

(1990) 08 DEL CK 0031

In the Delhi High Court

Case No : I.A. No. 4225 of 1989 in Suit No. 1504 of 1989

Goshala Marg Residents Association (Regd.) and another

APPELLANT

Vs

D.C.M. Ltd.

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Citation : AIR 1991 Delhi 334 : (1990) 2 ILR Delhi 110

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Mukul Rohtagi and Sanjay Karol, for the Appellant; Rajiv Sawhney and Sanjay Anand, for the Respondent

Judgement

1. plaintiff No. 1 is Goshala Marg Residents Association (Regd.), Kishan Ganj, Delhi and plaintiff No. 2 is Mr. Jyoti Parsad Sharma, who is one of the members of the Association. These two plaintiffs have filed a suit for a declaration that members of the plaintiff association and plaintiff No. 2 are tenants of the defendant with regard to residential accommodation allotted to them and, Therefore, have prayed for permanent injunction restraining the defendants, its employees and agents from dispossessing them from the tenanted premises otherwise than by due process of law. Along with the suit, this application has been moved under O.1, R. 8 of the CPC (hereinafter called the Code) with the allegations that there are 185 members of the plaintiff association who are all tenants in different premises allotted to them. They are all employees of the defendant company and the facts pertaining to all these employees are identical in nature. They have the same interest in the subject matter of the suit and being workmen with limited income and presently out of employment, they would be subjected to high costs and inconvenience if they were to pursue separate suits. Therefore, both the plaintiffs seek permission of the Court to sue the defendant for the benefit of all its 185 members whose names and addresses are contained in the list annexed with the application.

2. The defendant contested the suit as well as this application. In reply it has

been alleged that even the suit as such is not maintainable because it is false and frivolous. It was also denied that any member of the plaintiff association is a tenant in the premises as alleged. It is also denied that the facts pertaining to all the employees are identical in nature. The causes of action, if any, with regard to each of the plaintiffs were different, distinct and separate and, Therefore, provisions of Order 1, Rule 8 of the Code were not applicable.

3. I have heard the arguments advanced by learned counsel for the parties and have given my careful consideration to the controversy involved between them. On behalf of the plaintiffs some authorities have been cited. The most relevant authority is *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, . It was held by the Supreme Court (at p. 644 of AIR):

"The provisions of Order I of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed."

4. In this case the appellant Board had settled a large number of residential plots to different groups of applicants, including one described as low income group. The defendant, one of the allottees, filed a suit for permanent injunction against the appellant in representative capacity restraining it from demanding or collecting from the allottees any additional amount for settlement of lands with buildings in the colony known as Ashok Nagar. There was an allegation in the plaint that the case of all the allottees in low income group of Ashok Nagar under the Lease Deeds were identical and the plaintiff was representing them in asking for permanent injunction restraining the Board from enforcing the belated supplementary demands. It was in the background of the aforesaid facts that the Supreme Court laid down the law cited earlier. The Supreme Court further observed that earlier there was some doubt about the applicability of Order 1, Rule 8 which now stands clarified by the Explanation introduced by the CPC (Amendment) Act, 1976. In the case in hand the allegation by the plaintiffs is that all the 185 employees have the same interest in the subject matter of the suit. plaintiff No. 2, it is alleged in para 2 of the plaint, claims himself to be a tenant of two rooms, two kitchens, two verandahs and a bathroom at a monthly rent of Rs.17/-. It was increased periodically and at present the rent was Rs.45 / - per month. Prima facie there seems to be no doubt that tenancy rights in respect of all the 185 members of the association under the defendants are claimed in respect of different premises in occupation of the persons named in the list. Therefore, they seem to have a common grievance against the defendant with regard to the denial of their tenancy rights in view of settlements dated 1-2-1989 and 8-2-1989 allegedly negotiated on behalf of the plaintiffs by their Union in Civil Writ Petition No. 2476 of 1988. It is further the case of the plaintiffs that on account of Section 14 of the Delhi Rent Control Act, a tenant

could not be evicted from the tenancy premises except on an eviction order made against the tenant on an eviction petition filed before the Rent Controller. Therefore, it is the further case of the plaintiffs that the agreement entered into by the Union surrendering the tenancy rights of the plaintiffs was void and inoperative on account of the overriding effect of Section 14 of the Delhi Rent Control Act.

5. On the other hand it has been argued on behalf of the defendant that the interest of all the 185 persons was not common and all of them had distinct and separate causes of action and, Therefore, permission could not be granted by this Court under Order 1, Rule 8 of the Code. The argument is further elaborated by citing examples like the right of way or the right of worship in a temple available to numerous persons. It is only in such cases, it is argued, where it could be said that all the numerous persons had a common interest, thus giving rise to a common cause of action. However it has been clarified by the Supreme Court in the aforesaid authority that either the interest must be common or the majority of persons must have a common grievance which they seek to get redressed. The Explanation introduced by the CPC (Amendment) Act, 1976 has also now clarified that it is not necessary in such cases to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued or defend the suit, as the case may be.

6. Therefore, prima facie it appears that the plaintiffs seem to have a common grievance along with all the 185 persons on whose behalf permission is being sought by them to sue in a representative capacity under Order 1, Rule 8 of the Code. But it may also be noted that six of such persons at Serial numbers 44, 81, 90, 95, 99 and 111 have come before the Court and have sought their names being withdrawn from the list. Similarly at Serial number 69 is mentioned the name of Mr. Mehar Chand, who has since expired. His widow also appeared in person before the Court and pleaded for being disassociated with this suit. Therefore, in effect 7 persons out of 185 persons have disassociated themselves from this suit. Still majority of the persons i.e. 177 prima facie seem to be associated with the plaintiffs in their common grievance regarding their tenancy rights which are denied on behalf of the defendant. It yet remains to be seen whether majority of these persons would like to associate themselves to the alleged common grievance along with the plaintiffs. Therefore, permission to the plaintiffs is granted only tentatively under Order 1, Rule 8 of the Code.

7. Under Order, Rule 8(2), the Court, at plaintiffs' expense, has to issue notice of the institution of the suit to all the persons interested. It may not be desirable in the circumstances of the case to give public advertisement to serve all the persons so interested. A notice by Regd. Post at the expense of the plaintiffs seems necessary because the Court is of the view that the expenses incurred by the plaintiffs by public advertisement may be approximately the same as would be incurred by the plaintiffs on service through registered post. Therefore, it is directed that notice of the institution of this suit be given to all such persons,

excluding the 7 persons named above and plaintiff No. 2, by Regd. Post returnable on 27th September, 1990 before the Deputy Registrar. The application accordingly stands disposed of.

8. Order accordingly.