



2024:DHC:1237



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

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Judgment reserved on: 05.01.2024

Judgment pronounced on: 19.02.2024

+ CM(M) 2111/2023, CM APPL. 66194/2023, CM APPL. 66195/2023
SUBEY SINGH Petitioner

Through: Mr. Sarvesh Chowdhary, Mr.R.K.
Pandey and Mr.Jyotirmay Vasisht,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Shobhna Takiar and Mr.Mayank
Bamniyal, Advocates.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") whereby the order dated 05.10.2023 passed by the Learned Additional District Judge, South East, Saket Court, New Delhi in MCA DJ No.19/2018 titled as "*Subey Singh vs Delhi Development Authority*" is impugned.

2. Vide the impugned order, the petitioner's application under Order XXXIX Rule 1 & 2 of the CPC seeking interim injunction against the respondent was dismissed.



Factual Background:

3. A narration of facts relevant to the present case are that the petitioner had filed a suit for permanent injunction, restraining the respondent from dispossessing and demolishing the property bearing No.N-13, T Huts, Khirki Village, New Delhi (hereinafter “suit property”), admeasuring 323 square yards, where the petitioner has been peacefully residing.
4. The petitioner also filed an application under Order XXXIX Rule 1 & 2 seeking interim injunction thereby restraining the respondent from dispossessing the petitioner from where he is currently residing.
5. On 13.03.2018, the respondent tried to demolish the suit property but due to the intervention of people in the vicinity, the respondent was unable to do so and had to leave the site. The petitioner, thus to legally enforce his rights, approached the Court by instituting the aforesaid suit. The petitioner’s application under Order XXXIX Rule 1 & 2 CPC came up for hearing. Vide the order dated 07.08.2018 passed in CS SCJ 270/2018, the learned Senior Civil Judge-cum-Rent Controller (South), Saket Courts, New Delhi (hereinafter “SCJ-cum-ARC”) observed that *prima facie* case in favor of the petitioner did not exist and the balance of convenience does not lie in his favour as the petitioner does not have any right, title or interest in the suit property. It was further observed that the petitioner also failed to show his legal right of possession by means of any documentary proof thereby dismissing the petitioner’s application under Order XXXIX Rule 1 & 2 CPC.



6. The aggrieved petitioner challenged the aforesaid order before the learned Additional District Judge-01, South District, Saket Court, New Delhi (hereinafter “ADJ”) and vide the impugned order dated 05.10.2023, the learned ADJ upheld the order dated 07.08.2018 thereby finding no illegality in the order, while dismissing the appeal. The petitioner now has approached this Court impugning the order passed by learned ADJ on 07.08.2018.

Submissions on behalf of the petitioner:

7. The petitioner strenuously asserted to maintain his claim on the basis of his alleged peaceful and uninterrupted possession of the suit property for the past 50 years and contended that he is seeking protection of his rights on the ground of settled possession and not as owner of the suit property. Reliance is placed on the Aadhar and Ration Cards as well as electricity bills of petitioner and his family members bearing the address of the suit property. It was submitted that the aforesaid documents are sufficient to prove possession title of the suit property. Thus, the petitioner claimed that he has a right and interest in the suit property, which is required to be protected. The petitioner further states that against the norms of law, the respondent is trying to seek declaration in the suit that is not even filed by them by relying on letter No.4(19)/78-SS.II (VOL.II) dated 09.02.1982 of the Ministry of Rehabilitation. It was contended that the possession of the property cannot be disturbed except in accordance with law.

8. The learned counsel further submitted that the position of law is established that even a trespasser in settled possession of the property belonging to the rightful owner cannot be dispossessed, even by a rightful



owner by taking law in his hand and that such a rightful owner can be enjoined for using force or taking law into his own hands. It was submitted that possession of the property is not challenged by the respondent and both the Courts below have also admitted the same, therefore, the petition of the petitioner is to be decided on the premises of his settled possession. Reliance placed on **Rame Gowda vs M. Varadappa Naidu** [AIR 2004 SC 5609] and **Munshi Ram & Ors Vs Delhi Administration** [(1968) 2 SCR 455].

