

**(2005) 02 DEL CK 0196**

**In the Delhi High Court**

**Case No :** Civil Misc. (Main) No. 545 of 2003 and C.M. 1123 of 2003

Engineering and Industrial Corporation Pvt. Ltd.

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

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**Date of Decision :** 28-02-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

**Citation :** (2005) 82 DRJ 416

**Hon'ble Judges :** C.K. Mahajan, J

**Bench :** Single Bench

**Advocate :** Vijay Kishan and Vikram Jaitley, for the Appellant; M.K. Singh, for the Respondent

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## **Judgement**

C.K. Mahajan, J.—The present petition is directed against the order dated 18.10.2000 passed by the Addl. District Judge declining to grant injunction to the petitioner.

2. The petitioner filed a suit for injunction restraining the respondent from interfering in the possession of the petitioner in respect of plot Nos. ED/11 to ED/15 and C/10, 12, 15 to 21, 34, 37-A, 39, 39-A, 36, 54 and 35 situated at Inderpuri Colony, New Delhi. Along with the suit, an application for interim injunction was also filed. The said application was dismissed by the Trial Court. The appeal filed against the order of the Trial Court was accepted by the learned Addl. District Judge on 24.11.1998.

3. Thereafter, the petitioner filed another suit for injunction restraining respondent from interfering with the possession, demolition of structure and taking possession of plots No. ED-7 to ED-10 being part of Khasra No. 1652, located in Inderpuri Colony, New Delhi. The application for interim injunction was dismissed by the Trial Court. The petitioner filed an appeal. However, the said appeal was dismissed by the learned Addl. District Judge vide the impugned order.

4. Learned counsel for the petitioner states that the impugned order is illegal and ultra virus of the fundamental principles of Order 39 Rules 1 and 2 CPC. It is also stated controversy in both the suits filed by the petitioner is identical and the decision in one will govern the other. Both the suits are in the same court and are taken together and evidence is being recorded only in one suit. The main controversy in both the suits is whether the aforesaid plots fall within Khasra Nos. 1649/1650 and 1651 which belong to the petitioner or in Khasra No. 1652, the land of which has been acquired by the Union of India. According to the report of the Tehsildar, Vasant Vihar dated 28.10.1999, plot No. ED-9 is covered by Khasra No. 1974/650/2.

5. Learned counsel for the petitioner further contends that in the facts and circumstances of the case, interim injunction ought to have been granted to the petitioner. Reliance is placed on Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others, , Union of India and others Vs. Kamlakshi Finance Corporation Ltd., , Muddanna and Others Vs. The Panthanagere Group Panchayat, Kengeri Hobli, and a decision of this Court in Gopal Krishan Kapoor Vs. Ramesh Chander Nijhawan and Others, .

6. The petition is opposed by the respondent. It is stated that the impugned order is a well reasoned order and does not warrant interference by this Court,

7. I have heard learned counsel for the parties and also perused the documents on record.

8. The learned Addl. District Judge in the impugned order has observed the prima facie it appears that an attempt has been made by the petitioner to encroach the Government land in Khasra No. 1652. The learned Addl. District Judge also observed on the basis of the demarcation report prepared by the Naib Tehsildar that there was 1-1/2 gathas encroachment into Khasra No. 1652 towards to Southern side of plot No. ED-9 and other continuous plots and since plots No. ED-7 and ED-10 are in the same row, the encroachment of 1-1/2 gathas towards the Southern side is in respect of all the numbers that is plot Nos. ED-7 to ED-10.

9. In Gopal Krishan Kapoor (supra), it was held as follows:-

"On a consideration of the ordinary meaning of the term "Prima facie" and the trend of judicial pronouncements it appears to me that "prima facie case" would mean a case which is not likely to fall on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, Therefore, justify an investigation.

The function of the Court when called upon to consider if the plaintiff has a prima facie case for the grant of an interim protection or not is to determine the limited question if the material placed before the Court would require investigation but it is not open to the Court to either subject the material to closer judicial scrutiny

for the purpose of deciding if on account of any inherent characteristics of the situation or the probabilities, the plaintiff may not succeed in his contention. Such an investigation would be clearly a transgression of the limits of the functions of the Court and would be both unreasonable and unfair because the suit being at a preliminary stage, the plaintiff has had no opportunity to support his contention by evidence and re-enforce the material brought by the plaintiff to the Court by additional evidence and to do that would amount to pre-judging the case of the plaintiff."

10. From a perusal of the order of the Addl. District Judge, it emerges that the interim injunction has been declined on the basis of the demarcation report of the Naib Tehsildar. The case is at the preliminary stage of deciding the application for interim injunction. At this stage, declining injunction merely, on the basis of the report of the Naib Tehsildar would amount to pre-judging the case of the plaintiff. It is not the case of the respondent that the petitioner is a trespasser. Therefore, irrespective of whether the petitioner proved their title to the tilt, they cannot be dispossessed by force on the decision taken on the basis of the report of the Naib Tehsildar. In another suit filed by the petitioner against DDA for injunction in respect of plots No. ED-11 to ED-15, the application for interim injunction was dismissed. In appeal, the order was reversed and the injunction was granted. The order in appeal was not assailed and is final. I see no reason why interim protection cannot be granted to the petitioner when the property in question in the present matter is adjacent to the one in the earlier suit filed by the petitioner in similar circumstances.

11. In these circumstances, the order of the learned Addl. District Judge dated 18.10.2000 is set aside. Parties are directed to maintain status quo in respect of possession of plot Nos. ED-7 to ED-10 situated at Inderpuri Colony, New Delhi.

12. Petition and the application stand disposed of.