

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

Decided on : 20.05.2014

- + CM(M) 299/2012 and CM No. 4466/2012
- + CM(M) 607/2012 and CM No.9354/2012
- + CM(M) 595/2012 and CM No.9132/2012
- + CM(M) 598/2012 and CM No.9189/2012
- + CM(M) 599/2012 and CM No.9200/2012

DELHI URBAN SHELTER
IMPROVEMENT BOARD

..... Petitioner

Through: Mr. Parvinder Chauhan, Advocate

Versus

NOORDIN

..... Respondent

SHARIF

..... Respondent

PREHLAD

..... Respondent

CHHOTTEY LAL

..... Respondent

REVAR

..... Respondent

Through: Mr. M.Naushad Siddiqui, Mr. Shamsher Ali
and Mr. Aditya Gaur, Advocates

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On 13.5.2008, the petitioner had sealed the respective properties of the respondents in the above noted five petitions. They had filed different suits in which interim orders were passed under Order XXXIX Rule 1 & 2 CPC, holding that the balance of convenience lay

in favour of the respective plaintiffs, therefore the said seal were directed to be removed. The petitioners' appeals against the interlocutory orders were dismissed, hence these petitions. Since the crucial dates and events are similar, these petitions are disposed off by a common order. The plot numbers of the different respondents (plaintiffs) and the quantum of monies paid by them on different dates would vary but the facts and events of CM(M) No. 299 of 2012 are taken as an indicative template.

2. This petition challenges an interim order dated 05.04.2011 in MCA No.7/2010, which dismissed the petitioner's appeal against an order of the Trial Court of 27.1.2009 passed under Order XXXIX Rule 1 and 2 CPC in a CS No.29/08.

3. The respondent was uprooted in the year 1986 from Pushp Vihar. Under the Rehabilitation Scheme of the Slum & JJ Department, Delhi Municipal Corporation, he was allotted Plot No. 6F, Madanpur Khadar, Phase-III, New Delhi through a draw of lots was conducted by the petitioner. An amount of Rs.7,000/- was deposited by the respondent against a receipt dated 13.10.2005. A provisional certificate was issued on 05.07.2006 by the petitioner. Later in 2008

one Mr. Hazrat Hussain filed a suit, bearing No. 300/2008, against one Mr. Nanak Chand who was an officer of the Slum and JJ Wing. In the WS the petitioner/Municipal Corporation had taken the stand that the plaintiff Hazrat Hussain has nothing to do with the land allotted to the Slum and JJ Department (Slum Urban Rehabilitation), MCD; that the MCD carved out six additional plots bearing Nos. 1A, 2B, 3C, 4D, 5E and 6F each measuring 18 sq. yds. and the respondent had got the plot No. 6F in a draw of lots.

4. It is stated that thereafter, without any provocation, rhyme or reason and without giving any show cause notice to the respondent, on 13.05.2008 the petitioner Corporation sealed the property of the respondent. This action was challenged before the Appellate Tribunal MCD which dismissed the appeal on the ground that the appropriate remedy lay elsewhere. The respondent then filed the suit bearing No. 29/2008 (New No. Suit No.500/2010) seeking a mandatory and permanent injunction against the petitioner for removal of the seal on the suit property i.e. to de-seal it. The learned Trial Court, vide an order dated 27.01.2009, directed the petitioners to remove the seal from the suit property and restrained them from causing any inference

in the plaintiffs' possession of it. The order was not complied with. The petitioner went in appeal wherein the order of the Trial Court was stayed. However, on 24.09.2010, the stay order was vacated for non-prosecution; ultimately the appeal was dismissed by the impugned order.

5. Mr. M.Naushad Siddiqui, the learned counsel for the respondent contends that despite the order of the Trial Court and of the Appellate Court directing the removal of the seal, the petitioners have not de-sealed the property. However, this Court notices that on 06.07.2012, status quo of the impugned order had been directed. The learned counsel further submits that for the non-compliance, flouting and disobeying of the Trial Court's order of 27.01.2009 – directing the de-sealing of the suit properties, an application under Order XXXIX Rules 2A CPC was moved for initiation of appropriate action against the petitioner (defendant). In its reply to the aforesaid application, the Deputy Director of the petitioner stated that the identity of the plaintiff had not been established therefore the property could not be de-sealed:

“It is submitted that the answering respondent is/was unable to comply with the order passed by the Hon’ble Court in as much as identity of the

plaintiff/applicant is uncertain. After passing of the order, whenever a person approached them for removal of the seal from the property (house No. 6F, Madanpur Khadar, Phase-III, New Delhi) the answering respondent always requested that person to produce Noordin (plaintiff/applicant) along with some proof to establish his identity as Noordin (plaintiff). But the said bonafide request of the answering respondent was never followed. Thus, the answering respondent is/was unable to comply with the order passed by the Hon'ble Court despite its best efforts."

