

(1995) 12 DEL CK 0022

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No"s. 164, 974, 3688 and 3690 of 1995

Dinesh Mathur

APPELLANT

Vs

O.P. Arora and Another

RESPONDENT

Date of Decision : 01-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1995) 4 AD 1005 : (1996) 61 DLT 577

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : S.N. Jha and Vijay Kishan, for the Appellant;

Judgement

Mohd. Sharnim, J.

(1) The petitioner through the present petition u/s 115 of the CPC wants this Court to revise and set aside the judgment and order dated October 12,1995 passed by the learned Additional Senior Sub Judge whereby the judgment and order dated September 24,1994 passed by the Civil Judge was confirmed.

(2) Brief facts which are necessary for the proper appreciation of the points involved in the present petition are as under: that the present petitioner is a partner of M/s. Lakshmi Restaurant, 7-G, Connaught Circus, New Delhi (hereinafter referred to as the disputed property). Late Shri Mool Chand, grandfather of the petitioner was inducted as a tenant of the disputed premises by one Bhagat Ram, original lessee of the disputed property in the year 1937. Shri Mool Chand obtained a license for running the said restaurant from the Chief Commissioner, Delhi. He also procured a license for running a bar in the said restaurant. The said license being L-4 was converted into an L-2 license in the year 1955 to sell only bottled liquor. Nobody ever objected to the running of the said restaurant in the disputed property since the year 1937. Respondent No. 1 entered into an agreement dated December 1,1982 to purchase the disputed property from S/Shri Daijit Singh Pal and Yash Pal Oberoi. He also made part

payment and secured the symbolic possession over the disputed property. Subsequently, Shri Daijit Singh Pal executed a sale deed in favor of respondent No. 1 in respect of his un-divided half share.

(3) Respondent No. 1 filed a suit against the petitioner for perpetual injunction on the ground that the disputed property was being used in contravention of Clause 2(7) of the perpetual lease deed dated September 27, 1948 and the petitioner be thus restrained from running the restaurant on the said property. It is absolutely wrong and false that there is any contravention of any provision of the said lease deed as the said restaurant and the liquor bar are being run on the disputed property since the year 1937 under a license given by the Chief Commissioner, Delhi. Respondent No. 1 is alleged to have acquired the proprietary rights in the disputed property in the year 1982. Respondent No. 1 knew from the very beginning that the disputed property was being used for running the restaurant. The present suit was filed on November 26, 1992. Hence the present suit is barred by time.

(4) Respondent No. 1 was never served with any notice by the L&DO to stop the alleged mis-user of the disputed property. Hence the present suit is not maintainable. Thus the application for ad interim injunction should have been dismissed.

(5) The learned lower Courts were of the view that there was a prima facie case in favor of respondent No. 1. The balance of convenience was also in favor of Respondent No. 1 as in case the injunction was not issued the respondent No. 1 was likely to suffer irreparable loss and injury. Hence the learned Civil Judge allowed the application under Order XXXIX Rules 1 & 2 of the CPC and directed the petitioner to close down the restaurant within three days from the date of the order failing which the disputed property was to be sealed.

(6) Aggrieved and dis-satisfied with the said order the petitioner approached the Senior Civil Judge by way of an appeal. The said appeal was dismissed vide the impugned order dated October 12, 1995.

(7) Learned Counsel for the petitioner, Mr. S.N. Jha, has intended that both the Courts below fell into a grave error by coming to the conclusion that the restaurant was being run on the disputed property under the name and style of M/s. Lakshmi Restaurant in contravention of Clause 2(7) of the lease deed dated September 27, 1948. According to the learned Counsel the said restaurant was being run on the said premises since the year 1937 without any objection from any quarter, whatsoever, including the L&DO. The said restaurant is being run with the prior permission of the Chief Commissioner, Delhi inasmuch as the petitioner obtained a license for doing so. Thus it is inconceivable how there can be a breach of the impugned clause of the lease deed when the Chief Commissioner himself granted the permission to run the said restaurant. The learned Counsel thus contends that there is no violation of any of the terms of the said lease deed. The learned Courts below thus should have held so.

