

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

% *Order delivered on: September 20, 2013*

+ **CM(M) No.404/2012 & C.M. No.6267/2012**

DELHI STATE INDUSTRIAL & INFRASTRUCTURAL
DEVELOPMENT CORPORATION LTD. & ANR Petitioners
Through Mr.Amiet Andlay, Adv.

versus

SHIV KUMAR Respondent
Through Mr.Vishal Bhatnagar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioners, Delhi State Industrial & Infrastructure Development Corporation Ltd. (DSIIDC Ltd.) and the Government of NCT of Delhi through its Chief Secretary, have filed the present petition under Article 227 of the Constitution of India for quashing the impugned order dated 21st March, 2012 passed in Suit No.25/2012 whereby the application filed by the respondent (plaintiff in the suit) under Order 11, Rules 1, 2, 12 & 14 read with Section 151 CPC was allowed.

2. The respondent/plaintiff, in fact, filed a suit for permanent injunction before the learned Senior Civil Judge, South, Saket Courts, Delhi against the petitioners/defendants, praying that the petitioners be restrained from taking forcible possession of the said land situated in Pocket-A, Electronic Estate, Okhla Industrial Estate, Phase-II, New Delhi (hereinafter referred to as the "Suit Property") and also from demolishing the boundary wall of the suit

property and the structure built therein including the temple known as Gauri Shanker Kanak Mandir.

3. The petitioners/defendants filed the written statement in the suit and had taken, *inter-alia*, the following defence:-

- (i) That the suit property belongs to the petitioner/defendant No.1. The alleged predecessor of the respondent/plaintiff had trespassed upon a part of the said land and started unauthorized and illegal construction thereon in the year 2001. A complaint in this regard was made to the concerned authorities including the Police and the unauthorized construction activity was got stopped.
- (ii) In the year 2011, the petitioner/defendant No.1 invited tenders for the construction of Electronic-cum-Marketing Estate Complex on the said land at Okhla Phase-II, New Delhi. The tender for the construction work in the tune of ₹11,16,92,728/- has been accepted by the competent authority of the petitioner/defendant No.1 on 8th November, 2011 and the letter of commencement of work dated 7th December, 2011 has also been issued to the successful tenderer.
- (iii) The intention of the respondent/plaintiff is motivated and malafide to stall the development at the said land to be carried out by the petitioner/defendant No.1. The respondent/plaintiff ought not to be allowed to come in the way of the execution of the public interest work for the benefit of the public at large.
- (iv) The respondent/plaintiff has approached the Court with unclean hands and suppression of facts and does not deserve any indulgence from this Court in the grant of the discretionary

relief of injunction. The respondent does not have any right, title or interest in the land in question. The respondent has stepped into the shoes of a trespasser in unlawful occupation of Government land and has no locus-standi to file the present suit.

- (v) The legal maxim, “*Actus Curie neminem gravabit*” that the act of the Court shall prejudice no one, is applicable in the present case. In such a situation, the Court would not invoke its jurisdiction to give any undeserved or unfair advantage to a party invoking the jurisdiction of the Court.
- (vi) The suit land is Public Premises as defined under Section 2(e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short, called the “Public Premises Act, 1971”). The suit in relation to such land is, therefore, barred under Section 15 of the said Act.

4. When the suit along with the interim application came up before the learned trial Court on 16th February, 2012, the hearing in the injunction application was conducted and the following order was passed:-

“WS filed on behalf of defendant no. 1 along with documents. Counsel to address arguments on whether the land owned by DSIIDC Ltd. would be covered by the expression government land for the purpose of law of prescription as well as for deciding the fate of trespasser on government land. Counsel to also address arguments on the aspect whether a trespasser in settled possession is entitled to any interim relief or not in the facts of the present case.

List for arguments on 27.02.2012 at 2.00 PM.”

5. In compliance of the above order of the learned Civil Judge, the petitioner/defendant No.1 placed on record its Memorandum & Articles of Association, giving the details regarding its incorporation and shareholding pattern to demonstrate that petitioner, DSIIDC Ltd. functions through a Board of Directors appointed by the President of India who hold office until they are removed by the President. Further, the Lt. Governor, Government of NCT of Delhi, in exercise of power conferred under Section 3 of the Public Premises Act, 1971, has appointed the Estate Officer for the purposes of the said Act in respect of the premises belonging to or taken on lease by the DSIIDC Ltd. situated within the limits of National Capital Territory of Delhi or situated elsewhere in India.

