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

+ W.P.(CRL) 451/2011

I D PANDEY & ANR.

..... Petitioner

Through: Petitioner in person

versus

STATE NCT OF DELHI & ORS.

..... Respondent

Through: Mr. Rajesh Mahajan, ASC with SI
Sanjeev
Mr. S.S. Ahluwalia and Mr. Jatin
Teotia, Adv. for R-5

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

14.12.2016

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1. The matter is listed today as 12.12.2016 was declared a holiday.
2. The petitioners have preferred the present writ petition, firstly, to seek a direction to the police officials to provide them security and to check at regular intervals with regard to their welfare so that no harm comes either to them or to their property. The petitioners also seek a direction that the police officials should not harass them any manner. The petitioners have, lastly, sought a direction to the respondent authority to restore possession of their house from respondent no.5. Respondent no.5 in the petition is Mrs. Rekha Pandey, wife of the deceased son of the petitioners, Sanjay Pandey.

3. The submission of the petitioner, who appears in person, is that he is the sole and absolute owner of the property being Flat No.B-30D, Gangotri Enclave, Alaknanda, which had been allotted to him in the year 1985. He had also taken a loan for acquiring the said property from Coal India Limited, where he was serving. The petitioner had three sons and one daughter. His son Sanjay Pandey was married to respondent no.5 in 1995. Unfortunately, the said marriage between Sanjay Pandey and respondent no.5 did not work out.

4. The petitioners state that on 10.05.1999, respondent no.5 abused the petitioners and even called the police. The petitioners state that on 30.05.1999, there was another altercation undertaken by respondent with the petitioners.

5. Unfortunately, the son of the petitioners Sanjay Pandey died on 15.12.2009 leaving behind a girl child who was got admitted by the petitioners into Mothers International School. Late Sanjay Pandey purchased a flat being Flat No.B-18D, Gangotri Enclave, Alaknanda in his name and in the name of respondent no.5. The said flat was occupied by the parents and sister in law and one younger married sister of respondent no.5.

6. The petitioners state that before they could come out of the shock of the death of Sanjay Pandey, respondent no.5 started harassing them. Despite having her own accommodation, she forcibly entered the property of the petitioner by putting her clothes. She also allegedly threatened the petitioners with false implication in cases. The petitioners also approached the police but to no avail. The petitioners were left to fend for themselves in courts.

7. The petitioners state that on 16.02.2011, when they sought to enter their own flat, they were prevented from doing so by respondent no.5. They were abused by respondent no.5 in the filthiest manner. The petitioners state that the police officers including the SHO and higher officers refused to take any action against respondent no.5 on their complaint. It is in this background that the petitioners preferred the present writ petition which has remained pending since March 2011.

8. The petitioners have placed reliance on several decisions including the decision of the Supreme Court in *S.R. Batra & Anr. v. Taruna Batra*, (2007) 2 SCC 1546. The respondents were noticed in the matter. The police has filed status reports. Respondent no.5 has also filed her reply, which is on record.

9. According to respondent no.5, she was also occupying the said flat along with the petitioners and being the matrimonial home of respondent no.5, she is entitled to continue to occupy the same. According to respondent no.5, she continued to live in the said flat after the demise of her husband Sanjay Pandey. According to respondent no.5, some of the instalments in respect of the flat jointly acquired by her husband and her were paid by the father of respondent no.5. According to respondent no.5, she is being maintained by her parents and other family members since the petitioners are not doing so. As noticed above, respondent no.5 has a minor daughter to look after.

10. Counsel for respondent no.5 has also sought to place reliance on the status report dated 19.04.2011 filed by Sh. Ajay Sharma, SHO PS Chitranjan Park and in particular to the following portion of the said report:

“Petitioner, Sh. ID Pandey has alleged that Smt. Rekha Pandey is forcibly staying in his flat and she is not allowing them to stay therein, whereas Smt. Rekha Pandey alleged that she is ill-treated by Sh. I.D. Pandey and his family members and they have also stopped the financial support to her. These complaints were enquired into. After an enquiry into the matter it was found that no cognizable offence is made out. Earlier, the petitioner, Sh. I.D. Pandey and his wife used to stay with Smt. Rekha Pandey, but due to stoppage of financial support to Smt. Rekha Pandey, the petitioner and his wife started living with their son Sh. Susheem Pandey in Neelgiri Apartments. Both the parties were having duplicate keys of the flat. Smt. Rekha Pandey and her daughter are still using one of the room of the flat. All the complaints of both the parties along with the enquiry report has been sent to Crime Against Women Cell for proper counselling on 10.3.2011”.

11. When the case was taken upon 02.12.2016, the petitioner no.1, who appeared in person, stated that respondent no.5 was presently residing in Flat No.B-30D, Gangotri Enclave, Alaknanda, which belongs to him. He also stated that respondent no.5 had shifted out of the said premises to Flat No.B-18D, Gangotri Enclave, Alaknanda. Attention was also drawn to the order of 21.01.2014, whereby the court had directed SI Laxmi Chand, Chitranjan Park to inspect the said flat so as to ascertain as to who was in possession, and whose belongings were lying in different portions of the said flat.