9. It is submitted that possession of property not being in dispute, the learned ADJ failed to consider the said fact and dismissed the application, which is contrary to law, thus, the petitioner's possession needs to be protected and respondent is required to follow due process of law in dispossessing the petitioner. It was also submitted that petitioner is not claiming by way of present suit to perfect his title to suit property by virtue of adverse possession, however, this suit is filed to only plead settled possession of the property, which purportedly has been confused by the learned ADJ with adverse possession.

Submissions on behalf of the Respondent:

10. Conversely, the respondent submits that the petitioner is an encroacher and trespasser on DDA land and the DDA has a right to inspect and protect its land as and when it deems fit. The suit property was transferred to the DDA by the Ministry of Rehabilitation vide letter No.4(19)/78-SS.II (VOL.II) dated 02.09.1982 and physical possession of the same was taken on 22.12.1987, vide letter No.1(41)



Survey/CSC/87/Malviya Nagar as Site No.1, Hauz Rani. Therefore, the suit property is situated on government land.

11. It is contended that the documents submitted by the petitioner i.e., Aadhar Card and Ration Card neither confirm the petitioner's ownership nor prove that the petitioner has been in possession of the suit property for the past 50 years. Furthermore, the address mentioned by the petitioner in the documents is not the address where the petitioner is residing

12. The respondent further submits that the brother of the petitioner had filed a similar suit for declaration and injunction against the respondent for the property bearing No.N-10, Khirki Village, New Delhi, which was dismissed vide judgement dated 20.01.2016 and a regular civil appeal against the judgement was dismissed by the learned ADJ on 13.10.2016 and thereafter the abovementioned property was demolished during the demolition drive. It was, thus, submitted that present petition is devoid of any merit and same be dismissed.

13. In rebuttal, the petitioner submitted that the respondent cannot claim title over the land and by virtue of a mere transfer of rights through a letter and same cannot be treated to transfer of ownership of the land, specifically when no Khasra Number has been mentioned in the letter which does not reflect whether the area in particular has been acquired or not.

Analysis & Conclusion

14. Reflecting upon the extent of limited powers of this Court under Article 227 of the Constitution of India, it is trite law that this Court in exercise of its supervisory power cannot sit in appeal over the decisions of



the Court below. The law requires that while exercising the supervisory powers, the Court has to adjudge (i) if there is violation of principles of natural justice, (ii) perversity and illegality in the impugned order, if any and (iii) if the decision of the Trial Court either lacks jurisdiction or is in violation of the fundamental rights of any citizen.

15. The scope of Article 227 has been well summarised in **Mohd. Yunus v. Mohd. Mustaqim & Ors.**, (1983) 4 SCC 566 by the Hon'ble Supreme Court where it is observed that unless there is failure on the part of the trial court to exercise its jurisdiction, or it acted in disregard of principles of natural justice, or the procedure adopted by him was not in consonance with the procedure established by law, only then the High Court will exercise the supervisory jurisdiction to rectify the errors in the decision.

16. The position of law has been further crystallised in the case of **Estralla Rubber v. Dass Estate (P) Ltd.** [(2001) 8 SCC 97] as under:-

“...Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a to. "I c conclusion, which the court or tribunal has come to."

17. Manifestly, the scope of intervention by this Court under Article 227 of the Constitution of India is limited, findings & facts cannot be disturbed, unless a question of law is raised.



18. The petitioner has essentially pleaded that he is in settled possession of the suit property for the past 50 years and if he has to be dispossessed by respondent, it can be done by following 'Due Process' of law. The concept of 'Due Process' is no longer an enigma and has been well settled in view of the decision of the Supreme Court in the case of *Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) through LRs* (2012) 5 SCC 370, wherein it is observed as under:-

“81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent.

