

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.572 of 2012

In
TEST SUIT No.3 of 2009

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Ashok Bihari Sharan S/O Late Sita Bar Sharan Resident Of Mohalla Sheikhpura, P.S. Hawaiadda, Town And District Patna, Presently Resident At Bailey Kunj Apartment, Muzargali Sheikhpura, P.S. Hawai Adda, Town And Distt. Patna.

... .. Petitioner/s

Versus

1. Mr. Deepak Kumar M.D. Classicon (I), Builder Pvt. Ltd. Patna (Builder), S/O Sri Shiv Shankar Sinha Resident Of Keshri Nagar, P.O. Keshri Nagar, P.S. Rajiv Nagar, Distt. Patna.
2. Dr. Lokesh Son of Unknown Resident of Flat No. 601 Block-A, S.B. Residency Sheikhpura, P.S. Hawai Adda, Distt. Patna- 800014
3. Mrs. Aparajita Rai W/o Rajak Sinha Resident of EH-4/302, UTOPIA Ltd. ECO, Sector 93A, Noida Uttarpradesh 201304 Now present residence is flat no. 904 B, S.B. Residency, Sheikhpura, P.S. Hawai Adda, Distt. Patna-800014
4. Mr. Jan Manjay Rai Son of Chandra Mohan Rai Resident of EH-4/302, UTOPIA Ltd. ECO, Sector 93A, Noida Uttarpradesh 201304 Now present residence is flat no. 904 B, S.B. Residency, Sheikhpura, P.S. Hawai Adda, Distt. Patna-800014
5. The Patna Municipal Corporation through Municipal Commissioner, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Dharendra Narain Mallik, Advocate
For the Opposite Party/s	:	Mr. Md. Waliur Rahman, Advocate Mr. P.K. Shahi, Sr. Advocate Mr. Anshuman Singh, Advocate Mr. Manoj Kumar Ambastha, Advocate Mr. Praveen Kumar, Advocate Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 30-11-2022

Cryptic as the instant petition filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) may be, however since the time of its



filing on 2nd of February, 2012, it has led into the prolixity of the proceedings, making the file voluminous deterring the predecessors to have decided the issue expeditiously in accordance with law.

The point is simple. Is it that the interim order dated 30th of September, 2011, passed by this Court in Test Suit No. 3 of 2009, titled as Ashok Bihari Sharan Vs. Madan Mohan Sharan & Anr. Stands violated calling for an action under the provisions of the Act or not?

Allegedly, in violation of the said order, respondent contemnor transferred Flat No. 601, measuring an area of 1690 sq.ft. in favour of respondent Dr. Lokesh Kumar.

Order dated 30th of September, 2011 is extracted, in its totality, as under:-

“Hearing in this test suit is going on since last date on I.A. No. 3269 of 2009 filed by the plaintiff for protection of property. Since many parties are appearing and are contesting the I.A., hearing could not be concluded. Puja holidays are intervening and plaintiff apprehends that during the holidays the Builder, who has appeared and is contesting the I.A., may further alienate the property.

In the circumstances, only as an interim measure, this Court directs the Builder not to further alienate the property, i.e. not to enter into an



agreement with any third party, not to give possession to any third party and not to create any third party right till final orders are passed on the said I.A. However, Builder will be at liberty to proceed with the construction of the building and if it needs any directions or liberty from this Court, it will be at liberty to file I.A. for the purpose.

Put up on the next appointed day.”

The respondents in their reply have, in the considered view of this Court, sufficiently explained the circumstances under which the said sale took place. The property transferred did not fall to the share of the petitioner nor did he have any right over it.

That apart, the alleged sale took place on 17th of January, 2013 and noticeably, much prior thereto, the aforesaid interim order dated 30th of September, 2011 stood vacated by the Court itself on 5th of October, 2012, and significantly without recording any infringement thereof or any protest lodged by the petitioner.

In fact, noticing the conduct of the petitioner, the Court, in the very same order, restrained the petitioner from making any complaints before any authority against the respondent Builder.



This order dated 5th of October, 2012, passed in Test Suit No. 3 of 2009, titled as Ashok Bihari Sharan Vs. Madan Mohan Sharan & Anr. is extracted, in its totality, as under:-

“On 30.09.2011, I.A. No. 3269 of 2009 was heard by this Court. This I.A. was filed by the plaintiff for protection of property during the pendency of the suit. This Court, by way of interim measure, directed the Builder not to further alienate the property and not to enter into an agreement with any third party and not to give possession to any third party till final orders are passed on the said I.A. Thereafter Builder filed I.A. No. 1737 of 2012 for vacating this interim order.