6. It was submitted that the DSIIDC Ltd., although functions as an independent legal entity, is under the control of the Government. Lands belonging to the DSIIDC Ltd. are covered by the definition of public premises as defined under Section 2(3) of the Public Premises Act, 1971. It was further submitted that the land in suit is a Government land and the period of prescription with respect to the same is thirty years.

7. Again, when the matter was listed on 5th March, 2012, the application under Order XXXIX, Rules 1 & 2 CPC was heard by the Court which has passed the following order:-

“The Memorandum and Articles of Association filed by the defendant no. 1. Copy supplied.

Let written arguments be filed before the next date of hearing as today another legal argument has been raised by learned counsel for plaintiff which was not covered by questions framed on 16.2.2012. Today in view of legal objection, another issue needs to be decided, i.e. ‘If the defendants claims to be state and premises are Public Premises then why the eviction of

Unauthorised occupants from Public Premises Act is not applicable’.

List on 16.3.2012 at 2 PM.”

8. During the course of arguments, the respondent filed the application under Order 11, Rules 1, 2, 12 & 14 read with Section 151 CPC. The prayer was made in the application to discover the documents from the petitioner No.1 so as to furnish the original documents, as mentioned in the index of documents filed on 16th February, 2012 and also a direction was sought to furnish the requisite documents, i.e. documents of acquisition of the suit land and also to furnish the information as warranted by way of an affidavit. The said application was allowed by the impugned order dated 21st March, 2012, directing the petitioner No.1 to discover on oath the documents pertaining to its ownership vis-à-vis acquisition under the provisions of Order XI CPC. The said order has been challenged by the petitioners in the present petition.

9. It is not in dispute that the petitioner/defendant No.1 had already placed on record its reply and Memorandum of Association which gives an indication that the said petitioner is in the control of the Government and all the lands are owned and treated as public premises under the provisions of the Public Premises Act, 1971. There are no pleadings in the plaint about the issue of ownership of the suit land of the petitioners. It is settled law that before making an order under the provisions of Order 11, the following principles are to be considered by the Court:-

- (i) The documents sought to be discovered and produced have to be relevant to the matter in controversy viz. matters in question.
- (ii) The documents have to be in the possession and power of the person against whom discovery and production is sought.

- (iii) Discovery and production of the documents which are sought for are necessary at that stage of the suit.
- (iv) The discovery and production is necessary for fairly disposing of the suit or for saving costs.
- (v) The discovery and production may be general or limited to certain classes of documents as the Court in its discretion deems fit and the production will only be ordered if the Court considers it just.

10. It is also a settled law that before giving a direction to a party to discover and produce a document, the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit and further the privilege conferred under Order 11, Rules 12 and 14 CPC is not being used for the purposes of a roving or fishing enquiry. See *M/s J.S. Construction Pvt. Ltd. vs. Damodar Rout*, AIR 1987 Orissa 207, relevant para No.5 whereof reads as under:-

“5. The privilege vested in a party to the suit by the provisions under Order 11, Rules 12 and 14 of the Code is not intended to enable him to cause a roving enquiry to fish out information which may or may not be relevant for disposal of the suit. No doubt, the party seeking discovery or production of the document need not satisfy the court that the document in question is admissible as evidence in the suit; it would be sufficient to show that the contents of the document would throw light on the subject-matter of the suit. Unless these basic requirements are insisted upon by the court before issuing a direction under the aforesaid provisions, the provisions are likely to be utilised for harassing the other party instead of helping in proper adjudication of the dispute in the case.

In this case, as noticed earlier, the application for discover/production of the documents was filed by the

opposite party before filing his written statement. No attempt was made in the application to show how the documents described in the schedule were relevant to the subject-matter in the suit and in what manner their contents were likely to throw light on the subject-matter involved in the suit. As the impugned order reveals the trial court also did not apply its mind to find out if these conditions were satisfied in the case except making a bald and general observation that the documents described in the schedule will no doubt throw light upon the question in controversy. This is further clear from the fact that the description of many of the items in the schedule, particularly items Nos. (3), (4), (5) and (11) were vague and unintelligible. This, to say the least, was not a satisfactory manner of disposing of the application. It is needless to reiterate that the discretion vested in the court under the provisions of the Code has to be carefully exercised and that a direction should not be issued as a matter of course.”

