

(2020) 09 DEL CK 0046

In the Delhi High Court

Case No : Criminal Writ Petition No.) 798 Of 2020

Ashish Bhalla

APPELLANT

Vs

State (GOVT Of NCT Of Delhi) & Ors

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Citation : (2020) 09 DEL CK 0046

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : Kanwal Chaudhary, Akhil Sachar, Sunanda Tulsyan, Rajesh Mahajan, Joyti Babbar, Pradeep Kumar, Monica Kumar

Judgement

Yogesh Khanna, J

Crl.M.A.No.7207/2020

1. The hearing has been conducted through Video Conferencing.

2. This writ petition filed by petitioner, is with following prayers:-

a) Issue a Writ, Order or direction in the nature of Mandamus and / or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondent Nos.1 and 2 to not to cause any obstruction in the unfettered and unrestricted right of the Petitioner to reside in the Flat No.997-GH-5/7, Paschim Vihar, Sunder Vihar, Delhi (West) - 110087;

b) Issue a Writ, Order or direction in the nature of Mandamus and / or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondent Nos.1 and 2 to not to permit the Respondent No.3 to cause any obstruction in the unfettered and unrestricted right of the Petitioner to reside in the Flat No.997-GH-5/7, Paschim Vihar, Sunder Vihar, Delhi (West) - 110087;

c) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. Initially, this petition was listed for hearing on 11.05.2020 when this petitioner submitted that a flat bearing No.997-GH-5/7, Paschim Vihar, Sunder Vihar, Delhi (West) - 110087 is a joint property in the name of petitioner and his wife/respondent No.3 vide a registered sale deed dated 17.10.2012 and they have been residing therein with their minor son. However disputes arose between the petitioner and respondent No.3/wife; the matter even went to the police and a Kalandara No.262/2020 at police station Mianwali Nagar was registered to maintain peace and harmony. It was argued respondent no.3 and the police has been creating hindrance in his ingress and egress from the said flat.

4. However the respondent No.3/wife had alleged the petitioner has been beating and threatening her. It was alleged by the learned counsel for applicant/respondent No.3 the petitioner stayed somewhere else as had given an understating in Kalandara proceedings, not to enter into said flat and that she along with her minor son was only residing in the flat in question and on 29.04.2020 when she was not in her flat, the petitioner along with his henchmen and in her absence had broke open the locks of the flat in question, but due to intervention of police and neighbors, the possession of the flat in question was restored to her. It is averred though the petitioner has been causing domestic violence, but the respondent No.3 could not file any case against the petitioner, due to Covid-19 situation.

5. On 18.05.2020 the petitioner had moved an urgent relief application (Crl.M.A.No.6472/2020) to bring on record certain facts and documents. Infact the petitioner had challenged the submission of the learned counsel for respondent No.3 that he ever gave any undertaking before the learned Special Executive Magistrate for not staying in the flat in question or there was any FIR registered against him as also there was no evidence of administration of phenyl or qua allegations of beatings to respondent No.3.

6. The matter was listed on 29.05.2020 when a status report was filed by State/respondents No.1 & 2, wherein it was stated the police has no role either in dispossessing the petitioner from the premises in question nor in any manner in creating any hindrance in his residing in said house at any point of time. Qua the apprehension of respondent No.3/wife, the petitioner asserted he would install CCTV cameras in every nook and corner of the flat in question in order to avoid false implication and assured to live peacefully.

7. It was always the submission of the petitioner that he is in possession of the subject flat and since the police and respondent No.3 were creating obstructions, he had filed this writ petition and on 29.05.2020 upon filing of status report by respondents No.1 & 2 stating interalia they had no role in obstructing him to enter the subject flat, the petitioner withdrew this writ petition.

8. However, later respondent No.3/wife came up with the present application

being Crl.M.A.No.7207/2020 stating inter alia that in the garb of status report filed by the respondents No.1 & 2 and in the grab of order dated 29.05.2020 of withdrawal of this writ petition, the petitioner had forcibly entered into and had taken possession of the entire flat by break opening its locks, hence it was prayed the possession of the flat in question, forcibly obtained by the petitioner in the garb of the order passed by this Court, be restored by the petitioner to respondent No.3 in its original position as the petitioner cannot be allowed to take benefit of an order of withdrawal passed by this Court in a way to take forcibly possession of the flat. Further a prayer was made to clarify order dated 29.05.2020 if it entitle the petitioner to forcibly break open the locks or to enter the flat in question. Further prayers qua initiating action against the petitioner under the Contempt of Courts Act, perjury etc. were also made.

