



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 2nd June, 2022

+ CRL.M.C.1486/2018 & CRL.M.A. 7406/2019

RAJ NARAYAN SINGH Petitioner
Through: Mr. Ajay Bahl and Mr. Pritish
Sabharwal, Advocates
versus

STATE & ORS. Respondents
Through: Ms. Manjeet Arya, APP for the
R/State
Mr. Praveen Chauhan, Mr. S. Rao
and Mr. Aakash Dubey, Advocates
for R-2
Mr. Vishal Gosain, Ms. Adya R.
Luthra and Mr. Pravir Singh,
Advocates for R-3

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") for setting aside the order dated 10th November, 2017, passed by the learned Special Judge (P.C. Act) CBI-01, Saket Courts, New Delhi in revision petition No. 07/2016 filed by the petitioner against the order dated 19th August, 2016 passed by the SDM(Hauz Khas).

2. The facts as are relevant for the disposal of the present matter are that there is a plot bearing No. S-94, Panchsheel Park, New Delhi,



measuring 499 square yards. The petitioner claims to be the absolute owner in possession of the said property on the basis of an Agreement to Sell dated 24th February, 1986, executed in his favour by late Sh. Surender Kumar Sardana. The said late Sh. Surender Kumar Sardana had also executed a General Power of Attorney, *Will*, Receipt of payment of Rs.16 lakhs and an Affidavit to complete the sale in favour of the petitioner on 24th February, 1986. The original documents pertaining to the property were also handed over and continue to remain in the power and possession of the petitioner. The property has also been mutated in the name of the petitioner vide a registered Conveyance Deed executed by the Delhi Development Authority (for short, “**DDA**”) on 12th August, 2013.

3. It is the case of the petitioner that Sh. Surender Kumar Sardana expired on 5th April, 2011 and the respondent No.2 arrived from USA on 29th April, 2011 and requested the petitioner to allow him to live in the said property for some time. Since the respondent No.2 was the brother of late Sh. Surender Kumar Sardana, the petitioner allowed him to use one room. However, unknown to the petitioner, the respondent No.2, with the active connivance of his sister Smt. Sangeeta Bambani, and with criminal intent, filed an application before the DDA on 2nd July, 2011 seeking mutation of the property in their names. When the petitioner learnt about this, he filed objections before the Deputy Director, DDA, requesting that since he was the bona fide owner of the property, no mutation be allowed in favour of the respondent No.2. Despite several notices by the DDA to the respondent No.2 for production of all original documents pertaining to the property, the respondent No.2 failed to appear before the concerned official of the



DDA and produce the relevant documents. Thereafter, he also claimed that he had lost all the original documents of the property. As the petitioner had filed all the original documents before the DDA, the file was sent on 16th August, 2012 for vigilance inquiry.

4. Subsequently, the petitioner approached the DDA for conversion of the property in his name from lease-hold to free-hold on 28th June, 2013 and paid the conversion charges on 12th August, 2013, whereafter, the DDA executed and registered the Conveyance Deed in favour of the petitioner. The respondent No.2 returned to USA, without informing the petitioner, and when the petitioner contacted the respondent No.2, he was informed that not only has the respondent No.2 filed a suit before the High Court of Delhi, but he also alleged that he had sold the property to a prospective buyer namely, Sh. Murari Mirchandani, respondent No.3 herein, and he had also received Rs.70 lakhs as earnest money from him, and advised the petitioner to forget about the property. A complaint to the police did not result in any action against the respondent No.2 and his sister.

5. It is thus stated that since the request of the respondent No.2 for mutation of the property was rejected, therefore, the alleged Agreement to Sell dated 11th April, 2012 with the respondent no.3, for a sum of Rs.14.25 crores was illegal. The respondent No.3 also filed a Civil Suit for specific performance against the respondent No.2 in this court, being CS(OS) 1081/2014, wherein the petitioner was arrayed as defendant no.5, but no stay was granted against the petitioner. The respondent No.2 had also filed a W.P.(C) 258/2014 against the DDA and the petitioner for cancellation of



the Conveyance Deed dated 12th August, 2013, which was dismissed by a Coordinate Bench of this Court with costs of Rs.50,000/- on the respondent No.2. The LPA No.171/2014 filed by the respondent No.2 against this dismissal was also dismissed. After the dismissal of the writ petition, the respondent No.2 maliciously filed a Civil Suit against the DDA and the petitioner being Suit no. 10/2014, claiming the same reliefs, but was not diligently following it up in the District Courts, Saket.

6. In this background, on 17th September, 2014, when in the evening, the petitioner and his nephew Sh. Manish Singh, were having tea in the property, 8-9 persons entered into it to take illegal possession at the instance of the respondent No.2 and also started throwing the furniture outside. The police were immediately alerted. A written complaint was also made to the police on the same day i.e., 17th September, 2014, when he was told that the property had been sealed by the police and the learned SDM, Hauz Khas, New Delhi. A *Kalandara* was also prepared under Section 145 Cr.P.C.. The order passed by the SDM directing status quo to be maintained in respect of the property is dated 19th September, 2014.