11. In the matter of ***Rajesh Bhatia & Ors. vs. G. Parimala & Anr.***, 2006 (3) ALD 415, it was held that:-

“17. In Halsbury's Laws of England, fourth edition, Volume 13 in para 1, the nature and extent of discovery has been considered thus:

The term "discovery" in this title is used to describe the process by which the parties to civil cause or matter are enabled to obtain, within certain defined limits, full information of the existence and the content of all relevant documents relating to the matters in question between them. The process of the discovery of documents operates generally in three successive stages, namely (1) the disclosure in writing by one party to the other of all the documents which he has or has had in his possession, custody or power relating to matters in question in the proceedings; (2) the inspection of the documents disclosed, other than those for which privilege from or other objection to production is properly claimed

or raised; and (3) the production of the documents disclosed either for inspection by the opposite party or to the court.

The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their respective cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to use before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him to eliminate surprise at or before the trial relating to documentary evidence and to reduce the costs of the litigation.

.....

In determining whether a document should be disclosed by a party two tests should be applied: (1) whether it is relevant: (2) whether it is or was in the possession, custody or power of the party or his agent: and in any case when the order directing disclosure has limited discovery or relates to particular documents only the terms of that order must be applied.”

12. This Court in the judgment, titled as ***Mr. M. Sivasamy vs. M/s Vestergaard Frandsen A/S***, decided on 7th August, 2009 has held that:-

“9. We may note that none of the decisions cited before the Learned Single Judge deal with the discovery and production of documents which are confidential in nature or have proprietary information belonging exclusively to one party and which information such party is interested in ensuring that the same does not come into the hands of the opposite party who is his competitor. Not only this, the aforesaid judgments of the Hon’ble Supreme Court and of Andhra Pradesh High Court in Rajesh Bhatia’s case have to be read keeping in

mind certain observations in those very paras and which are as under:

“Generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party’s evidence of his case or title.” (M.L.Sethi’s Case)

“The court also has been given power to deal with the documents when produced in such manner as shall appear just. Therefore, the power to order production of documents is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in question. These are relevant considerations, which the Court shall have to advert to and weigh before deciding to summoning the documents in possession of the party to the election petition...” (In Sasanagouda’s case)

“(2) the inspection of the documents disclosed, other than those for which privilege from or other objection to production is properly claimed or raised:” (Rajesh Bhatia’s case)

We do feel that these above observations in Rajesh Bhatia’s case must be confined to “discovery” of documents which is only to decide whether such documents are in the power and possession of the opposite party or not i.e. whether they exist or not and not for “production”. This observation cannot be read with respect to production of documents because it will run counter to the provisions and also the observation of the Hon’ble Supreme Court in both the judgments of the M.L. Sethi’s and Sasanagouda’s as stated earlier that confidential documents and documents pertaining exclusively to the confidential information and trade secrets of the opposite party cannot be directed to be produced, unless and until the same is absolutely just.

20. In view of the above, we set aside the order of the Learned Single Judge except to the extent as stated in para 18 above.

21. Appeals are accordingly disposed of leaving the parties to bear their own cost.”

13. In the judgment reported as ***Raj Sarogi vs. American Express (India) Pvt. Ltd.***, 94 (2001) DLT 127, it has been held as under:-

“6. The appellant filed the application under two separate provisions of law, namely, Rule 12 of Order 11 CPC for discovery of documents and Rule 14 of Order 11 CPC for production of documents. Rule 12 and Rule 14 of Order 11 CPC are independent of each other. The object of Rule 12 of the Code is two fold: (a) to secure as far as possible that all material documents are disclosed by putting the opposite party on oath as to the documents in his possession or power with consequent penalties attach to a false oath; and (b) to put an end to what might otherwise led to a protracted enquiry as to the material documents actually in possession or under the control of the opposite party. As and when the application under Rule 12 of Order 11 CPC is filed seeking discovery of documents, the Court is required to exercise discretion, as envisaged in the said Rule, which does not alter the principle relating to the production of documents but gives the Court a discretion to refuse to direct discovery of documents when there is no reasonable prospects of its being of any use or to limit the nature and extent of the discovery. The discretion undoubtedly vested in the Court must be exercised judicially to further the primary object of the Rules for production and discovery of documents.

