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In the Calcutta High Court

Case No : G.A. No. 1082 of 2006 & G.A. No. 1082 of 2006, A.P.O.T. No. 150 of 2006 and W.P. No. 133 of 2006

Divine Grace Apartments Owners'' Welfare Association and Another — APPELLANT

Vs

Mussammat Anis Fatma Begum and Others — RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:
Calcutta Police Act, 1866 — Section 10A
Constitution of India, 1950 — Article 12, 21, 226

Citation : (2008) 2 CALLT 340

Hon'ble Judges : Surinder Singh Nijjar, C.J;Indira Banerjee, J

Bench : Division Bench

Advocate : Ashok Banerjee, Manju Manot and Bajrang Manot, for the Appellant;Ashoke De, Nilay Sengupta and Aniruddha Chatterjee for Respondent No. 1 and Santanu Mukherjee and Koushik Bhattacharjee for Respondent No. 13, for the Respondent

Final Decision : Allowed

Judgement

Indira Banerjee, J.—This appeal is against an order dated 13th February, 2006 of the learned single Judge, disposing of the writ application being W.P. No. 133 of 2006 filed by the Respondent No. 1, inter alia, by directing the Respondent No. 4, being the Officer-in-Charge of Shakespeare Sarani Police Station, to open the padlock on the eastern gate of Premises No. 33, Shakespeare Sarani, Kolkata -700 017, hereinafter referred to as the said premises.

2. Pursuant to a development agreement executed by and between the respondent. No. 1 and M/s Swastik Private Ltd., hereinafter referred to as the Developer, the Developer constructed a residential building and/or block, a commercial building and/or block and a small two storied house at the said premises.

3. The respondent No. 1 has been allotted 4 flats in the residential block, two

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covering the entire first-floor, one on the second-floor and one on the third-floor. The respondent No. 1 has been residing at the two-storied house, behind the commercial block.

4. The appellant is an association of flat-owners, who own flats at the residential block at the said premises. Disputes appear to have arisen between the appellant and the respondent No. 1, over the action of the respondent No. 1 in letting out two first-floor flats allocated to the respondent No. 1 in the residential block, to the respondent No. 13, for commercial use.

5. The appellant along with others have filed a suit, being Title Suit No. 1650 of 2005, in the City Civil Court at Calcutta, which is still pending. Apart from the aforesaid suit, there are various other litigations between the respondent No. 1 and the appellant including a writ petition for an order, restraining CESC Ltd. from installing a commercial meter at the said first-floor flats allocated to the respondent No. 1.

6. The respondent No. 1 claims that on or about 11th August, 2005, the Calcutta Municipal Corporation had granted permission to the respondent No. 1 for change of user of the said two first-floor flats.

7. It is not in dispute that there are three entrances to the residential block, two on the west and one on the east. The decision of the appellant to keep the third entrance being the entrance on the eastern side, locked, appears to have given rise to further disputes between the respondent No. 1 and the appellant.

8. On 29th January, 2006 the respondent No. 1 wrote a letter requesting the respondent No. 4 to provide necessary assistance to the respondent. No. 1, so that the respondent No. 1, her men, agents and servants could use the eastern entrance in addition to the other entrances on the west. The contents of the said letter are extracted hereinbelow for convenience:

This is to draw your kind attention that inspite of the Trial Courts order and subsequently Hon''ble High Courts order the above mentioned persons and their agents are causing forceful obstruction and illegal acts by obstructing my men and my tenants M/s. VLCC Health Care Ltd., in free ingress and egress to the portions of the building belonging exclusive to me.

Today in the morning at about 9 a.m. the said Mr. Vikash Agarwal along with his men came down from the 5th Floor Flat-cum-Office and daringly put his padlocks in the two entrance gates leading to the common area of the building.

On demanding explanation they behaved very arrogantly and roughly threatening not to allow anyone to enter the building premises without their permission.

I request you to take necessary steps against their high handedness in causing concern and difficulty to all the occupants of the building.

9. The letter of 29th January, 2006 was followed by another hand written letter

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dated 30th January, 2006, the contents whereof are extracted herein below:

This is to state that the premises No. 33. Shakespeare Sarani, Kolkata-700017 consists of three buildings (Commercial & Residential).

I am the sole Mutawalli (Trustee) of the said wakf property residing at one of the said three buildings.

I have rented out the 1st Floor of the Ground plus seven storied building to one M/s. VLCC Health Care Ltd. for commercial use after getting it sanctioned by the Kolkata Municipal Corporation.

One Mr. Vikash Agarwal of 5th floor with collusion and conspiracy with one Mr. Daulat Ram Jain have formed an illegal association and the two are regularly behaving arrogantly and making threats to my men and tenants on the 1st Floor of the said building.