12. In view of the statement made by petitioner no.1 that respondent no.5 had shifted to Flat No.B-18D, Gangotri Enclave, Alaknanda, which was denied by counsel for respondent no.5, this court appointed a Local Commissioner to visit the said flat on the same day. Accordingly, Mr. Peeyush Bhatia, Advocate who was present in court, was appointed as the local commissioner with the following mandate:

“Mr. Peeyush Bhatia, Advocate, who is present in court, is directed forthwith to visit Flat No.B-30D, Gangotri Enclave, Alaknanda, and to report whether:

i) any person is occupying in the said flat or any portion thereof

ii) the identity of the person(s) who are occupying the said flat/ portion thereof

iii) the electricity consumption of the said flat as found in the last six months. He shall also take the reading of the aforesaid meter connection of the said flat.

iv) he shall make inquiries from the immediate neighbours as to who is the person in occupation of the said flat, and also inquire whether the person has been seen in the area in the immediate past surrounding the said flat.

v) he shall take photographs of the area to ascertain whether the flat appears to be lived in, in the recent past or not”.

13. The Local Commissioner has furnished his report. The report states that the flat of the petitioners was found locked and no person was found to be occupying the same. The Local Commissioner made inquiries from the IO and the petitioner and learnt that the petitioner had constructed three rooms on the terrace of the said flat, which were sealed by SI Laxmi Chand in compliance of the order dated 03.02.2014. The said portion was found locked. An inquiry was made from one of the neighbours Shalini Goel – living opposite to the flat in question, i.e. Flat No.29D for last two years. She stated that no one is living in the said flat No.30D for the last one month, and she had last seen respondent no.5 with her minor daughter only on Diwali, and even before that, respondent no.5 would come to the said flat

some time occasionally once in 15 days in the last 4-5 months. The Local Commissioner also inquired from one Mrs. Rakhi De, resident of Flat No.29B, first floor, who stated that she was residing in the said flat (29B) for the last one year. She also stated that respondent no.5 occasionally visited Flat No.30D once in a month, as she had shifted to another flat in the same society 5-6 months ago. She stated that she had last seen respondent no.5 and her minor daughter on the day of Diwali when she was shifting some household articles from the flat in question.

14. The Local Commissioner has also found that the garage attached to the flat had not been used for few months. He has also filed few photographs in support of his report. The electricity bills for the last 11 months i.e. for the period 11.01.2016 to 09.11.2016 for Meter No.28049072, CA No.100050877 in the name of the petitioner I.D. Pandey show that there is hardly any electricity consumption over a period of nearly ten months. It appears that only about 30 odd units have been used between September to November, which clearly shows that the flat in question is not being inhabited or used by anyone.

15. Petitioner no.1 is undoubtedly the absolute owner of the flat in question. He acquired the said flat even before his son Sanjay Pandey got married to respondent no.5. Merely because he permitted his son Sanjay Pandey and respondent no.5 to live in the said house out of his own free wish and desire, he cannot be blamed for the said act of his generosity and he cannot be made to suffer for the rest of his life for the same. The petitioners are in the evening of their lives and it is unfortunate that in their old age, their widowed daughter-in-law has made their life hell. They cannot

occupy and live in their own flat.

16. On the other hand, respondent no.5 acquired along with her late husband another flat in the locality, namely, Flat No.B-18D, Gangotri Enclave, Alaknanda. Respondent no.5 has tried to keep her foothold in the flat of the petitioners i.e. Flat No.B-30D, Gangotri Enclave, Alaknanda by claiming that her belongings are there and she is occupying a portion of the said flat.

17. As it turns out, respondent No.5 is not residing in the flat of the petitioners, undisputedly, at least for the last many months. This is evidenced from the statements of the neighbours recorded by the Local Commissioner as also the electricity bills which show hardly any consumption of electricity. Respondent No.5 has not been left without a roof. She has her own flat in her name. She has moved into the said flat with her own parents and other relatives.

18. Petitioner no.1 informs the court that he has already obtained a decree for possession against respondent No.5 from a civil court. This position is not disputed by counsel for respondent No.5, who states that the said decree has been challenged by filing a Regular First Appeal being RFA No.552/2016 before this court. Admittedly, there is no stay of operation of the judgment passed by the civil court in the said case.

19. In the aforesaid circumstances, the writ petition is allowed. The SHO PS Chitranjan Park is directed to proceed to the flat of the petitioners i.e. Flat No.B-30D, Gangotri Enclave, Alaknanda along with the petitioner on 15.12.2016 at 11:00 a.m. The SHO shall open the said flat, if necessary, by breaking open the locks. Respondent No.5 may also participate in the

proceedings. In case she claims any article as belonging to her, and there is no dispute about the same raised by the petitioners, the same shall be allowed to be removed by her. However, in case of dispute, the articles shall not be permitted to be removed and shall remain in the premises. The possession of the entire flat, including the two rooms and one store room constructed on top floor, shall be delivered to the petitioners. Respondent No.5 shall not be permitted to remain at the said premises. The aforesaid directions shall be implemented forthwith, subject to orders that may be passed at the stage of final determination of the aforesaid Regular First Appeal.

20. The SHO PS Chitranjan Park is also directed to ensure the safety and security of the petitioners in their Flat No.B-30D, Gangotri Enclave, Alaknanda. He shall ensure that they are not put to any harassment or harm by anyone including respondent No.5 or any of her family members and friends. An assessment of the threat perceived by the petitioners shall be made by the SHO and adequate security be provided to them.

21. The writ petition stands disposed of in the aforesaid terms.

22. Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

DECEMBER 14, 2016

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