



\$~104(Appellate Side)

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

+ CM(M) 303/2022 & CM No.16387/2022, CM No.16388/2022

FARIDA KALIA AND OTHERS & ORS. Petitioners
Through: Mr. R.Y. Kaha, Adv.

versus

ARJUN GUPTA AND OTHERS & ORS. Respondents
Through: Mr.Udit Arora, Adv. for R-1
Ms.Richa Dhawan, SC-North DMC/R-2
Mr.Gurpreet Singh, Ms.Shannu Baghel,
Ms.Shashi Kant Jha, Advs. for R-4
SI Tarun Kumar from PS Civil Lines

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **26.04.2022**

1. The impugned order dated 11th March, 2022, passed by the learned Additional Senior Civil Judge (“the learned ASCJ”) dismisses an application preferred by the applicants Farida Kalia, Sheikh Fakruddin Kalia and Azka Sheikh Kalia in CS 3705/2017 under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, whereby the applicants sought to be impleaded in the suit filed by Respondent 1/plaintiff against Respondents 2 to 4.

2. CS 3705/2017 was filed by Respondent 1 Arjun Gupta against Respondents 2 to 4, i.e. North DMC, SHO, PS Civil Lines and Kailash Kumar Gupta. Respondent 1 sought to contend that a building had been erected on the suit property situated at No.6, Sham Nath



Marg/Raj Niwas Marg, Alipur Road, Behind Masjid, Civil Lines, Delhi-110054 in violation of statutory laws, by Respondent 3 and his children. The suit accordingly sought a permanent injunction against Respondent 3 from carrying out any further allegedly illegal construction on the suit property and also mandatory injunction for immediate sealing and demolition of the allegedly unauthorised construction situated on the suit property.

3. To a query from the court regarding the locus of the petitioners who filed the aforesaid suit, learned Counsel for Respondent 1 submits that the petitioner is a public-spirited citizen, staying in a nearby plot.

4. The petitioners moved applications under Order I Rule 10, for impleadment in the aforesaid suit. They pleaded that they had jointly purchased the third floor apartment situated on the suit property at 6, Shamnath Marg/Raj Niwas Marg, and were bonafide purchasers for consideration, having never been informed by Respondent 3 about the pendency of the aforesaid CS 3705/2017. Part of the property in which the petitioners were staying was, it was alleged, demolished on 16th and 17th, consequent to the aforesaid suit having been filed by Respondent 1 while other parts of the property were allowed to remain untouched.

5. In these circumstances, the petitioners sought permission to be impleaded in the proceedings by way of the aforesaid application under Order I Rule 10 of the CPC.



6. The impugned order of the learned ASCJ, somewhat perplexingly, has dismissed the petitioner's application applying the *caveat emptor* principle, observing that there was a "red colour warning stamp" on the sale deed/property transfer document which ought to have been sufficient to forewarn the petitioners about the encumbrances attached to the property which they were purchasing. The petitioners, therefore, it was held, had purchased the property at their own cost and peril. According to the learned ASCJ, this "red colour warning stamp" ought to have put the petitioners on notice that the property was booked for demolition and was unauthorised in nature. Further observing that the petitioners had failed to establish how they were necessary and proper parties in the petition and as to how the controversy in the petition was incapable of a final and effective adjudication in their absence, the petitioners' request for being impleaded in the petition was rejected and petitioners' application under Order I Rule 10 dismissed.

7. Learned Counsel for Respondent 1 reiterates the reasoning contained in the impugned order and submits that the petitioners were well aware of the fact that the property which they were seeking to purchase was unauthorised and, therefore, purchased the property at their own risk and peril. Their presence, he reiterates, was not necessary to adjudicate the *lis* forming subject matter of the suit. As such, he submits that no jurisdictional or other error could be said to have been committed by the learned ASCJ in rejecting the petitioners' application under Order I Rule 10 of the CPC.



8. I am constrained to observe that the reasoning of the learned ASCJ is *ex facie* perverse. I am completely at a loss to understand as to how, given the fact that the prayer in the petition was for demolition of the construction on the suit property, the petitioners, who were admittedly owners of apartments at the third floor of the suit property, and whose apartments also suffered demolition as a result of the suit filed by Respondent 1, could be said, by any stretch of imagination, not to be entitled to be impleaded or heard in the matter. It is significant that Respondent 1 claimed to have no personal interest in the suit property, but claimed to be a person staying in an adjoining plot. Respondent 1 was, therefore, supposedly acting in public interest. If that was so, one would expect Respondent 1 to be alive to the occupancy status of the suit property and the persons who are residing therein. It may need explanation as to how Respondent 1, if he was a bonafide litigant, remained completely oblivious as to the occupants of the suit property.

9. Learned Counsel for Respondent 1 submits that the petitioners were not occupants of the suit property at the time the suit was initiated. This, in my view, can hardly answer the point. As a supposedly public-spirited citizen, interested in seeing that unauthorised constructions did not spring up on public land, Respondent 1 would be expected at the very least to keep track of the persons who came into occupation of such unauthorised constructions. If he did so, it was Respondent 1's obligation to implead such persons who came in occupation of the suit property or at least keep the court abreast of the changing occupancy status of the suit property.



Respondent 1's default in this regard may require to be explained in the proceedings before the learned ASCJ. It is fundamental that even a person who is in unauthorised occupation is entitled, on application of the most basic principles of natural justice and fair play, to be heard before his property is demolished. It is disquieting, therefore, to note that the petitioners' property was not only demolished without hearing them – as they were never impleaded in the proceedings – but that, when they sought to be impleaded, their request was turned down.

10. The principle of *caveat emptor*, that the learned ASCJ has sought to invoke, has, in my view, not even the remotest connection with the issue of whether the petitioners ought or ought not to have been permitted to be impleaded in the proceedings. Even if it were to be presumed that the petitioners ought to have been alive to the fact that they were purchasing property which was unauthorised, that does not disentitle them from being heard in the suit proceedings, especially when, as a consequence of the said proceedings, their property was demolished.

12. The impugned order of the learned ASCJ in my view militates against the most fundamental principles governing Order I Rule 10 of the CPC and is also in the teeth of the most basic concepts of natural justice and fair play.

13. For the aforesaid reasons, and without expressing any further opinion on the nature of the suit, lest the proceedings before the



learned ASCJ be prejudiced, the impugned order, being completely unsustainable in facts and in law is quashed and set aside. The petitioners are permitted to implead themselves in the proceedings before the learned Additional Senior Civil Judge in CS 3705/2017. The petitioners would be entitled to file their written statement in response to the aforesaid suit and take all further steps as per the provisions of the CPC.

14. In view of the aforesaid, the impugned order is quashed and set aside.

15. The petition is allowed accordingly. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

APRIL 26, 2022/kr

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