I filed a complaint on 29.01.2006 with your police station regarding their illegal acts when they forcefully locked the Eastern main gate of the building stopping my tenants from ingress and egress to their first Floor tenancy.

Today after coming to know that we have filed a complaint with your police station they have sent some men with criminal intent in the guise of security personnel and have tried to threaten me by saying that they will stop my entry and the entry of my legal tenants with the building. In the prevailing situation, I am highly disturbed and my tenants are being prevented from entering their tenanted portion, I request you to take urgent necessary action to stop the said persons from carrying out their high-handed and illegal activities.

10. The aforesaid hand-written letter was apparently delivered to the respondent No. 4 on 31st January, 2006, at noon. There appears to be yet another typed letter dated 30th January, 2006, addressed to the respondent No. 4, the relevant portion whereof is extracted hereinbelow for convenience:

Recently I have let out my entire 1st Floor on monthly rent to M/s. VLCC Health Care Ltd., ever since then some Flat owners (Lessees) are regularly causing difficulty to my men and tenants on some pretext or other.

On 29.01.2006 one Mr. Vikas Agarwal of Flat No. 5B and Mr. Daulat Ram Jain of Flat No. 3A have forcefully put their padlocks on the Entrance Gate of the main building causing great hardship to me and my tenants. I have filed complaint and police diary against them but no action has yet been taken by you in this regard.

11. There is no acknowledgement of receipt of the said typed letter. Be that as it may, there was no allegation in any of the aforesaid three letters, of any threat to life, liberty, personal safety, or safety of property. No apprehension was expressed of possibility of any breach of peace, or of any law and order problem.

12. On 31st January, 2006 itself, the respondent No. 1 affirmed a writ application, complaining of police inaction, even though the handwritten letter

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dated 30th January, 2006 was actually delivered to the respondent No. 4 at noon on 31st January, 2006, as is evident from the endorsement in the copy of the letter annexed to the writ petition.

13. There appears to be some inconsistency in the three letters allegedly written by the respondent No. 1 to the respondent No. 4. In the letter of 29th January, 2006, it is alleged that the private respondent No. 12 along with his men "put padlocks in the two entrances leading to the common area of the building. On demanding explanation they behaved arrogantly and roughly threatening not to allow anyone to enter the building premises without their permission."

14. In the hand-written letter dated 30th January, 2006 actually delivered on 31st January, 2006, it was stated that the complaint of the respondent No. 1, filed on 29th January, 2006, was with regard to forcible locking of the eastern gate of the residential building. In the alleged typed letter of 30th January, 2006, the allegation is that on 29th January, 2006 some of the private respondents had forcibly put their padlocks on the entrance gate of the main building, causing hardship to the respondent No. 1 and her tenants.

15. The respondent No. 1 deviously tried to create an impression of complete obstruction of ingress to and egress from the said two first-floor flats, by the letters referred to above. In paragraph 16 of the writ petition it is admitted that the residential block has three common entrances, one at the eastern side and the other two at the western side of the residential block.

16. The thrust of the case of the respondent No. 1 in the writ petition is the refusal to allow the respondent No. 1 access through the eastern gate. It would be relevant to refer to paragraphs 20 and 21 of the writ petition which are extracted hereinbelow for convenience:

20. Therefore again on 30.01.2006, your petitioner duly requested the respondent No. 3 to provide necessary police help and/or to remove the padlock from both the common entrance gate so that there will be smooth ingress and egress of your petitioner particularly through eastern side common gate, leading to lift of said premises. But at this time, said respondent No. 3 even refuses to accept the same, for the reasons best known to him.

21. Your petitioner state that the police authority is statutorily bound to protect the fundamental right of the citizen of the society. They are further bound to see that no illegality be done with the citizen within their territory. Putting a padlock in the common entrance gate to deprive the owner of facts smooth ingress and egress therein is an offence prescribed under the Indian Penal Code, which the police should take immediate action of their, without any further reference. But in the present case, the respondent No. 3 by showing his complete inaction in the matter otherwise, helping those respondent Nos. 4 to 12 continue with their illegality and hooliganism, for the reasons best known to him.

