

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: May 23, 2019

+ **CRL.REV.P.963/2018 & CRL.M.A. Nos.35542/2018, 2255/2019**

REV SOLMON DAVID Petitioner
Through: Mr. Rakesh Tiku, Senior Advocate
with Vineet Chadha, Mr. Sachin &
Ms. Saumitiri Pradhan, Advocates
Versus

STATE (NCT OF DELHI) & ANR. Respondents
Through: Mr. M.S.Oberoi, Additional
Public Prosecutor for respondent
No.1-State with SI Kunal Kishore
Ms. Rebecca John, Senior Counsel
with Mr. Sudershan Rajan & Mr.
Arvinder Mohan, Advocates for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

J U D G M E N T

1. In proceedings under section 145 of Cr.P.C., the concerned SDM in the impugned order dated 18th October, 2018 has directed that the possession of the subject premises i.e 19 Raj Niwas Marg, Civil Lines, Delhi be handed to second respondent while holding as under:-

“It is an admitted fact that Mr. Sandep Massey was the secretary of Kids Castle and was in possession of the property in dispute and both the parties have acquired their respective rights from Mr. Sandeep Massey. It is also an admitted fact that Paul Prem N Prem represented BUNI

in court cases, therefore from the perusal of exhibited documents on record it shows that documents executed by Mr. Sandeep Massey in favour of Mr. Vineet Kumar and Mother of Mr. Vineet Kumar are prior then the documents relied upon by Mr. Rev Solomon David. Mr. Vineet Kumar further in support of his case led the evidence and in order to show his possession from 04.11.2014 till the dispute i.e 23.12.2014 called Sh. Dhan Singh I.O as witness, who testified that upto 23.12.2014 premises was locked under the locks and keys of Mr. Vineet Kumar whereas on the other hand Mr. Vineet Kumar whereas on the other hand Mr. Rev Solomon David had not led any evidence in support of his case and failed to rebut the testimony of witness and even failed to prove his possession on the date of the dispute.”

2. The challenge to the impugned order by learned Senior Counsel for the petitioner was on the ground that the arguments were heard by SDM-Sh.Vivek H.P. on 14th April, 2018 but the impugned order has been passed by another SDM-Sh.B.K Jha on 18th October, 2018. It was pointed out that in the impugned order, it is clearly recorded that the author of the impugned order had heard arguments. It was submitted that this is factually incorrect because SDM-Sh.B.K. Jha, who has passed the impugned order, had never heard the arguments, as it is so reflected from the order-sheets of the case before the concerned SDM. So, it was submitted that the impugned order suffers from utter non- application of mind and is liable to be set aside on this ground alone. Reliance was placed on Supreme Court’s judgment in *Rasiklal Manikchnd Dhariwal & Anr. Vs. M.S.S Food Products* (2012) 2 SCC 196.

3. On merits, it was submitted on behalf of petitioner that the stand of respondent regarding his purchasing the property in question is contradictory. Attention of this Court had been drawn to the evidence of the Investigating Officer to submit that it does not stand established that the possession of the property in question was with the respondent. It is submitted that the learned SDM committed an error in jumping to the conclusion that the possession of the property was with respondent and the title aspect is not required to be gone into as it is for the civil courts to determine the title.

4. On the contrary, learned Senior Counsel for second respondent supported the impugned order and submitted that *Sh. Vivek H.P.*, SDM was an officer on probation and he was allowed to sign the order-sheets but the evidence was recorded by *Sh. B.K. Jha*, SDM and arguments were also heard by him on or before 16th April 2018. So, it was submitted that there is no violation of principles of natural justice. It was further submitted that written submissions were filed by the parties before the court of *Sh. B.K Jha*, SDM, Civil Line Delhi. To submit so, attention of this Court was drawn to *Annexure P-18* and *Annexure P-19*.

5. Ld. Counsel for the respondent had handed over copy of the order of 17th March 2018 to show that *Sh. Vivek H.P.* was the SDM on probation at Civil Line Delhi from the 19th March, 2018 to 20th April, 2018. Copy of RTI reply is also handed over by senior counsel for the respondent no. 2 which reveals that the tenure of *Sh. B.K Jha* as SDM, Civil Lines, Delhi was from 21st October, 2015 upto 31st January 2019. It

was thus submitted that during this period, the impugned order has been passed. It is pointed out that in the written arguments submitted by petitioner, prayer was made for inspection of the property in question to ascertain who is in actual physical possession of the property.