- (8) Learned Counsel for the Caveator, Mr. Vijay Kishaii, has urged to the contrary.
- (9) It is manifest from the facts canvassed above that the only short point which arises for adjudication in the instant case is as to whether the respondent No. I was entitled to an ad interim injunction on the ground that the disputed property was being used in utter dis-regard of Clause 2(7) of the lease deed dated September 27, 1948 as alleged by him.
- (10) It is well-known that the Court before the grant of an ad interim injunction must be satisfied that there is a triable issue and a strong prima facie case in favor of the applicant. The applicant must further prove that in case the ad interim injunction was not granted he would suffer irreparable loss and injury and in the event of his success ultimately he cannot be adequately compensated by damages.
- (11) There is no dispute in the instant case that the disputed property is being used for running a restaurant, including a liquor bar therein. The sheet anchor of the defense version of the petitioner is that he has not committed any breach of any of the Clauses of the aforesaid lease deed, including Clause 2(7), by running the said restaurant inasmuch as he is doing so with the prior permission of the Chief Commissioner, Delhi, in the form of a license.
- (12) Since we are concerned with the construction of Clause 2(7) of the said lease deed it would be just and proper to examine the provisions of the said Clause before proceeding any further in the matter. It is in the following words :-
- "2(7):The lessee will not carry on or permit to be carried on on, the said premises any business, trade or manufacture which in the opinion of the Chief Commissioner of Delhi is noisy, noxious or offensive or permit the said premises to be used for any purpose otherwise than a shop with residence above and/or suffer to be done thereon, any other thing, whatsoever, which in the opinion of Chief Commissioner of Delhi may be an annoyance or disturbance to the Governor General of India and will not without prior sanction of the Chief Commissioner of Delhi use the said premises or permit the said premises to be used for the sale of grains or articles as food or drink of any kind or description, whatsoever."
- (13) It is crystal clear from the said Clause that the disputed property cannot be used for the sale of liquor or food articles without the prior permission of the Chief Commissioner of Delhi. According to the learned Counsel for the respondent the said restaurant with a bar therein is being run without the prior permission of the Chief Commissioner of Delhi as the same is in utter disregard of Clause 2(7) of the lease deed. Learned Counsel for the petitioner, on the other hand, contends that the petitioner by running the restaurant and the bar in the disputed property has not committed the breach of any of the provisions of the lease deed inasmuch as he is doing so with the prior approval of the Chief Commissioner of Delhi which he secured in the form of a license. Furthermore, the disputed property is being used as a restaurant since the year 1937 i.e. since

the time of his grand-father.

(14) The petitioner has not placed on record any permission, whatsoever, granted by the Chief Commissioner of Delhi on record in order to substantiate his contention that he is doing so with the prior approval of the Chief Commissioner of Delhi. However, the learned Counsel wants this Council to construe the license issued by the Chief Commissioner of Delhi as a permission for running of the restaurant with a bar therein.

(15) Thus, the only question which now falls for decision is as to whether the said license can be construed as a permission for running the said restaurant? My answer to the above query would be an emphatic "No". The authorities who grant the licenses are in no way concerned with the terms of the lease deed. According to them whosoever satisfies the terms and conditions for issue of a license may obtain the same from them. In fact, they would not be even aware of the terms of the lease deed. Hence to regard the said license as permission within the meaning of Clause 2(7) of the lease deed would be simply a traversity of the interpretation. Admittedly, the perpetual lease deed was governed by the provisions of the Government Grant Act, 1895. The terms and conditions of such a perpetual lease are governed by Sections 2 & 3 of the said Act which are in the following words:-

"I.TRANSFER of Property Act, 1882, not to apply to Government grants- Nothing in the Transfer of Property Act,1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favor of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed. 3. Government grants to take effect according to their tenor-All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule or law, statute or enactment of the Legislature to the contrary notwithstanding."

