

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 30th July, 2013

+ **RFA 251/2004, CM No.6378/2004 (for stay) & CM No.7170/2006**
(u/O 41 R-27 CPC)

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Ms. Amita Gupta, Adv.

Versus

SANATAN DHARAM SABHA, SHAHDARA Respondent
Through: Mr. S.N. Gupta, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 29th November, 2003 of the Additional District Judge (ADJ) against the appellant Municipal Corporation of Delhi (MCD), of possession of portion of property at 531, Sanatan Dharam Senior Secondary School, Bara Bazar, Shahdara, Delhi and for mesne profits/damages for use and occupation @ Rs.5,000/- per month.

2. Notice of the appeal was issued and vide *ex-parte* ad interim order dated 17th May, 2004 the operation of the impugned judgment and decree was stayed. Vide subsequent order, the Trial Court record was requisitioned. Vide yet subsequent order 8th September, 2006, the appeal was admitted for hearing and the ad interim order in force made absolute, subject to the

condition that the appellant shall bear all expenses towards the maintenance, cleanliness, upkeep of the premises in its occupation and also pay the electricity and water charges in connection with the use thereof. The appeal is accompanied with an application under Order 41 Rule 27 of Civil Procedure Code (CPC), 1908 for permission to place on record additional documents.

3. The counsels have been heard.

4. The respondent, a Society under the Societies Registration Act, instituted the suit from which the present appeal arises pleading, i) that it had as a licensor given on leave and licence basis, licence to the appellant MCD to use six rooms situated on the first floor and forming part of the property known as Sanatan Dharam Devnagri Pathshala situated at 531, Sanatan Dharam Senior Secondary School, Bara Bazar, Shahdara, Delhi for a period of five years for running a school; ii) that the appellant MCD after taking the said property on licence, started running a school for imparting education to the students and till the date of institution of the suit was running the said school from the licensed portion; iii) that since the respondent Society did not want the licence to continue, vide notices dated 24th February, 1999, 17th July, 2000, 4th December, 2000 and 14th February, 2001, the licence was terminated and the appellant MCD called upon to deliver possession of the said property but had failed to do so; iv) that though the said portion of the property was capable of fetching rent @ Rs.10,000/- per month but mesne profits/damages for use and occupation were being claimed @ Rs.5,000/- per month only. Accordingly, the relief

of, a decree for possession of the said portion and of damages for use and occupation/mesne profits from the date of institution of the suit and till delivery of possession was claimed.

5. The appellant MCD contested the suit taking various technical pleas and denying that any licence to use the said property had been granted by the respondent Society to the appellant MCD. It was pleaded that the appellant MCD had taken over the management/functioning of the said school as the respondent Society had failed to run the school as per the Rules and Regulations and to act as per the grant-in-aid scheme of the appellant MCD. It was elaborated, a) that a school by the name of Sanatan Dharam Devnagri Pathshala was started by the respondent Society in the year 1946; b) that since 1950 to 1954 temporary recognition was accorded to the said primary school; c) that permanent recognition was granted on 1st May, 1955 with a condition that in the event of failure to follow the conditions as laid down in the Punjab Education Code, the recognition would be withdrawn; d) that the respondent Society applied for grant in aid from the appellant MCD and which was sanctioned and whereunder the appellant MCD paid 95% of the salary of the staff etc. and the respondent Society was to pay balance 5% of the salary; e) that the said school though under the management of the respondent Society was aided by the appellant MCD; f) that the respondent Society however mismanaged the affairs of the said school and which was taken over by the appellant MCD in the year 1990 and the appellant MCD started paying 100% of the salary to the staff and teachers; g) that since the school was functioning from the said premises, even after the taking over of the management by the appellant

MCD, the same continued to function from the said property.

6. The respondent Society filed a replication to the written statement aforesaid specifically admitting the aforesaid material averments in the written statement. It was however pleaded that it was for the appellant MCD to run the school and the appellant MCD should leave the building of the respondent Society. It was further pleaded that the appellant MCD could take over the management of the school for a maximum period of five years and after five years, had no right to run the school from the property of the respondent Society.

7. On the pleadings aforesaid of the parties and which would show that there was no dispute as to the facts, but the following issues were still framed on 9th July, 2002:

“1. Whether the plaintiff is entitled for possession of the suit property shown in red in the plan attached? OPP

2. Whether the plaintiff is entitled for mesne profits and pendente lite damages, if yes, at what rate and for which period? OPP

3. Whether the suit has been properly valued and court fees ad volorum has been paid or not? OPD

4. Whether the suit has been filed by a competent person? OPP

5. Relief.”

and the suit put to trial.