17. The primary function of the police is maintenance of law and order and

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prevention of crime. Under the Calcutta Police Act, 1866 and in particular Section 10A thereof, every police officer is required to discharge inter alia the following duties:

i) Prompt service of summons, and execution of warrant or other orders, lawfully issued to the police officer by a competent authority.

ii) Obtaining of intelligence relating to commission of cognizable offences or designs to commit such offences, action consistent with law, to bring offenders to justice, prevention of the commission of cognizable offences and prevention of non cognizable offences within the view of the police officer concerned.

iii) Prevention of commission of public nuisances.

iv) Apprehension of persons the police officer is legally authorised to apprehend and for which apprehension there is sufficient reason.

v) Discharge of such duties as are imposed upon a police officer by any law in force.

vi) Prevention of loss or damage by fire and prevention of accident or danger to public.

vii) Regulation and control of traffic, prevention of infraction of traffic Rules, maintenance of law and order in the streets and other public places.

18. No case has been made out in the writ petition of contravention by the police authorities, of the duties and obligations referred to above. There is only a vague allegation of an offence under the Indian Penal Code and an equally vague allegation of contravention by the police authorities of the Bengal Police Act, wholly devoid of any particulars. In the writ petition too, no case has been made out of any threat to life, liberty, personal safety or safety of property.

19. By the order under appeal, the learned single Judge directed the Officer-in-Charge of the concerned Police Station, being the respondent No. 3 in the writ petition and the respondent No. 4 in this appeal, to remove the padlock on the eastern gate of the said premises. The material excerpts of the order under appeal, are set out hereinbelow:

It appears that the disputes and differences between the parties have arisen between the petitioner on the one hand and the other flat owners with regard to the nature of user of two flats of which the petitioner is the absolute owner. The petitioner wanted to commercially exploit the said flats by setting up a health clinic in the said flats. Such commercial utilisation of the flat is being seriously opposed by the other flat owners who have formed an association being the respondent No. 4 herein. Whether or not the petitioner can utilise the same commercially is not the subject matter of challenge before me. The question which arises before me as to whether the petitioner could be prevented from entering into the flat through the eastern side gate.

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This application was opposed on behalf of the respondent No. 4 by contending that the lock on the eastern side gate was put long back and, therefore, I should not pass any order for opening the same. By an order dated 8th February, 2006, I had directed the police authorities to make an enquiry and to find out as to when this lock was put. The said police authorities have filed a report in which it has been stated that the said lock on the eastern side gate was put on 29th January, 2006 at about 9 hrs. It is further submitted by both the parties that the eastern side gate is used as a fire exit.

The petitioner''s right as an owner of the fiat in question cannot be disputed. Therefore, the owner''s right to use all the entrances into the premises in question cannot be forcibly restricted without due process of law. The padlock on the eastern side has been put on by the respondent No. 4 and/or on their behalf without taking recourse to law thereby preventing the petitioner from entering into her own flat.... I have seen the map. It appears to me even with the said openings being intact the petitioner would have to traverse the entire part of the length of the building and come up from the other side and enter through the western side gate whereas it would be possible for her to enter through the Eastern Side Gate which was admittedly opened until 29th, January, 2006. The report of, the Police Authorities filed in Court today have not been disputed on behalf of the respondent No. 4.

...

Under the circumstances, I am of the opinion that the petitioner cannot be prevented from entering into the premises through the eastern side gate as well. I, accordingly, direct the respondent No. 3 to open the padlock on the eastern side gate so as to enable the petitioner from entering into the premises through the said eastern side gate. The respondent No. 4 as the Association shall ensure that the said gate is kept open till 10 p.m. everyday and if necessary the same shall be locked after 10 p.m. for security reasons. The same shall be opened at 8 a.m. everyday.

Since the question of the petitioner''s entitlement to the flat in question is required to be adjudicated, let affidavit-in-opposition to this application be filed within one week from date. Reply, if any, be filed within one week thereafter. Let the matter appear after fortnight.

It is made clear that I have not gone into the merits with regard to the respective rights between the parties.

20. Mr. Ashok Banerjee appearing on behalf of the appellant rightly submitted that the disputes between the respondent No. 1 and the appellant and some other flat-owners were of a civil nature and that there was no scope for intervention of the police.

21. Admittedly ingress to and egress from the said two first-floor flats had not

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been obstructed completely, as pointed out by Mr. Banerjee. The respondent No. 1 was only put to inconvenience by reason of the eastern gate being kept under lock and key.

22. Mr. Ashoke De, appearing on behalf of the respondent No. 1, submitted, on the other hand, that as admitted owner of the flats in question as also part owner of the entire premises, the respondent No. 1 had all the rights incidental to ownership of the said premises including the right to use the flats allocated to her for commercial purposes as well as the right to use all the entrances to the residential block. The Municipal Corporation had duly granted permission to change the user of the flats in question.

23. Mr. De, further submitted that the appellant and the private respondents in the writ petition were forcibly trying to prevent the respondent No. 1 from exploiting the said two first-floor flats commercially, with ulterior intent, and had accordingly initiated successive proceedings against the respondent No. 1.