7. The petitioner filed another petition being CrI.M.C.203/2016 for quashing the proceedings before the SDM (South). Vide orders dated 18th January, 2016, this court directed the SDM to dispose of the proceedings under Section 145 Cr.P.C. within a period of six months. On 19th August, 2016, the SDM (South) disposed of the proceedings under Section 145 Cr.P.C, keeping the property sealed, which was also an erroneous order as there was no injunction against the petitioner in the Civil Suit pending before this court. Therefore, being aggrieved, the petitioner filed



CrI.M.C.3798/2016, but the court granted him permission to file a Revision Petition before the learned Additional Sessions Judge vide its order dated 7th October, 2016. That Revision Petition being revision petition No. 07/2016 was dismissed by the learned District and Sessions Judge vide impugned order dated 10th November, 2017, on the basis of which the present petition has been filed.

8. It is submitted by Mr. Ajay Bahl, learned counsel for the petitioner, that in its orders, the learned District and Sessions Court had wrongly assumed that the High Court vide its orders dated 21st April, 2014 had restrained the petitioner from parting with possession of the suit property. Therefore, the learned Sessions Court fell into error in observing as below:-

“With regard to the sealing of the property, since title and possession of the suit property itself is disputed and the parties have already been restrained from alienating, encumbering, dealing and parting with possession of the property, therefore it would not be appropriate for Ld SDM to initiate another inquiry at this stage, concerning the same matter between the same parties, nor the order of de-sealing can be passed in favour of any of the parties as the subject property was found vacant at the time of inspection. Since the parties have already resorted to the civil proceedings, therefore, they may move appropriate application with regard to the restoration of the possession/desealing before Civil Court concerned, if so advised. Revision Petition stands disposed off in above terms.”

9. However, such a submission does not appeal to this Court. The proceedings under Section 145 Cr.P.C. have a very limited canvas. The



SDM cannot determine the title to the property. Section 145 Cr.P.C. reads as under:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months



next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and



natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107.”

10. When the parties have a quarrel in respect of a premises and the premises is sealed, the SDM can only make an inquiry as to who was in the possession immediately before the sealing and if there is no risk to public order, hand over the property to the person from whom the possession was taken or the person who was last found in possession. If there was a question of law and order, the property would definitely remain sealed. Where the question of title is apparent even to the SDM, he is obliged to refer the parties to the Civil Court and await the decision of the Civil Court before releasing possession/de-sealing the property.

11. Reliance has been placed by the learned counsel for the respondents No.2 and 3 on the decision of a Coordinate Bench of this Court in ***Shanti Kumar Ramsisaria v. State (Govt. of NCT of Delhi)***, 2019 SCC OnLine Del 6852 to contend that the inherent powers of the High Court under Section 482 Cr.P.C. ought not to be exercised when no special circumstances have been pointed out for the court to disturb the view taken by the revisional court.



12. While exercising the inherent powers under Section 482 Cr.P.C., the court must be conscious of the scope of such powers. In a petition under Section 482 Cr.P.C., interference by this court, in exercise of its discretionary powers, can only be in cases where clear perversity or error is disclosed on the face of the record.

13. In **Krishnan v. Krishnaveni**, (1997) 4 SCC 241, the Supreme Court has held as under:-

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person-accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of



proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when trial is conducted expeditiously.”

14. Similarly, in ***Dhruvaram Murlidhar Sonar Vs. State of Maharashtra***, (2019) 18 SCC 191, the Supreme Court has held as under:-

“8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.”

15. In the present matter, the petitioner seeks to adopt a short-cut. The title to the suit property is subject matter of CS(OS) 1081/2014 and the suit before the District Courts. Thus, the SDM would be ill-positioned to conclusively decide to whom the possession must be given. Even granting that in the orders of this court dated 21st April, 2014, no order of restraint was passed against the petitioner, being the defendant No.5 in CS(OS) 1081/2014, the fact remains that the question of the title is under consideration before this court and the District Court, Saket in the Civil



Suits filed by the respondent no. 3 and respondent no. 2 respectively. The pendency of these Civil Suits cannot be circumvented by directing the SDM to release the property to the petitioner. It is not as if the petitioner is left without remedy. Being the defendant No.5 in CS(OS) 1081/2014, he could move the court for appropriate orders.

16. Thus, the conclusion of the learned District and Sessions Court that since the parties have already resorted to the civil proceedings, the SDM would have nothing to proceed ahead, is not an erroneous conclusion. The conclusions drawn in fact are correctly drawn.

17. The petition does not disclose any perversity or non-application of mind, calling for interference of this Court with the impugned order.

18. The petition is accordingly dismissed, along with the pending application.

19. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 02, 2022

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