9. Reply to this application was filed by petitioner denying allegations of respondent No.3/applicant. The petitioner rather submitted he was always in possession of the flat in question and the prayers sought in the writ petition were because the respondent No.3 in collusion with respondents No.1 & 2 was creating obstruction in his entry and his right to stay in the flat in question, and this writ was filed only to remove such obstructions.

10. The main issue, thus, is if the petitioner was in actual and physical possession of the flat in question on the date of filing of the writ and till 29.05.2020?

11. On 05.06.2020 this Court had directed respondents No.1 & 2 to make enquiries from neighbors and to file a report as to who was in physical possession of house, a month prior to the filing of this writ petition and till order dated 29.05.2020.

12. The respondents No.1 & 2 filed report dated 15.06.2020 to the following effect:-

"2. It is stated that vide order dated 05.06.2020, this Hon'ble Court directed the answering respondent to conduct an enquiry and file a report as to who was in physical possession of house, a month prior to the filing of the writ petition till the date of the order dated 29.05.2020.

3. An enquiry in this regard was conducted and statements of neighbours i.e. Sonia Gupta w/o Deepak Gupta, R/o GH-5&7/995, Pachim Vihar, New Delhi and Vinod Yunjal s/o Sh. Om Prakash Yunjal R/o GH-5&7/1005, Paschim Vihar, New Delhi were recorded with regard to possession of the premises on 13.06.2020. Sonia Gupta and Vinod Yunjal aforesaid stated that the petitioner Ashish Bhalla and respondent No.3 Venus Bhalla were residing together at the aforesaid residence till 11.03.2020. After that, Venus Bhalla was residing with her son till 29.05.2020. While, the petitioner Ashish Bhalla, however gained access to the aforesaid residence on 29.05.2020 and after that Venus Bhalla with her son started to leave somewhere else with her parents. CCTV footage was also sought to ascertain the position regarding possession during the relevant time; however,

no CCTV footage was available.

4. It is pertinent to mention here that in the main petition, with regard to possession, the petitioner has mentioned that he wants unfettered and unrestricted access to the said house as after 11.03.2020 he has not been allowed to enter the house."

13. Learned counsel for applicant/wife submitted a bare perusal of the status report would reveal the petitioner was never in possession of the flat in question either on the date of the filing of petition or on 29.05.2020 and it was only upon passing of order dated 29.05.2020, he break open the locks and gained wrongful access to the flat in question and respondent No.3 having left with no other alternative, went to her parents home with her minor child.

14. Not only the status report but averments made in this writ petition also make an interesting reading:-

"2. a) xxxx

b) That Respondent No.3 filed a frivolous Complaint dated 11 .03.2020 before the Station House Officer, Police Station, Mianwali Nagar, 110087 and a Kalandra No.262/2020 was executed to maintain peace and harmony between the Petitioner and Respondent No.3. However, the Respondent No.2 brazenly in collusion with the Respondent No.3 directed the Petitioner to not to reside in the demised premises and the Petitioner under the instructions of the Respondent No. 2, has been locked out of the demised premises by the Respondent No.3. The Respondent No.3 is presently residing at her parental house mentioned in the Memo of Parties and the demised premises have been locked by the Respondent No.3.

c) That constrained by circumstances, the Petitioner was forced to seek assistance from friends and live with them for the past one month. Further, due to the ongoing lockdown in the country on account of COVID-19 pandemic, the Petitioner is in a miserable condition and is in dire need of money, food and shelter.

d) That the Petitioner also submitted an urgent request dated 23.03.2020 to the Respondent No.2 i.e . Station House Officer, Paschim Vihar (West) Police Station interalia seeking assistance to live in the Demised Premises peacefully with the Respondent No.3. The Petitioner requested the Respondent No.2 to not to obstruct the access of the Petitioner qua the demised premises. Further, in order to ensure that the Petitioner's father-in-law is satisfied about the peaceful living environment, the Petitioner had proposed installing CCTV cameras and providing due access of the same to him .

Copy of the urgent request dated 23.03.2020 to the Station House Officer, Paschim Vihar (West) Police Station is annexed herewith as Annexure B.

e) However, Respondent No.3 filed Complaint dated 29.04.2020 before the

Respondent No.2 wherein it was falsely alleged that the Petitioner had tried to break-in the Demised Premises. The said allegation is preposterous and absolutely false, as the Petitioner had been residing with different friends for the past one month ever since Respondent No.3 locked the Petitioner out of the demised premises. In any event, the Petitioner being the owner of the demised premises cannot be precluded by the Respondent No.'s 1 and 2 from residing in the demised premises. Pursuant to the receipt of the Complaint dated 29.04.2020 filed by the Respondent No.3, the Respondent No.2 directed the Petitioner to not to reside in the demised premises."

