

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 26.09.2013

+ **FAO(OS) 149/2013**

LEELA BUILDERS PVT. LTD. & ORS. Appellants

Versus

SUNITA SINHA & ORS. Respondents

Advocates who appeared in this case:

For the Appellants : Mr Raghavendra M. Bajaj and
Mr Arun Batra
For the Respondents : Mr Ravi Gupta, Senior Advocate with
Mr P.S. Bindra, Advocate for respondent
No. 1
Mr Udayaditya Banerjee, Mr P.B. Suresh
and Mr Vipin Nair, Advocates for
respondent No. 3

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal is directed against the order dated 17.01.2013 passed by a learned Single Judge in I.A No. 766/2013 in CS(OS) No. 2162/2008. The said application was filed under Order XXXIX Rule 2A CPC read with Section 151 CPC for punishing respondent No. 1 / plaintiff No. 1 and respondent Nos. 2 and 3 / defendants No. 9 and 10 for

wilful disobedience of the order dated 25.02.2002 and for consequential dismissal of the suit. The operative portion of the order dated 25.02.2002 is under:-

“However, it is apparent from the records that the defendants have applied for conversion of the property from lease hold to free hold in the Land & Development Office. The pleadings disclose that triable issues have been raised by the plaintiffs. Therefore, during the pendency of the suit if the property is allowed to be converted from lease hold to free hold, there is every possibility of change of hand of the property by way of sale and alienation in which case, not only the plaintiffs would be prejudicially affected but, the same would also make the suit infructuous or would lead to multiplicity of proceedings. The defendants are in possession of the property as of today and they shall continue to be in possession of the property and in my considered opinion they would not suffer any irreparable loss and injury even if the said property is not converted from lease hold to free hold. It is made clear that the plaintiffs shall not also interfere or obstruct peaceful possession of the suit property by the defendants.

Accordingly, I find force in the arguments on the counsel appearing for the plaintiffs and I am satisfied that the temporary injunction could be granted in favour of the plaintiffs and against the defendants restraining the Land & Development Office from transferring the lease hold rights or converting the lease hold rights of property No. 48, Block No. 171, Sunder Nagar, New Delhi into free hold or in any manner selling or alienating the property to any other person till the disposal of the suit, which I hereby do.”

2. The allegation of the appellants who were the applicants in the said application is that the above order has been violated and willfully

disobeyed by the respondents herein inasmuch as during the pendency of the suit proceedings the said respondents have agreed to sell the property to third parties.

3. The learned counsel for the respondents, however, drew our attention to the impugned order wherein the learned Single Judge has observed that the order dated 25.02.2002 restrained the defendants / applicants from converting the property from lease hold to free hold and that the said order did not direct the plaintiffs to maintain status quo with regard to the title of the suit property. Consequently, the learned Single Judge dismissed the application under Order XXXIX Rule 2A CPC as according to the learned Single Judge there was no wilful disobedience or breach of the injunction order i.e., the order dated 25.02.2002.

4. The learned counsel for the appellants contended that if the entire order dated 25.02.2002 is read then it could be discerned that the order required status quo to be maintained by the parties. We are, however, unable to read the order in the manner in which the learned counsel for the appellants has suggested. The learned counsel for the appellants also suggested that the order indicated that the interim directions were to avoid multiplicity of proceedings and if the plaintiffs were permitted to sell the property in question it would ultimately result in the multiplicity of proceedings. The learned counsel for the appellants also contended that the plaintiffs were directed not to interfere with or obstruct the peaceful possession of the suit property which was, at the time when the order was passed, in the possession of the defendants.

5. In the said suit there are ten defendants. Defendant Nos. 1 to 8 were and are in possession of the suit property. Defendant Nos. 9 and 10 are not in possession of the suit property. Furthermore, defendant Nos. 1 to 8 were the defendants who had applied for conversion of the suit property from lease hold to free hold. Defendant Nos. 9 and 10 were not party to that application. Therefore, the reference in the order dated 25.02.2002 to the expression 'defendants' would have to be read as a reference to defendant Nos. 1 to 8 and not defendant Nos. 9 and 10. That being the position, the interim injunction that was given was against defendant Nos. 1 to 8 and not against defendant Nos. 9 and 10. Because the latter two defendants were neither in possession of the suit property nor had they made any application before the Land & Development Office for conversion of the suit property from lease hold to free hold. Insofar as the order dated 25.02.2002 is concerned, it was granted in favour of the plaintiffs and not in favour of defendant Nos. 1 to 8. It was defendant Nos. 1 to 8 who were enjoined from having the suit property converted from being a lease hold property to a free hold property. Furthermore, the said defendants were also restrained from, in any manner, selling or alienating the property to any other person till the disposal of the suit. There was no such direction or restraint against the plaintiffs or defendant Nos. 9 and 10.

6. We also note that the possession of the suit property continues with defendant Nos. 1 to 8 and there has been no interference or obstruction with regard to the peaceful possession of the said defendant Nos. 1 to 8 insofar as the suit property is concerned. That being the case, the learned

Single Judge was right in dismissing the application of the present appellants / defendant Nos. 1 to 8, which had been filed under Order XXXIX Rule 2A CPC.

7. The learned counsel for the respondents also drew our attention to order dated 26.03.2003 passed by a Division Bench of this court in FAO(OS) No. 152/2002 and CM No. 365/2002 which was an appeal preferred by the present appellants against the order dated 25.02.2002. The order passed by the Division Bench on 26.03.2003 is to the following effect:-

“We have heard counsel for the parties and perused the record. During the course of the arguments, it is agreed by the counsel for the parties i.e, Mr O.N. Vohra, Senior Advocate on instructions from Mr P.C. Dhingra, Advocate appearing for the appellant, Mr Anil Kher, Advocate for respondent Nos. 1 and 2 and Mr V.K. Sawhney, Advocate for respondent No. 3 that let the L&DO process the application already filed for conversion by the appellant herein. It is agreed that the respondents shall also file an application with L&DO indicating that the application file by the appellant and the money deposited already with them be processed on merits and that the conversion from lease-hold to free-hold should be done in the name of the recorded owners i.e., Smt Sunita Sinha, Shri Arvind Krishan Malhotra, Shri Sanjeev Sethi and Shri Rajiv Luthra. It is agreed that the appellant has already deposited Rs 2.00 lacs. It is further agreed that any further demand raised by the L&DO shall be paid by the appellant for the purpose of conversion from lease-hold to free-hold to the appellant for the purpose of conversion from lease-hold to free-hold to the property in question. So far as the question of rights of the parties are concerned, they be determined in the suit.

The consent order has been passed keeping in view that the benefit which will ensue on account of conversion of the property from lease hold to free hold will be to the advantage of the parties in due course of time.

The application by the respondents should be moved within two weeks, failing which it will be deemed that the said respondent has given the consent to the application already filed by the appellant.

Stay to the extent of restraining the L&DO for converting the property to free-hold stands vacated. It is clarified that the amount deposited by the appellant for conversion of the property does not determine the rights of the parties.

With these observations, the appeal stands disposed of.”

8. In view of the foregoing, the present appeal has no merit. The same is dismissed without any order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

SEPTEMBER 26, 2013

SU