82. This Court in a recent judgment in Ramrameshwari Devi aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

19. The aforesaid decision of the Hon'ble Supreme Court was followed by a Co-ordinate Bench of this Court in the case titled as *Bal Bhagwan vs. Delhi Development Authority* 2020 SCC OnLine Del 1630, wherein the set



of facts were similar to the one's in the present case, wherein it was observed as under:-

“The issue as to what constitutes 'due process' is thus settled beyond any doubt. The Plaintiff, who is claiming possession, can be dispossessed in the suit for injunction filed by him. Due process does not always mean that the owner has to file the suit to prove his title. So long as a Court of law has examined the documents and has given a fair hearing to the parties concerned, the compliance of due process has taken place. Moreover, due process of law also does not mean the final adjudication after trial. It merely means an opportunity being given to present the case before the Court of law and the rights of the parties being adjudicated. It does not mean the whole trial, as per Maria Margarida (supra).”

20. In the present case, the application moved on behalf of the petitioner under Order XXXIX Rule 1 and 2 CPC has been dismissed by the Trial and the order of the dismissal has been upheld in first appeal preferred before the learned ADJ. Thus, there are concurrent findings of dismissal of the application under Order XXXIX Rule 1 & 2 CPC by the Trial Court and Appellate Court.

21. Insofar as following the principle of natural justice, at both the levels, the parties have been granted due opportunity of being heard and it is also not the grievance of the petitioner that principle of natural justice were violated in any manner. The petitioner has not pointed out any jurisdictional error concerning the courts below. The only plea raised is that the First Appellate Court and the Trial Court did not consider the fact that petitioner has been in settled possession for the last 50 years and thus prima facie enjoys right and interest in the suit property by virtue of the same.

22. In view of the above, it is incumbent upon this Court to examine the veracity and lawfulness of the impugned order for which it is relevant to



note the observations recorded by the learned ADJ. The relevant portion of the impugned order is reproduced hereinunder:-

“The ground taken by the appellant is that he has been in settled possession for the last 50 years. However, the settled possession has not been proved by the appellant. The copy of the letter written by Under Secretary, Govt of India to the Vice Chairman, DDA has been annexed alongwith details of land and it has been stated by the DDA that appellant had no right, title or interest on the suit property. Moreover, all the documents filed by the plaintiff pertained to the year 2005 or after 2005.

On the other hand, respondent has been able to show the notification as per which Khirki Village was acquired by DDA in 1987 and its physical possession was taken over. Moreover, documents like ration card, electricity bill and aadhar card etc do not confirm ownership in favour of the appellant, All the documents are recent documents and do not show the possession of the appellant over the suit property for last 50 years. The address mentioned on the documents are also not proper as they merely mention the address as NY, T Huts which is not the actual address of the appellant.

The appellant prima facie seems to be an encroacher as he has not been able to show his legal right of possession in the suit property and has not filed any documentary proof of ownership. The order passed by learned Trial Court does not suffer from any infirmity. It is evident that no prima facie case exists in favour of the appellant and in the absence of an prima facie case in favour of the appellant, no balance of convenience or irreparable loss can be derived in favour of the appellant. I, therefore, find no infirmity or illegality in the order of learned Trial Court. The Trial Court has not made any error in dismissing of the application of the plaintiff / appellant under Order XXXIX Rule 1 & 2 CPC.”

23. The other judgments relied upon by the learned counsel for the petitioner being in the factual context of respective cases are not applicable to the present petition.

24. Needless to say, the learned Trial Court has aptly appreciated plea of settled possession of the petitioner. Pertinently, the petitioner has prima facie failed to establish his settled possession for the last 50 years. The learned ADJ has rightly observed that the documents relied upon by the



petitioner relate to the year 2005 or thereafter and not those establishing his possession of for the past 50 years. Moreover, complete address of the suit property was found to be missing on the alleged documents. Thus, the petitioner could not set up the 'Ternary Test' which governs the grant of injunction. This Court does not find any justification in the submission made on behalf of the petitioner. The aforesaid findings of learned ADJ does not suffer from any patent illegality, consequently, the petition is dismissed.

25. The view expressed hereinabove merit no interference in the suit.

SHALINDER KAUR, J.

FEBRUARY 19, 2024

SU/ss