24. Mr. De further argued that, having failed to obtain orders from the Civil Court, the appellant had taken recourse to the devious action of locking the eastern gate, which provided easy access to the first-floor of the residential block.

25. The respondent No. 1 did not file any application for interim relief in any of the pending civil proceedings. As rightly submitted by Mr. Banerjee, the respondent No. 1 could also have filed an application for interim relief, in the suit filed by the appellant in the City Civil Court, Calcutta.

26. In this appeal, it is not necessary to go into the merits of the disputes between the parties. Suffice it to state that the disputes with regard to whether flats in the residential block can be used commercially or whether owners of flats in the residential block can use all or any of the three entrances, as per their own choice, freely and without any kind of restriction, are purely private disputes.

27. The respondent No. 1 has filed an Affidavit-in-Opposition to the application of the appellant for stay of operation of the order under appeal and the appellant has filed an Affidavit-in-Reply thereto. It is not necessary for this Court to look into the Affidavits, since this Court is not concerned with the merits of the disputes between the parties or the orders passed by different Courts in other proceedings. The respondent No. 1 did not seek police assistance to enforce any order of Court.

28. The question in this appeal is, whether the Writ Court ought to have directed the Officer-in-Charge of the concerned Police Station to unlock the eastern gate at the said premises, having regard to the case made out by the respondent No. 1 in the writ petition.

29. A writ may lie for enforcement of a Constitutional, a statutory, a legal or may be even an equitable right. It is difficult to understand what possible right the respondent No. 1 could have had, to seek police intervention to unlock a gate, and that too, when there was access to and from the flats in question through

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another gate.

30. There can be no doubt, that a writ may lie to compel the police authorities to perform a statutory duty. There is, however, not a whisper in the writ petition of the specific statutory duty, which the respondent police authorities had not performed.

31. The learned single Judge, rightly observed that the question of whether the respondent No. 1 could utilize the flats in question for commercial purpose was not in issue before him. The learned Judge, however, erred in law in adjudicating the civil dispute of whether the respondent No. 1 was entitled to use the Eastern Gate at the said premises, in an application under Article 226 of the Constitution of India. In passing the order under appeal, the learned single Judge did not at all consider the scope of the powers and duties of the police authorities.

32. In P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, cited by Mr. De, the Supreme Court held that a person may be entitled to police help, having regard to the threat perception. To quote S.B. Sinha, J. "Indeed the jurisdiction of the writ Court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain."

33. Significantly, in the aforesaid judgment cited by Mr. Dey, P.K. Balasubramanyan, J. while concurring with S.B. Sinha, J. held as follows:

17. A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court for issuance of such writ on a plea that a particular party has not obeyed a decree of an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order or in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a Court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate Civil Court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

19. A writ for "police protection" so called, has only a limited scope, as when the Court is approached for protection of rights declared by a decree or by an order passed by a Civil Court. It cannot be extended to cases where rights have not

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been determined either finally by the civil Court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

34. In the writ application, there was only a vague averment of violation of the fundamental right of the petitioner, not by the State but by the appellant and some of the private respondents, none of whom are state within the meaning of Article 12 of the Constitution. In any case, it is difficult to understand how any fundamental right of the petitioner could have been infringed by reason of locking of one gate when admittedly there were other gates and ingress to and egress from the said first-floor flats through the other gates had not been blocked.

35. Mr. De''s submission that there was threat to life, for which police intervention was sought, is not borne out by the averments either in the writ petition or in the letters written by the respondent No. 1 to the Officer-in-Charge of the concerned Police Station, copies of which have been annexed to the writ petition.

36. In filing the writ petition, the respondent No. 1 has done exactly what has been deprecated by Balasubramanyan, J. in the case of P.R. Murlidharan (supra). The writ Court has been made a forum for adjudicating civil rights in the guise of seeking a writ of mandamus for police help. The right of the petitioner to use the Eastern Gate at the said premises had not earlier been adjudicated by a Court of law.

37. The learned Judge erred in law in directing the Officer-in-Charge of the concerned Police Station to unlock the padlock at the eastern gate of the said premises. Such an order for police help ought not to be passed for the asking. On the other hand, the Court should be cautious in passing such orders. Orders of this kind for police intervention to resolve disputes, which are essentially civil, could open a Pandora''s box, with policemen intervening with impunity in civil disputes and locking and unlocking gates at their whims, by taking recourse to orders of Court as the source of their authority to do so, for an order for police intervention presupposes a finding of the breach of the duty of the police to intervene.

38. The appeal is allowed and the impugned order is set aside.

Surinder Singh Nijjar, C.J.

39. I agree.

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