7. The impugned order on the face of it suggests that learned Single Judge did not consider the question that whether the discovery was or was not necessary at that stage of the suit or whether the documents, the production of which was sought were or were not

relevant. Before directing discovery of documents, the Court is required to satisfy itself that whether the documents are relevant for the purpose of disposing of the suit or not. A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant. Learned Single Judge did not satisfy himself that whether or not the documents were relevant. Learned Single Judge appears to have been swayed merely by one reason that it was not a bona fide act on the part of the appellant in moving the application, which in our view, cannot be a sole ground on which such an application seeking discovery of documents be dismissed. Learned Single Judge was expected to apply his mind to the facts of the case and the averments made in the application. He was also expected to disclose his mind by stating in the order on what valid grounds the plaintiff/appellant would not be entitled to seek the direction, prayed for in the application. No reason is at all disclosed in the impugned order implying that the discretion has not been exercised properly with reference to the averments made in the application. We have gone through the contents of the application and are of the view that it is a fit case where the application deserves to be heard and decided afresh within the scope of the two different provisions of the Rules.”

14. It is the admitted position that the respondent has simply filed the suit for permanent injunction wherein the prayer made by the respondent is that the respondent/plaintiff should not be dispossessed forcibly by the petitioners/defendants from the land shown as red in the site plan and the petitioner No.1 be restrained from demolishing the boundary wall of the suit property and structure built therein.

15. The respondent's case, in nut shell, is that his grand-father, late Sh.Ram Singh had, during his lifetime, constructed a temple on the part of the land in question, known as Gauri Shanker Kanak Mandir which is in

existence for the past more than 35 years. He had also constructed three rooms, a kitchen and a toilet near the temple and he was continuously residing therein with his family. After the death of Sh.Ram Singh, his son Baba Sukh Lal Das @ Lal Singh was in possession of the said land and the suit property including the temple where several religious functions organized on the said temple were attended by several prominent citizens and politicians of Delhi. After the death of Baba Sukh Lal Das @ Lal Singh, his family including the respondent is residing in the suit property.

16. Learned counsel for the petitioners states that it is the admitted position that the respondent has no title or ownership of the suit property. The respondent has to prove his right as claimed in the suit in accordance with law. Both the parties have to lead their respective evidence in order to establish their pleas raised by them in their respective pleadings. Counsel further states that at this stage, the respondent has no right to ask the petitioners to discover the original documents in view of the nature of the suit filed by the respondent. He argues that learned trial Court in the application filed by the respondent did not appreciate the fact that the suit is not filed by the petitioners nor the petitioners sought any declaration from the court to declare its ownership thus the respondent has to stand in trial in view of fact stated in the plaint and prove its case, the respondent cannot be permitted to prove his case after obtaining the information of the petitioners.

17. There is a force in the argument of the counsel for the petitioner as it is the case of the respondent against the petitioners that the respondent should not be dispossessed from the suit property. The suit is for permanent injunction. The respondent has to stand at his own legs, rather to discover the documents for the purpose of a roving or fishing enquiry about the ownership of the title of the petitioners.

18. The learned trial Court has not considered the said aspect in the impugned order. It is the admitted position that at the stage of evidence, the petitioners have to produce their witnesses to disprove the case of the respondent and during the cross-examination the respondent has every right to ask the questions to the said witnesses about the ownership of the suit property claimed by the petitioners. I agree with the argument of the learned counsel for the petitioners that at this stage, the said order of discovery was uncalled for in view of the nature and facts and circumstances of the present case.

19. The petition is accordingly disposed of. Pending application also stands disposed of.

20. The application of the respondent, under these circumstances is rejected. However, liberty is granted to the respondent to cross-examine the petitioners' witnesses on this aspect. The order passed by the learned trial Court is accordingly modified.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 20, 2013