6. In rebuttal, learned Senior Counsel for petitioner had drawn the attention of this Court to order-sheets of the concerned SDM from 22nd March, 2018 to 16th April, 2018 to point out that *Sh. Vivek H.P.* had been signing the order-sheets and thereafter there was no hearing between 16th April, 2018 and 18th October, 2018.

7. On the other hand, learned Senior Counsel for respondent supported the impugned order on merits and submitted that from the evidence of the Investigating Officer, it does stand established that respondent was in possession of premises in question, where school was running.

8. After considering the submissions advanced by the counsel for the parties and on perusal of impugned order, material on record and the decision cited, I find that if one person hears and another decides, then personal hearing becomes an empty formality and the said procedure also offends the cardinal principle of *audi alteram partem*. Supreme Court in *Rajesh Talwar vs. CBI & Ors 2012 (3) SCALE 279* has reiterated that the golden thread which runs through all the decisions, is that justice must not only be done, but must also be seen to be done.

9. In light of the afore-referred principle of law, this Court has tested the impugned order on the touchstone of principles of natural justice and

finds that though SDM-*Sh.Vivek H.P.*, a probationer, had been given independent charge as SDM, Civil Lines but effectively SDM-*Sh.B.K.Jha* was the SDM, Civil Lines, Delhi who had heard the arguments. It is so evident from the written submissions filed by both the sides before the trial court. Simply because *Sh. Vivek H.P.*, who was a probationer had signed the order-sheet of 16th April, 2018 would not lead to a conclusion that the arguments were not heard by SDM-*Sh.B.K.Jha*, who was effectively working as SDM, Civil Lines, Delhi. In the considered opinion of this Court, there is no violation of principles of natural justice in the instant case.

10. On merits, this Court finds that even if petitioner's admission of *Mr.Sandeep Massey* being Secretary of Kids Castle Convent School and being in possession of the property in dispute is ignored, still in light of the evidence of *PW-1 SI Dhan Singh* (Annexure P-16), it can be safely concluded that the findings returned in the impugned of respondent being in possession of the subject premises cannot be negated. The afore-referred evidence stands corroborated from the documentary evidence i.e. GPA, Receipt, Possession Letter of 11th November, 2014. During the course of hearing, reliance was sought to be placed by learned Senior Counsel upon Possession Letter of 4th December, 2014, which is subsequent to the Possession Letter of 11th November, 2014 which is in favour of second respondent. But in the face of the above-referred documentary evidence i.e. GPA etc., no reliance can be placed upon the affidavit dated 5th December, 2014 of *Sandeep Massey* and an undated receipt as the said affidavit and receipt pertain to a bungalow located

inside 19 Raj Niwas Marg, Delhi and does not pertain to the school in question.

11. During the pendency of this petition, urgency was expressed for getting the boundary wall of the Kids Castle Convent School in question repaired and in that context, a Court Commissioner was appointed who has submitted his report. Relevantly, no objection had been filed to the report of the learned Local Commissioner. No doubt, the learned Court Commissioner had found that boundary wall of the school in question needs urgent repair but what is relevant to note is that it becomes evident from this Court Commissioner's Report that aforesaid school in question is functional in the subject premises, which fortifies the impugned order. Learned Court Commissioner has had found that the infrastructure for play school i.e. class rooms, toys play room, teacher room were there in the premises in question. Admission Register of the students of the school in question was produced before the learned Court Commissioner. Not only this, the learned Court Commissioner had got the entire inspection videographed and had annexed in the form of CD and Pen Drive alongwith the report. This Court is satisfied that the findings returned in the impugned order stands amply corroborated from the report of the learned Court Commissioner who has also placed on record the photographs of the class rooms, school building etc. which sufficiently justifies the impugned order as possession of second respondent in the subject premises stands firmly established. Needless to say, the question of title is already subjudice before the Civil Court and otherwise also, is not required to be gone in these proceedings.

12. Consequentially, finding no palpable error in the impugned order, this petition and the applications are accordingly dismissed while vacating the interim order.

(SUNIL GAUR)
JUDGE

MAY 23, 2019
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