(16) It is abundantly clear from above that the provisions of the Government Grants Act, 1895 are to prevail over any other law, statute or enactment of the Legislature. The said two Sections came up for interpretation before their Lordships of the Supreme Court as reported in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, ,....." It is plain upon the terms that Section 2 excludes the operation of the Transfer of Property Act, 1882 to Government grants. While Section 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of Section 3 making it amply clear that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the

document."

(17) Thus the mere grant of a license to run the restaurant with a bar therein would not ipso facto operate as a permission to run the restaurant on the disputed property since once a grant had been given its terms can be varied only in accordance with the provisions of the grant or by legislation. The observations of their Lordships of the Supreme Court can be adverted to with profit in order to find out as to What is the principle to be adopted while construing the terms of a grant. It was observed in *Raja Rajinder Chand Vs. Sukhi*, , ...

"IT is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the sovereign authority; and grants made by the Sovereign are to be construed most favorably for the Sovereign. This general rule, however, is capable of important relaxations in favor of the subject....."

(18) The next contention raised by the learned Counsel for the petitioner is that respondent No. 1 has not been served with any notice by L&DO so far complaining the breach of the terms of the lease. Hence, respondent No. 1 was not entitled to the relief of injunction. I am sorry, I am unable to agree with the contention of the learned Counsel. To my mind, the service of the notice by the L&DO on the lessee is not a condition precedent for the institution of a suit for injunction to stop the misuse inasmuch as there is an apprehension that in case the mis-user is not stopped in that eventuality the Lesser may cancel the lease for the breach of the terms of the lease agreement and may re-enter thereon. The above view was given vent to a by a Single Judge of this Court in *Commander N.N.Seth etc. v. N.C. Dawar* 1972 R.L.R. 130,.....

"It was lastly contended that because the Government had not served any notice on the landlord complaining of the breach of the Clause (6) of the lease and nor had taken any action under it, the case was not covered by Clause (k) of Section 14(1). An attempt was made to distinguish the present case from the case before the Division Bench on the ground that in that case notice had been issued by the D.D.A. I am unable to sustain the distinction. Section 14(1)(k) nowhere requires that action by Government or the Delhi Development Authority or the Municipal Corporation, the three authorities named in the clause, will be a condition precedent for the invocation of the clause. Where notwithstanding notice the tenant was found to be using or dealing with the premises in a manner contrary to and condition imposed on the landlord by the authorities mentioned in the Section the cause of action to invoke this clause arose to the landlord. The fact that the concerned authorities had not till then issued formal notice to enforce the lease is of no relevance."

(19) Learned Counsel for the petitioner has then contended that the petitioner and his grandfather have been using the disputed property for the purposes of running a restaurant with a bar therein since the year 1937. In case an injunction is granted restraining the petitioner from running the restaurant the

petitioner would suffer irreparable loss and injury. Thus according to the learned Counsel, the prima facie case is in favor of the petitioner and the balance of convenience is also in his favor. The respondent on the other hand, is not going to suffer any loss or injury in case the petitioner is allowed to continue the restaurant till the disposal of the suit. It will be simply tantamount to delay in adjudicating upon the rights of the parties at this stage. I am sorry I am unable to agree with the contention of the learned Counsel.

(20) Admittedly, the disputed property is being used for running the restaurant in contravention of the clear provisions of Clause 2(7) of the lease deed. Thus in case the mis-user is not stopped in that eventuality the lease is liable to be cancelled. If it happens respondent No. 1 would suffer irreparable loss and injury inasmuch as he would lose his property for ever. Besides this, he would be also liable to pay the damages in the form of penalty. The petitioner being a tenant does not stand to gain in case an order of re-entry is passed because he would suffer the same fate as that of his landlord.