On the insistence of the parties, the hearing on the interlocutory application commenced and continued for many days. Thereafter this Court, with a view to get the matter amicably settled between the parties, who are own brothers and sisters, made them agree to sit with Mr. Swaraj Kumar Ghose, learned senior counsel, who was requested by this Court to make the parties agree to arrive at a settlement. The Builder also filed details of the constructed portion of building and flats handed over to the parties out of the owners' share. They also informed this Court that flat nos. 302, 303 and 504 in Block No. A were complete in all respects and were being kept reserved for the plaintiff. Mr. Ghose was requested by this Court to visit the building and inspect the said flats and submit a report with regard to its status. He submitted his report and found that three flats are vacant and they



are ready for being handed over the flats. However, Mr. Ghose reported that in spite of his best efforts, he could not make the parties agree to come to an agreement and submitted his report in that respect.

Learned counsel for the plaintiff submits that the plaintiff is residing in a rented accommodation. Hence he submits that the plaintiff is ready to take possession of three flats and accede to the prayer of Builder that the interim order may be vacated subject to the result of the suit. He also submits that since two blocks of the residential portion of the building is complete, no useful purpose will be served in pressing I.A. No.3269 of 2009. Hence he seeks permission to withdraw the same. However, he submits that liberty may be granted to the plaintiff to move this Court, as and when required, if the plaintiff finds that any further damage is going to be caused to the property.

In the circumstances. I.A. No.3269 of 2009 is disposed of as withdrawn. The interim order dated 30.09.2011 is vacated. I.A. No.1737 of 2012 filed by the Builder is also dismissed as withdrawn.

Learned senior counsel for the Builder produces three possession letters in respect of the said three flats for handing over their possession to the plaintiff which plaintiff receives in Court. Plaintiff is further directed to approach, Mr. Ravindra Prasad, a representative of the Builder, who is present in Court, today at 5.00 P.M. at the site who is directed to hand over the keys of three flats and their physical



possession to the plaintiff.

Learned counsel for the Builder submits that the plaintiff has gone on filing complaints and applications before various authorities including the police authorities. He may be restrained from filing any other complaint before any authority against the Builder or in any matter related to the constructed building.

Submission of learned counsel for the Builder is reasonable. Plaintiff is restrained from filing any further complaint or application before any authority in respect of the constructed part of the building.”

Noticeably, the disputes *inter se* the parties stood settled with the builder (respondent herein) handing over possession of three flats vide communication of same date dated 31st of August, 2012, identical in nature. One of which is also extracted as under:-

“To,
Mr. Ashok Bihari Sharan
S/o Late Savitri Devi
W/o Late Sita Bar Sharan
Sheikhpura Bailey Road
Patna-14

Sub-Delivery of Possession of Flat No-302, on Second Floor, Block-A, measuring built up area 1400 sq.ft on Plot No. 1290, 1291,1289,1291/1856, under



Khata No. 336,303,152, Tauzi No. 5765, Thana No. 9 Holding No- 525 and 526, Circle No. 521, in S.B.Residency Apartment situated at, Sheikhpura Near- I.G.I.M.S, P.S-Patna Air Port, Baily Road, Patna- 14.

Dear Sir,

Kindly refer to Development Agreement Dated 19/12/2004 & 16.08.2005, and Registration No- 3008/dated 03.12.2007, made between ourselves and yourselves we hereby agreed to construct the above mentioned Building.

And as per share distribution dated 31/3/2008 or 30/11/2009. The flat is in your land owners share in your name.

Today we have delivering you the vacant Possession of above mention Flat to you.

As a consideration amount in respect of above land.

It is confirmed that now you have no claim against flat, Finishing and Fixtures provided by us.

You have agreed to make possession and pay the Electricity, Generator and maintenance Charges as per demand raised.

(Mr. Ashok Bihari Saran)

Handled over by:

Taken Over

(I am fully satisfied with construction work and other amenities of the Building Complex)”



It is a settled principle of law that contempt is a matter between the Court and the contemnor. There is no disobedience, much less wilful, and this Court cannot enter into any sort of roving inquiry, for the onus, establishing violation of the order, is, firstly, upon the person alleging the same, which in the instant case, is missing on record.

In any event, with the matter having been settled, and the Court vacating the interim order, there is no question of any subsisting cause of action of violation of the order.

The petition stands disposed of.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	03.12.2022
Transmission Date	

