ceased to function with effect from 31st December, 1994;**
- 2. That a new Ecumenical Body by name HOLISTIC CHILD DEVELOPMENT INDIA has been formed;**
- 3. CNI is a full Member of the new Ecumenical Body;**
- 4. And that CNI Dioceses and their hostels are the maximum beneficiaries of the funds from HCDI-**

It was resolved that HCDI be allowed to function from the CNI premises, currently used by CNI-CCC and on the terms and conditions on which CNI-CCC was provided the space.

It was also resolved to ask the HCDI to look for alternate place for its offices as soon as possible because the CNI Synod Office needs additional space for its own expended work.

“successor”. Ex. D-1 is as follows:

The other documents, Ex. D-2 and Ex. D-3, show that HCDI accepted the offer to move into the suit premises. Ex. D-4, a letter issued by CNI, to the HCDI, ON 6-4-2004, undoubtedly questions the latter's position, reflected in its letter, about being in possession. Crucially, however, it states as follows:

Kindly refer to your letter no. TRK/fr dated 9th March 2004 regarding use of the CNI Bhavan premises by the HCDI.

The 155th Meeting of the CNI Synod Office Bearers held on 31st March 2004 while reiterating their earlier decision authorized me to inform you further that the premises presently under the occupation of the HCDI would not be available to them with effect from 1st July 2004 in view of the pressing need of additional space for our own programs.

Most pertinently, Ex. D-4 states that:

“We are now giving you three months notice and hope you will hand-over the vacant possession of the premises to the undersigned on or before 30th June, 2004.”

Ex. P-7 written by the Defendants, says, *inter alia*, that the CNI Synod, in its 56th EC meeting decided that HCDI would be requested to contribute Rs. 14,688/- per year, as charges for maintenance of the building. The document also required payment for the year 1995-96. Ex. D-5, D-6, Ex. D-7 and Ex. D-8 are letters written to the plaintiff, by the CNI, stating that the former had to vacate the premises; these letters, like Ex. D-4, were addressed in 2004. The last of these, Ex. D-8, stated that the plaintiff had to vacate the premises by 15-12-2004. In the light of these correspondence, the further documents clarify that the defendants' stand why the plaintiff was denied access to the premises, as contended by it:

"...As the matter to vacate the premises was being prolonged, by concerted effort of non-action by HCDI, and the construction work of the fourth and fifth floor in the existing building had already commenced, I was forced to send you a letter dated 14th February, 2008, specifically pointing out to your failure to fulfil your own commitments and informing you that your staff posted at HCDI office, CNI Bhawan, would not be allowed entry w.e.f 1st March, 2008 and therefore asked you to ensure that all records, furniture and fixtures were removed prior to that date..."

The said letter further stated that the plaintiff's continuous assurance about its searching another place was a "farce" and a "time wasting tactic" since March, 2004. In these circumstances, the plaintiff, according to the defendants, had overstayed in the premises, and the defendants were forced to ensure that their (the plaintiff's) staff were not allowed entry.

16. In the judgment reported as *Sudhir Jaggi v. Sunil Akash Sinha Chaudhary*, 2004 (7) SCC 515, the Supreme Court explained the concept of "possession" as follows:

"Kumar Kalyan Prasad v. Kulanand Vaidik (AIR 1985 Pat 374 : 1985 Pat LJR 462 : 1985 BBCJ 310) while discussing the scope of Section 6 of the Specific Relief Act, 1963, it has been held :

"9. In the first instance, a mere reference to the plain language of the provision aforesaid would indicate that the word 'dispossessed' has not been used in the narrowly constricted sense of the actual physical possession of immovable property. Indeed, it talks somewhat widely of dispossession of immovable property otherwise than in due course of law without the person's consent. If the legislature intended to narrowly limit the word 'dispossessed' there could have been no difficulty by specifying in terms the actuality of physical possession as its necessary and vital ingredient. The word employed is the ordinary word 'dispossess'. Plainly enough it would include within its sweep actual physical dispossession also but this is no warrant for holding that it necessarily excludes the violation of other forms of possession including a symbolical possession duly

delivered by law and contumaciously violated by an aggressive trespasser. On principle I am not inclined to construe the word 'dispossessed' in Section 6 in any hyper-technical sense and to push it into the procrustean bed of actual physical possession only. Indeed the intent of the legislature in Section 6 to provide early and expeditious relief against the violation of possessory right, irrespective of title, would be equally, if not more, relevant where symbolical possession delivered by due process of law is sought to be set at naught forthwith."