8. The learned ADJ has decreed the suit against the appellant MCD, finding/observing/holding:

(i) that since the appellant MCD had not taken the defence that exclusive possession of the premises was with the appellant MCD, it has to be necessarily presumed that the relationship between the parties was that of licensor and licensee;

(ii) that the sole witness of the appellant MCD had expressed ignorance as to whether the appellant MCD keeps the keys of the main gate of the building with itself or as to whether the respondent Society opened and locked the main gate of the building in which the school was being run; thus, it has to be presumed that the exclusive possession of the property remained with the respondent Society;

(iii) that from the conduct of the appellant MCD of not replying to several notices served on it prior to the institution of the suit averring the appellant MCD to be a licensee in the premises also, the admission of the appellant MCD of the said fact has to be inferred;

(iv) that since the sole witness of the appellant MCD had in his cross-examination admitted that the respondent Society is the owner of the entire building including the portion in which the appellant MCD was running the school in the second shift, the conclusion that the relationship between the parties was that of licensor and licensee

was inescapable;

(v) that the respondent Society from its evidence has proved the letting value of the licensed portion to be Rs.5,000/- per month;

Accordingly a decree for recovery of possession and for mesne profits/damages for use and occupation @ Rs.5,000/- per month with effect from the date of filing of the suit and till the delivery of possession was passed.

9. The counsel for the appellant MCD has argued, a) that the appellant MCD could not contest the suit properly before the Trial Court; b) that in fact it has now been learnt that the respondent Society is not the owner of the property; c) that the land underneath the property is now learnt to be belonging to a *Gaushala* and copy of *Jamabandi* of Village-Shahdara, Tehsil & District-Delhi of the year 1974-1975 in this regard is filed along with the application under Order 41 Rule 27 of CPC. It is argued that since the respondent Society is not the owner of the property, it was not entitled to sue for possession. It is further argued that no licensor-licensee relationship has been proved.

10. The counsel for the respondent Society has sought to support the judgment and decree of the Trial Court.

11. However, in view of the admitted position in the pleadings:

(i) that in the portion of the property with respect to which suit was filed, the respondent Society was running a school and which school was aided by the appellant MCD;

(ii) that the management of the said school was taken over by the appellant MCD from the respondent Society;

it was enquired from the counsels as to what is the law with respect to such take over of management of school; whether after the management of the school has been taken over by the appellant MCD or the Delhi Administration, can the erstwhile management of the school which ordinarily would be having rights to the premises in which the school was/is being run / functioning, evict the school therefrom.

12. Though neither counsel is of assistance on the said aspect but a perusal of the Delhi School Education Act, 1973 applicable to all schools in Delhi shows that under Section 20(2) thereof under Chapter VII titled “Taking Over the Management of Schools”, it is provided that whenever the management of any school is taken over, every person in-charge of the management of such school immediately before its management is taken over is required to deliver possession of the school property to the Administrator or any other officer authorized by the Administrator in this behalf. The said provision suggests that the property of the school goes with the school and the erstwhile management of the school cannot divest

the new management of the school from the said property. In fact the Division Bench of this Court in *Radhey Sham Sharma Vs Lt. Governor* 69 (1997) DLT 594 upon being approached for direction to the Directorate of Education to exercise power under Section 20 of the Act, while allowing the writ petition and issuing the direction for take over of the management of the school, expressly directed take over of the movable and immovable property of the school. Section 2(v) of the School Act defines 'School Property' as meaning all movable and immovable property belonging to or in possession of the school and all other rights and interest in, or arising out of such property and includes land, building etc. The school functioning in the suit property and which school is now in management of appellant MCD, was prior to its management being taken over by the MCD also admittedly functioning from the suit property and thus the suit property in possession or use of the school, was school property and rights therein stood vested in the appellant MCD along with management of the said school. The basis on which the respondent / plaintiff sued, i.e. of having granted licence to the appellant MCD to use the suit property and such licence having been terminated, was clearly wrong.

13. It has next been enquired from the counsel for the respondent Society whether the respondent Society has led any evidence as to in what capacity the respondent Society, even if owner of the property, had permitted the subject school when in its management, to be run/operated/function from the said portion of the property. Notice in this context may also be taken of Section 7 of the School Act requiring the management of every aided school, as the subject school was, to furnish to the appropriate authority at

the time of grant of aid and thereafter annually a statement containing a list of school property and prohibiting transfer of movable or immovable property of an aided school except with the previous permission of the appropriate authority. It is not the case of the respondent/plaintiff that at the time of grant of aid or in the returns filed thereafter, the said property was not shown as the property of the school. It is well nigh possible that the school at the time of applying for aid showed the portion of the property in which the school was established and functioning as school property.