6. It is seen from the Trial Court proceedings of 31.05.2011 that the proof of identity of the plaintiff (respondent herein) was duly given to the counsel for the Corporation as well as to its official Shri Sanjay LDC in the Court. The petitioner was directed to comply with the order dated 27.01.2009 and remove the seal of the premises since the identity of the plaintiff had been established in the day's proceedings. The suit was next listed for compliance on 08.06.2011. But despite the clarity apropos identity of the plaintiff and specific directions by the Court, there was no compliance. Therefore, the stand taken by the Corporation about there being a doubt about the identity of the plaintiff is totally false, misplaced and a misuse of the process of the Court.

7. Later in the petitioners' appeal, the impugned order was stayed by the Appellate Court on 04.06.2009. However, the same was vacated on 24.09.2010. But, from that date till the stay by this Court on 06.07.2012 i.e. for almost 22 months, the respondent-Corporation did not comply with the Court's directions. Before this Court, the petitioner/Corporation has stated that there was a conspiracy among the officers of the respondent-Corporation who had allotted the plots illegally i.e. without approval from the competent authority, inasmuch as the land which was allotted in the draw of lots was meant for the site-office of the Corporation; that cases have been booked against the officers by the Anti Corruption Branch of the CBI and the cases were under investigation. The employees of the Corporation who were suspected and charged were (i) Sher Singh, Asstt. Engineer; (ii) Shri Nayak Chand, J.E.; (iii) Atul, UDC; (iv) Sh. Phillip Toppo, Dy. Director and (v) Sh. S.N.S. Sindhu, Director. It will be seen that virtually the entire department of the Slum and JJ Wing including the Director had been accused of wrongdoing. Interestingly, the learned counsel for the respondent submits, that the entire case against Nanak Chand has fallen through inasmuch as the inquiring authority itself

concluded on 27.06.2012 that the article of charge framed against Nanak Chand, JE was not proved.

8. Both, the Trial Court as well as Appellate Court were of the view that in the absence of any document to justify the legality of the sealing of the premises under the relevant provisions of the MCD Act or any other provision of law, the action of the petitioner was prima facie not justifiable; that balance of convenience lay in favour of the plaintiff (respondent herein) hence, in the interim, the MCD seal needed to be removed from the suit property.

9. The learned counsel for the respondent submits that the petitioner is in contempt because despite the Court having directed them to de-seal the premises, they have not done so on the pretext that the identity of the plaintiffs could not be ascertained. He submits that this flouting of the Court amounted to contempt of the Court, and because of the pendency of this petition, the proceedings before the Trial Court have not progressed. The Appellate Court had reasoned:-

“It is settled law that the order of the Ld. Trial Court passed under Order 39 Rule 1 & 2 CPC could be set aside only if it is perverse or against the settled principles of law. In the present case,

the respondent was allotted the plot in draw of lots and he has deposited the allotment money and thereafter constructed two rooms on the ground floor and a latrine on the first floor and it is not disputed that before the sealing of the plot, the appellant has not issued any notice to the respondent and the appellant could not produce any sealing order on record and it is a admitted fact that till date no action for cancellation of the allotment of the plot or for the forfeiture of the money has been initiated by the appellants. Although, the appellant is claiming that the respondent has got plot in connivance with the officials of the appellant but the respondent cannot be allowed to suffer due to illegal and wrongful acts of the officials of the appellant and moreover, the respondent after allotment has constructed the house at the site. The appellant have not been able to show any documents to justify the legality of the sealing of the premises. As per respondent, his household goods are still lying there. Therefore, prima facie case is in favour of the respondent and the balance of convenience is also in favour of the respondent and the respondent shall suffer irreparable loss and injury if the interim order is not granted in his favour. Therefore, I do not find any illegality in the order passed by the Ld. Trial Court. Accordingly, the present appeal is dismissed.”