15. The above assertions in his Writ clarify the petitioner was not residing in the flat in question on the date of the filing of the petition, than had set out prayer of non-obstruction, etc., as if he was residing therein, hence upon filing of report by the respondents No.1 & 2 that they are not creating any obstructions in his entry or exit, the petitioner cleverly withdrew his petition on 29.05.2020 and had forcibly entered the premises.

16. The fact the petitioner was never in possession of the flat in question either on the date of filing of this Writ or on 29.05.2020, can also be seen in his email Annexure P-9I, annexed to his reply to this application of respondent No.3, wherein the petitioner had confirmed he was out of possession of the flat in question since 11.03.2020.

17. Even in para No.25 of his reply, the petitioner had averred on returning home on 29.05.2020 he discovered two almirahs were locked and since the petitioner had misplaced the keys, the petitioner had called the locksmith and since the respondent No.3 and her father were keeping a watch upon him through their driver, they did not allow the locksmith to make such keys. The fact the petitioner brought a locksmith at the flat in question on 29.05.2020 supports the contention raised by the respondent No.3 viz. the petitioner broke open the locks of the flat in question on 29.05.2020 and had entered inside the premises.

18. It may be clarified the order dated 29.05.2020 never allowed the petitioner to break-open the locks or to make any forcible entry into the flat in question. The status report filed by the respondents No.1 & 2 clearly reveal the petitioner was never in possession of the flat in question till such date. Thus, the act of the petitioner of taking forcible possession of flat in question is wholly illegal and taking undue benefit of an order dated 29.05.2020 of this Court. This act of petitioner cannot be permitted.

19. In reply to this application, though the petitioner had stressed upon the fact he had arranged entire finances for the purchase of flat in question, hence has every right to stay therein and it was only due to interference of the family members of respondent No.3 the differences arose between the couple, but these facts are not relevant herein to decide the issue involved.

20. The leaned counsel for respondent no.3 rather refers to various DD entries filed against the petitioner viz DD No.35B dated 24.04.2008 police station

Paschim Vihar; DD No.64B dated 03.03.2015 and DD No.44B dated 05.06.2016 both at police station Mianwali Nagar. All these complaints were lodged by respondent No.3 as she was allegedly threatened by petitioner, but later on, she withdrew the complaints since the matter was settled between them.

21. Though the learned counsel for the petitioner refers to Annexure P-10 viz. a reply by respondent No.3 to email of petitioner viz Annexure P-9 wherein she had stated she came to the flat in question on 29.05.2020 to collect her personal wearing apparel in the presence of petitioner herein and with his consent and that such assertions of respondent no.3 proves his possession on 29.05.2020 is wholly misconceived and I doubt this could ever be treated as an admission on the part of respondent No.3. Since the petitioner had forcibly taken possession of the flat in question so to take her personal wearing apparels respondent no.3 had to visit the flat since she was not inclined to stay with the petitioner, considering his past conduct.

22. Thus, considering the averments made in the writ petition; the status report filed by the respondents No.1 & 2; email Annexure P9 annexed to the reply to this application; it is abundantly clearly the petitioner was never in possession of the flat in question since 11.03.2020 till 29.05.2020, hence cannot be allowed to take undue advantage of an order dated 29.05.2020 as such order never allowed the petitioner to make a forceful entry in the premises; hence he needs to restore the possession of the premises to respondent No.3.

23. The action of the petitioner in taking wrongful and illegal possession of the flat in question with aid of order dated 29.05.2020 needs to be deprecated. The petitioner is hereby directed to handover the keys of the flat in question to the concerned SHO, PS Mianwali Nagar, New Delhi, within two weeks from today, who in turn shall hand over the same to the respondent No.3 so that she can live peacefully in the flat in question with her son. Needless to say in case of any failure on the petitioner, the SHO concerned shall put his lock and hand over its keys to respondent No.3.

24. The rights in the flat in question and/or disputes interse qua harassmt etc, may be raised before appropriate forum. The observations made above shall not influence the Courts below and allegations be dealt purely on merits.

25. The application of respondent No.3 stands disposed of in above terms. No order as to costs.