14. The counsel for the respondent Society has fairly admitted that no such evidence has been led. He however after the lunch break has contended that even if the appellant MCD for the reason of being in management of the school is entitled to continue running the School from the said portion, but the management could have been taken over for maximum period of five years only and which expired in the year 1995. It is argued that the possession of the appellant MCD in management of the said school after five years i.e. from the year 1995 is unauthorized and the respondent Society filed the suit from which this appeal arises after the said period only.

15. However on enquiry whether the respondent Society has challenged such continuance of the appellant MCD in management of the said school after the maximum period prescribed therefor also, the counsel again fairly admits that no challenge has been made. He however states that the respondent Society itself is running a senior secondary as well as primary school in the morning shift from the said property and in fact in the portion

of the property with respect to which the suit is filed and the appellant MCD is running the school in the evening shift only. It is stated that there are only 60 students in the school of which the management is with the appellant MCD and during the pendency of this appeal various possibilities, of the respondent Society taking over the management of the said school also or of the appellant MCD, shifting the said 60 students to some other schools have been explored but inspite of efforts of the respondent Society no consensus could be arrived at.

16. The aforesaid narrative would show that this is yet another classic case which has remained pending from the year 2001 and has gone through the rigmarole of trial without there being any need therefor. The same has happened because there was no proper application of mind at the stage of framing of the issues or of recording evidence and issues were framed and evidence led mechanically on facts of which there was no dispute in the pleadings or adjudication whereof was not necessary for disposal of the suit.

17. The only question for adjudication on the basis of the admitted facts was, whether for the reason of the appellant MCD after taking over management of the school from the respondent Society having continued in management beyond the maximum period prescribed therefor, the possession of the school of the property could be said to be unauthorized.

18. In my opinion, no. If it were to be held otherwise, the consequence would be to affect the functioning of the school. If the respondent Society being the erstwhile management of the school was/is aggrieved from the appellant MCD continuing in management of the school beyond its

entitlement, the remedy of the respondent Society was to challenge the same and not to divest the said management of the school of the property of the school and which would tantamount to shutting down of the school. A school, under Rule 46 of the Delhi School Education Rules, 1973 cannot be closed without seeking permission in that regard. Admittedly, no such permission has been sought. A school cannot function in vacuum and needs a place where education can be imparted. To divest the school of the property where it is established and from where it is operating since inception is as good as closing the school. Moreover the respondent/plaintiff has not filed the suit with a case of the portion of the property, where the school was established and from where it has been functioning, not being the property of the school. As long as the appellant MCD is in the management of the school, even if beyond its entitlement, it is entitled to the property of the school under Section 20(2) of the Act and cannot be divested thereof. Rather the Supreme Court in ***Municipal Corporation of Delhi Vs. Children Book Trust*** (1992) 3 SCC 390 (in para 90) though in the context of determining the liability of the schools for payment of property tax of the property occupied by the school, held that the property occupied by a school will belong to the school and not to the society and the society cannot claim to be in exclusive occupation of the land and building in question.

19. The counsel for the respondent Society has at this stage also invited attention to Section 20(5) of the School Act to contend that the respondent Society in any case is entitled to mesne profits/damages for use and occupation awarded under the impugned judgment and decree.

20. Section 20(5) provides that whenever the management of the school is so taken over, the Administrator shall be liable for the rent as may be payable for the building of the school to the person entitled thereto and to whom it was being paid by the erstwhile management. It is not the case of the respondent Society that the respondent Society as owner/landlord of the said property was charging any rent from the school functioning therein when under its own management. The counsel for the respondent Society rather contends that since the respondent Society was managing the school, there was no question of payment of any rent. That being the position, Section 20(5) is not attracted and the appellant MCD cannot be said to be liable to pay any rent to the respondent Society. Just like, the school under the management of the respondent Society treated the subject property as its own, similarly the property continues to be of the school even if the management thereof be of the appellant MCD.

21. The learned ADJ is thus found to have misdirected himself in adjudication of the suit, and the judgment and decree of possession and mesne profits against the appellant MCD cannot be sustained and is accordingly set aside. The appeal is allowed and the suit of the respondent / plaintiff from which this appeal arises, is dismissed.

22. It is however clarified that nothing contained herein shall come in the way of the respondent Society from challenging the continuing of the appellant MCD in management of the said school and in claiming appropriate remedy for being put back into the management of the school.

23. The misdirection with which the proceedings suffered, being largely attributable to the appellant MCD itself, and the appeal having been allowed on grounds / for the reason not urged by the appellant MCD, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JULY 30, 2013
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