10. The learned counsel for the petitioner submits that the Trial Court, on 27.10.2009, had erred in directing de-sealing of the premises

and that status quo was to be maintained till the final adjudication of the suit. However, he has not been able to show how the balance of convenience lay in favour of the Corporation which had proceeded to seal the suit premises without following due procedure. Arbitrariness is not tenable in law. Admittedly, no notice has been issued to the respondent-allottee who had built up habitational accommodation on the lands allotted to them by the Corporation itself, and that too against payment. Therefore, the sealing of the suit property would be *ex facie* illegal and wrongful. It is also an undisputed fact that the petitioner/defendant was not in possession of the suit premises. It is not as if the plaintiff had encroached upon the respective plots of land which were allotted to them through the draw of lots. If there was any doubt with respect to the allotment of the plots through the draw of lots, and also about the payments, the Corporation would be well within its rights to proceed against them but only as per law. An act of sealing of a property without any provocation, apparent cause or notice to its owner/occupier would not only be arbitrary, high handed but would in the interim, be proceeded with any notice on the presumption that it was illegal. The issue of legality of the sealing is to

be adjudicated upon by the Trial Court, but the balance of convenience would obviously lie in favour of the plaintiff – the possessor of the suit property. Therefore, the Trial Court as well as Appellate Court were right in concluding that balance of convenience lay in favour of the plaintiff.

11. The learned counsel for the petitioner refers to para 5 of a judgment of the Supreme Court in ***Kishore Kumar Khaitan & Anr v. Praveen Kumar Singh***, (2006) Vol.3 SCC 312, which reads inter-alia: *“unless a clear prima facie finding that the plaintiff was in possession on those dates is entered, an order for interim mandatory injunction could not have been passed and any such order passed would be one without jurisdiction.”* The aforesaid judgment would not be applicable to the facts of this case inasmuch as it is not in doubt that the plaintiff were in possession of the suit property/plot of land which was given in draw of lots. Indeed, the Corporation itself has admitted that the lands were allotted to the respondents against payments in the draw of lots. In the circumstances, the Trial Court had rightly passed the order for de-sealing, on the basis of the record available. This

Court finds no merit in the petition to interfere with the order of the Appellate Court.

12. This Court, on 29.04.2014, had passed the following order:

“Learned counsel for the petitioner states that he would intimate the Court about the steps taken by the department and the progress in the CBI case. He also states upon instructions, that the respondents would be duly compensated for the plots booked by them since the land concerned cannot be allotted to them for residential purposes, at the said rate, because in 1997 itself the said lands were marked for institutional purposes; no allotment can be made in contravention of the layout plan. He seeks time to file an affidavit of petitioner’s Director on record in this regard along with the approved layout plan. Learned counsel submits that the land user as prescribed, in the Master Plan, shall be referred to in the affidavit. He submits that the respondents were removed from the premises concerned but the draw of lots towards rehabilitation was fictitious. Whereas, per contra, it is stated that the respondents were allotted the suit premises as rehabilitation plots.

At request of learned counsel for the petitioner, renotify on 05.05.2014 in the first five matters.

Dasti.”

13. However, the affidavit was not filed either on 05.05.2014 or on 13.05.2014, indeed not even till date. Evidently, the petitioner either does not know or does not wish to intimate about the status of the cases against the officers who have allegedly been charged for wrongdoing i.e. for illegally allotting the aforesaid plots.

14. The petitioner's argument about the lack of evidence regarding date, month or year on which the plaintiffs were evicted from the slum cluster would be an issue ought to be decided in trial. It is a matter which would require leading of evidence. So also would be the issue of whether the plaintiffs had been allotted the land as per law, with due authority. All that the Court is required to see in the present case was: as to who was in possession of the suit property and in whose favour the balance of convenience lay. In view of the undisputed position that the plaintiff was in possession of the land allotted to them through due process, upon which they had built their respective structures and were in possession of it. Later on the Corporation sealed it arbitrarily without due process, therefore, the balance of convenience clearly lay in favour of the plaintiffs.

15. Interestingly, neither has the allotment of the plots been cancelled nor have the monies been returned to. For the Corporation to simply come over, one fine day, and seal the property would ex-facie be an arbitrary, high handed and unsustainable act.

16. The reasons for the impugned order are based on the record and the conclusion arrived at is plausible in law. It does not suffer from

any material irregularity. This Court finds no reasons to interfere with it. Having noted the persistent recalcitrance of petitioner-Corporation as well as the frivolousness of this petition, it is dismissed with cost of Rs.25,000/-. The property shall be de-sealed forthwith.

NAJMI WAZIRI
(JUDGE)

MAY 20, 2014/acm