To the same effect is the judgment of the Calcutta High Court in the case of Raj Krishna Parui v. Muktarlam Das ((1910) 12 Cal LJ 605) in which while interpreting Section 9 of the Specific Relief Act, 1877 (Section 6 of the present Act, 1963) it has been held :

"In a suit commenced under Section 9 of the Specific Relief Act, the sole point for determination will be, whether the plaintiffs were in possession of the disputed property within six months previous to the institution of the suit and whether they had been deprived of such possession by the defendant otherwise than in due course of law. It is immaterial, if the plaintiffs were in possession, that such possession was without title. What the plaintiff has to prove is possession of the disputed property and not mere isolated acts of trespass over that property.

In order to entitle the plaintiff to succeed on the ground of possession, he must prove, firstly, that he exercised acts which amounted to acts of dominion; the nature of these acts of dominion varies with the nature of the property; secondly, that the act of dominion was exclusive. If the occupation by the plaintiff, as indicated by those acts, has been peaceable and uninterrupted and has extended over a sufficient length of time, the inference may properly be drawn that the plaintiff was in possession."

(emphasis supplied)

17. The decision in *Chokalingam*, in the opinion of the Court, is not an authority for the proposition relied on by the plaintiff. In *Rame Gowda* (supra) a three judge Bench of the Supreme Court, after reviewing all the authorities, held as follows, in the context of what is possession, and the correct approach in proceedings relating to Section 6 of the Specific Relief Act:

"It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of reasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and

also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presume the possession to gone with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a filmsy character, or recurring, intermittent, stray or causal in nature, or has just been committed, while the rightfull owner did not have enough time to have recourse to law. In the last of the case, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decision. Illustratively, we may refer to Munshi Ram and Ors. v. Delhi Administration - (1968) 2 SCR 455. Puran Singh and Ors. v. The State of Punjab - (1975) 4 SCC 518 and Ram Rattan and Ors. v. State of Uttar Pradesh - (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case, it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an instruction upon his possession which has never been lost. A stray act of trespass, of a possession which not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case, the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;*
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element*

of animus possidench. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case :

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land would be whether or not the trespasser, after having taken possession had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.”

It has been held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. This has been reiterated in *Subramaniaswamy Temple, v. V. Kanna Gounder*, 2009 (3) SCC 306.

18. The defendants’ position is that the plaintiff was never given lawful possession of the suit premises; that it was never the successor of CNI-CCC nor is there evidence to establish that, and on the other hand, it was merely allowed to use the space for a limited period, on the understanding that it would be vacated early, and in any case when it acquires alternative premises. It also argues that the plaintiff indeed had acquired such alternative premises.

19. The cumulative effect of the documents and materials on record, in the opinion of the Court, is that though the plaintiff has been unable to establish that it is the successor of CNI-CCC, Ex. D-1, the letter of 17-1-1995, containing the resolution of CNI, clearly shows that the premises were given for use of HCDI. That reveals that such occupation or use (the defendants carefully not using the expression “possession” ever since the controversy arose) is continuous, for 13 years. No doubt, the defendants were asking the plaintiff to hand over possession of the premises. Yet, it does not deny that the plaintiff came into existence only in 1995, and entered the premises then. These facts are sufficient for this Court to conclude that possession was handed over to the plaintiff, by the defendants, and the former continued in it, till access to the premises were denied by the defendants.

20. So far as the defendants’ argument about the plaintiff having acquired alternative premises (leading to the end of the latter’s license is concerned) though such a pleading is made

by the defendant, no evidence is led in this regard; the latter also did not seek appointment of a local commissioner, nor place any other material on record. It is placing reliance merely on the lack of specificity in pleadings is not sufficient in this regard.

21. For the above reasons, it is held that the plaintiff has been able to prove that it was in continuous occupation and possession of the suit premises, since 1995, till the defendants decided to deny access to them, in March, 2008. Clearly, this action was not based on any authority of law. Consequently, the plaintiff is entitled to a decree as claimed.

22. The suit therefore succeeds; the defendants shall ensure that the plaintiff's possession is restored, in respect of the premises, and it is allowed to use the same. The suit is decreed in the above terms. The defendants shall bear the costs of these proceedings; counsel's fee is quantified at Rs. 50,000/- .

January 29, 2010

(S.RAVINDRA BHAT)

JUDGE