
(2001) 10 DEL CK 0116

In the Delhi High Court

Case No : CM 10843 of 2000 in CW No. 586 of 1997

Ganga Prashad Sharma

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

Citation : (2002) 61 DRJ 328

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : S.P. Pandey, for the Appellant; Shiv Kumar and Ashima Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—By this order, I would be disposing of CM. 10843/2000, moved by the petitioner in CW.No. 586/1997, seeking a direction to respondent-No. 1/MCD to remove the encroachment on municipal land included as part of shop Nos. 3278 to 3281, Bazar Sita ram, Delhi-110006. Further , to remove shutters, fixed by tenants/respondents Nos. 2 to 4, who have encroached upon 17 ft. of municipal land by including it in the covered area of each of the shop.

2. Petitioner, owner of shop bearing Nos. 3278-3281, Bazar Sita Ram, Delhi, has filed this writ petition, seeking a writ of mandamus for removal of unauthorised constructions, raised by respondent Nos. 2 to 4 in from of shop bearing Nos. 3278-3281, Bazar Sita Ram, Delhi, shown in red colour in the site plan attached.

3. For disposal of the present application, facts and events, culminating in the filing of the application, may be noted:-

Notice to show cause had been issued in the writ petition. MCD had sought time to file counter affidavit. On 1.9.1997, counsel for the MCD, made a statement that demolition action had been taken on 23.8.1997. MCD was also directed to file a status report, in particular, with regard to shop bearing Nos. 3278 to 3281. MCD was required to specifically state whether there is any encroachment on

public land or not. In the event, writ petition was disposed of by the learned Single Judge on 6.1.2000, on the basis of an affidavit filed by the Executive Engineer, MCD, who stated, on oath, that the projections in front of shops No. 3278 to 3281 of Ward No. 19, Bazar Sita Ram, Delhi in the form of tin shed with iron pipe and angles have been removed by respondent on 23.8.1997. The learned Single Judge taking note of the above submission, disposed of the writ petition, holding that nothing further survived in the writ petition.

4. Petitioner preferred an appeal against the order dated 6.1.2000, before the Division Bench. The Division Bench disposed of LPA bearing No. 181/2000 vide order dated 16.5.2000. Petitioner had contended before the Division Bench that the statements made in the affidavit of MCD were not correct and on the basis of mis-representation MCD, succeeded in having the writ petition disposed of. The Division Bench disposed of the appeal observing that, "Let the appellant approach the learned Single Judge with all the these facts and we are sure that the learned Single Judge will consider the same and pass appropriate order."

It is in the aforesaid background that the present application CM. 10843/2000 has been filed by the petitioner.

5. Learned counsel for the petitioner/applicant, Mr.S.P. Pandey, submits that encroachment in the form of Chabutra on the pavement still exists. The said encroachment, according to Mr. Pandey, stands covered by the area, which is enclosed within the shutter. The submission of Mr. Pandey is that it is in this fashion that the area of the shop, which was originally let out, had been increased and the municipal land on the pavement has been enclosed within the shop. Mr. Pandey, in this regard, has taken me through the complaints made to the Executive Engineer, MCD and the orders passed by the Executive Engineer himself on the said complaints. The substance of these complaints and the orders passed is that the Executive Engineer acknowledged that there was an encroachment in the form of pucca Chabutra on the road pavement and had directed the Zonal Engineer to remove the said encroachment at the earliest. Mr. Pandey submits that despite repeated directions being given by the concerned Competent Authority of MCD for removal of the encroachment in the form of Chabutra, it was not removed. Mr. Pandey has also relied on an appeal, preferred by respondent Nos. 2 to 4 before the MCD Appellate Tribunal, where they themselves submitted that they resisted the demolition action on 23/26.8.1997. This position has been refuted by Mr. Shiv Kumar, learned counsel for respondent/MCD. He relies on the counter affidavit filed on 17.11.1997, wherein it is claimed that projection on municipal land in the form of tin shed with iron pipe and angles was removed with police force in August, 1997. Another affidavit dated 20.9.2001, has been filed by the Executive Engineer, MCD, wherein it is stated that there is no encroachment on municipal land in front of Shop Nos. 3278 to 3281 and the footpath is free for public use.

6. The case of respondent Nos. 2 to 4 as well as MCD is that while projection at the Chajja level was removed in August, 1997. On 3.6.1999, further action had

been taken to remove the Chabutra.

7. Learned counsel for respondent Nos. 2 to 4 has taken me through the photographs filed, appearing at pages 153 to 157 of the paper book, which show that the encroached portion on the pavement in front of shops was demolished. In other words, the case of the MCD and respondent Nos. 2 to 4 is that even the puce encroachment on the footpath has been demolished. Mr. Shive Kumar submits that the entire shops in the market are now in a straight alignment. Hence, there is no question of there being an encroachment of municipal land. The photographs filed on record lend support to this position.

8. Mr. Pandey submits that part of the public land is still enclosed within the shutter and the encroachment has not been removed to the full extent. Mr. Pandey submits that he has received the possession of one of the shops from tenant i.e. Shop No. 3280 on 7.10.2001 and that shop also has a part of the public land enclosed within the shutter. The submission of Mr. Pandey really boils down to the tenants, respondent Nos. 2 to 4 having extended the shops in question from what was originally let out to them, by encroachment of what is claimed to be municipal land. Whether respondent Nos. 2 to 4 have extended the area of the shop from what was originally let out or not is essentially a dispute between the landlord and the tenant. It should be dealt with in the civil forum rather than in writ jurisdiction. The grievance of the petitioner is rather of a private nature, arising out of alleged violation of his proprietary rights, as an owner of the premises by alleged encroachment by a tenant. These also raise disputed questions of fact, which cannot be gone into further in the exercise of writ jurisdiction. To the extent it was feasible, this court while proceeding with the matter in writ jurisdiction has got the portions of the shops, which were apparently an encroachment on the municipal land, demolished. Now it is stated by MCD that the entire line of the shops in the market is in one alignment. In case, petitioner still has any grievance against the tenants, having extended the shops unauthorisedly, it would be open to the petitioner to seek his remedies in the civil forum.

CM.10843/2000 is dismissed.