(21) The above view was also given vent to by the Hon'ble Supreme Court as reported in *Faqir Chand Vs. Shri Ram Rattan Bhanot, ...* In this case the lease granted by the Delhi Improvement Trust, the predecessors in interest of the Delhi Development Authority, to the processors in interest of the landlords contains a condition that any building to be erected on the land shall not be used for any purpose other than residential purpose. There is no dispute that part of each of the buildings is being used in a manner contrary to that condition. The landlord has also given notice asking the tenant to cease using the building for that purpose. The two, earlier decisions referred to held that notwithstanding this provision the landlord was not entitled to get possession of the land because he himself had leased the building for a commercial purpose and was Therefore, estopped from claiming possession. The result will be this. The Delhi Development Authority can enforce the conditions of the lease and forfeit the leased land with the buildings thereon. In that case both the landlord as well as the tenant stand to lose. The landlords point out this situation and say that they are not interested in evicting the tenants but are interested only in seeing that the tenants do not use the buildings for commercial purpose with the consequences that they may have to lose the land and the buildings and the tenants also cannot any longer use it for a commercial purpose."

(22) It has then been urged by the respondent that the present revision petition is not maintainable. According to the learned Counsel, the jurisdiction of this Court to interfere with the orders passed by the learned lower Courts u/s 115 of the CPC is very much limited. It can interfere only when it comes to the conclusion that the Subordinate Court has failed to exercise jurisdiction which is vested in it; or when it has usurped the jurisdiction which was not vested in it; or when it is being brought to the notice of the Court that the lower Court has acted illegally in exercise of its jurisdiction or with material irregularity verging on the border of illegality. According to the learned Counsel, the instant case does not

fall within the domain of Section 115 of the Code of Civil Procedure. It thus does not warrant any interference from this Court. I agree.

(23) Admittedly, this is not the case of the petitioner that the lower Court did not have the necessary jurisdiction to pass the impugned order. The contention of the learned Counsel that the order is wrong would not permit this Court to interfere with the same. The learned Counsel for the petitioner has also failed to show me any illegality or irregularity in the impugned order. If this is so, the present case, I feel, is not one of those cases which require interference from this Court in its Revisional jurisdiction.

(24) To the same effect are the observations of their Lordships of the Supreme Court as reported in *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, ,...* "In our opinion the High Court had no jurisdiction to interfere with the order of the first Appellate Court. It is not the conclusion of the High Court that the first Appellate Court had no jurisdiction to make the order that it made. The order of the first Appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first Appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code."

(25) Learned Counsel for the petitioner during the course of his arguments referred to the following authorities :-

(1) *Mathew Phillips v. P.O.Koshy* Air 1966 Mys 74 "But, if the legal right, which is alleged to have been infringed, is doubtful, the mere existence of the doubt is enough to refuse temporary injunction. The party, seeking the aid of the Court for an injunction, must show that the act complained of is in violation of his right or is at least an act, which, if carried into effect, will necessarily result in a violation of the right." (2) *Vinod Kumar Arora Vs. Surjit Kaur, ,* "The rule that when the Rent Controller and the Appellate Authority have rendered concurrent findings of fact, the High Court is not entitled to disregard those findings and come to a different conclusion of its own would apply only where the findings have been rendered with reference to facts and not on the basis of non-existent material and baseless assumptions." (3) *Bhartiya Magas Vargiya Zopadpatti Mahila Sarwangan Vikas Sanghatana, Nagpur Vs. Best Bread Company and Others, ,...* Suffice it to say that this is a contract where an injured party could reasonably be compensated in terms of money. In view of these circumstances, there is hardly any case for a temporary injunction." (4) *Himachal Steel Rerollers and Fabricators Vs. The Union of India (UOI) and Others, , ..* Grant of temporary injunction - Essential ingredients, prima fade case, balance of convenience and likelihood of irreparable injury - Absence of - Injunction cannot be granted. I have very carefully gone through the above authorities ,yet I find that the same are not applicable to the facts of the present case. In the circumstances stated above, I do not see any force in the present petition. Dismissed in liming.