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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1697/2018

RAJNISH CHHABRA

..... Petitioner

Through: Mr. Shahid Azad, Adv.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP with SI

Madhurendra Kumar P.S. EOW

Mr. Veeraj Datar and Mr. G. Narayan, Adv. for complainant

+ BAIL APPLN. 1699/2018

VIJAY BANSAL

..... Petitioner

Through: Mr. Shahid Azad, Adv.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP with SI

Madhurendra Kumar P.S. EOW

Mr. Veeraj Datar and Mr. G. Narayan, Adv. for complainant

+ BAIL APPLN. 1706/2018

NARENDER KUMAR GUPTA

..... Petitioner

Through: Mr. Shahid Azad, Adv.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP with SI

Madhurendra Kumar P.S. EOW

Mr. Veeraj Datar and Mr. G. Narayan, Adv. for complainant

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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15.11.2018

On 23.07.2018, 01.08.2018, 23.08.2018 and 28.08.2018, the following orders were passed:

Signature Not Verified

Signing Date: 09.10.2024 16:00:12
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

Order dated 23.07.2018

"The learned counsel for the petitioners seeks time to adduce documents to show that the lis apropos the land in question relates back to the year 1997 and that he is in the possession of the same for more than two decades. He relies upon the order passed by this Court in CM (M) No. 771/2009 dated 03.11.2009, an order of the Trial Court dated 13.07.2009, as well as orders in a Writ Petition permitting him to raise the boundary walls in the land. It is the petitioners' case that the issue pertains primarily to a civil dispute and the petitioner's possession of the land in question, has been established a long time ago.

At the petitioner's request, list on 25.07.2018."

Orde dated 01.08.2018

"The petitioners seek anticipatory bail in FIR No.0199/2017, registered with Police Station Economic Offences Wing for offences under sections 447/454/457/506/511 IPC.

It is alleged that the petitioners have trespassed into the property of the complainant company, however, the petitioners contends that they are in possession of the property by virtue of this Court's order dated 03.11.2009 passed in CM(M) No.771/2009. The relevant part thereof reads as under:-

"10. The contention of the respondents No. lto4/plaintiffs that they are also entitled in the suit from which this petition arises, to be-put back into possession of the land by removing even the furniture etc, of the petitioners lying thereon is not found to be tenable. The suit is not for the Relief of possession. If a person claims that his property is in

possession of a, trespasser and the trespasser is raising an unauthorized construction, a mere order restraining or demolishing unauthorized construction would not entitle the said person to possession also. If he is interested in possession of the property he has to sue for the same. Important relief of possession of immovable property cannot be claimed in such circuitous manner or in the garb of some other relief as is stated to be the case here.

11. The petition is therefore disposed of with the following directions:

a. The petitioners, who according to the respondents No. lto4/plaintiffs also were in possession of the land and had unauthprizedly constructed banquet hall/tent house on the said land and were carrying on said activity illegally thereon, shall continue to be in possession of the land till the order of appropriate court/authority directing dispossession of the petitioners there from.

b. The petitioners shall remain bound by their undertaking recorded in the order dated 25th July, 2009 of the appeal court and shall not raise any construction, be a banquet hall or a tent house or even a temporary tent on the said land and shall not

carry on any activities of holding functions, solemnizing marriages thereon unless they obtain the requisite permissions/licences/sancions from the concerned authorities for the same.

c. The respondents No. lto4/plaintiffs if claim to be entitled to possession of the land from the petitioners shall be so entitled only in a proper proceedings for the said relief. The counsel for the petitioners contends that the bar of Order 2 Rule 2 of the CPC would come against such relief. It is clarified that it will be open to the petitioners to take all pleas available in law to them in opposition to the said proceedings for possession if any initiated by the respondents No. lto4/plaintiffs.

d. The suit as well as the appeal shall also stand disposed of in terms of the aforesaid."

It is the complainant's case that the petitioners have broken a boundary wall and pushed around her guard at the spot. However, circumstances modifying the aforesaid order have yet to be examined.

The learned counsel for the State contends that the petitioners are not in lawful possession of the property. Interestingly, before the Trial Court, declining them bail, they had stated that they were not the owners of the property but merely tenants of the present company.

The learned counsel for the petitioners submits

that all these aspects will be explained to the Investigating Officer and they are ready and willing to join the investigations.

In the aforesaid circumstance, let them appear before the Investigating Officer concerned, tomorrow i.e. on 02.08.2018 at 3.00 p.m. and on all such dates when they are required by the police.

List on 14.08.2018.

Till the next date of hearing, the petitioners shall not be arrested."

Order dated 23.08.2018

"At the petitioner's request, renotify on 28.08.2018, when the petitioners shall bring on record, documents showing either their title to the property or that they are in lawful possession of the same."

Order dated 28.08.2018

"At the outset, Mr. Azad, the learned counsel for the petitioners submits that the petitioners do not have any document to show that they either have title to the property or that they are in lawful possession of the same. He, nevertheless, relies upon the orders of this Court to show that the petitioners are in possession of the property.

Mr. Viraj Datar, the learned counsel for the complainant submits that the petitioners' locus in the suit property is dubious because in the first instance, they claim to be in possession of the land through the erstwhile land owners, whilst simultaneously, the petitioners state that they are the complainant's tenants. He also refers to para 9 of the order dated 19.07.2018 passed by the learned Trial Court rejecting the petitioners' request for anticipatory bail. Additionally, he seeks time to bring on record the documents to show that the petitioners using dilatory methods and not showing their possession of the

premises, legitimate or otherwise; he also seeks to rely upon various complaints made by the complainant to the various authorities, against the petitioners' trespass into their lands.

At his request, re-notify on 03.10.2018.

Interim orders to continue.

The petitioners, Mr. Rajnish Chhabra and Mr. Narender Kumar Gupta, shall report before the Investigating Officer tomorrow i.e. on 29.08.2018 at 3.00 p.m. Petitioner Mr. Vijay Bansal, who is grieved by bereavement in his extended family, will report before the Investigating Officer on 02.09.2018 at 3.00 p.m."

On 28.08.2018, the petitioners' counsel had stated that the petitioners did not have any document to show that they have the title of the property or they are in lawful possession of the same. He, nevertheless, relied upon the order of this Court to show that the petitioner was in possession of the property. Insofar as the petitioner has no document to prove his title to be in the premises; the learned counsel for the State submits that custodial interrogation would be necessary for ascertaining as to how they are in alleged possession of the said property.

The learned counsel for the petitioner submits that the offences alleged against the petitioner are all bailable. Furthermore, there was no building or house in which any trespass could have been committed. At best, the allegation can be that the petitioner had walked into somebody's open land. Therefore, offences under sections 454 and 457 IPC would not be applicable.

The learned counsel for the State submits that section 420 IPC too has been added apropos the petitioner having cheated many unsuspecting

citizens.

The learned counsel for the petitioner submits that offence under section 447 IPC would not be made out because the petitioner has been in possession of the land since 1997. He relies upon an order of this Court, as mentioned hereinabove. However, the learned counsel for the State submits that a reference to the aforesaid order is misleading because it was passed in a case pertaining only 120 sq. yards of land apropos some other individual. Indeed, now the petitioner has encroached an area of almost 30 bighas which includes the land of the complainant.

In view of the above, the interim order is vacated. The petition is dismissed.

NOVEMBER 15, 2018/acm


NAJMI WAZIRI, J