

(2001) 10 DEL CK 0145

In the Delhi High Court

Case No : Civil Writ Petition No. 6061 and CMs 10424-425 of 2001

Hanuman Prasad Sharma and Others

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 348

Citation : (2002) 95 DLT 853 : (2002) 61 DRJ 252

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : R.P. Bansal and Mr. Sanjay Sharma, for the Appellant; S. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.

(1) Rule.

2. With the consent of the parties, writ petition is taken up for disposal.

3. Petitioner has filed this writ petition seeking a writ for quashing the order No. D/6/ZE/DB/CY/2001 dated 11.9.2001, passed by respondent Nos. 1 and 3 u/s 348 of the Delhi Municipal Corporation Act, ordering demolition of the tenanted remises, as specifically shown in "Red, Green, and Blue" in the site plan of property No. 4262 Gali Bairon Wali, Jogiwra Nai Sarak, Delhi.

4. (2) Learned senior counsel for the petitioner Mr. R.P. Bansal has pains takingly urged before me that this is a case where respondent Nos. 4 to 8, who happen to be the landlord of the premises, are bent upon evicting the petitioner. For this purpose, they have managed to secure the order passed u/s 348 of the DMC Act for demolition of the premises on the ground that the said premises are dangerous.

5. (3) It is not disputed before me that there has been inter se civil litigation between the parties. A suit se civil litigation between the parties. A suit bearing No. 305/80 for possession was filed by respondent Nos. 4 to 8 against petitioner No. 2. The said suit was decreed and an appeal was preferred. The appeal was dismissed by the Additional District Judge. A RSA bearing No. 2/97 was filed in this Court. The appeal has been admitted and dis-possession of the petitioner stayed. It is stated that petitioners themselves sought permission from the Zonal Engineer for repair of latrine, constructed by respondent Nos. 4 to 8, but to no avail. Petitioners thereupon filed a suit for mandatory injunction seeking to, restrain respondent Nos. 4 to 8 from demolishing the latrine. An interim injunction was granted against the respondents and they were restrained from causing any obstruction to the repair of the latrine on the ground floor of the suit property. It is stated that nevertheless respondent No. 4 to 8 obstructed the repair of the latrine. Police did not help as there were no directions for police help given by the Court in the order, permitting repairs.

6. (4) Respondent Nos. 10 and 11 have also filed a suit for declaration bearing No. 3713/92, challenging the decree passed by the Civil Judge. Petitioner No. 1 has filed yet another suit bearing NO. 552/98 for mandatory and permanent injunction before the Court of the Senior Civil Judge, seeking repair of the latrine in the tenanted premises, as respondent Nos. 4 to 8 were not allowing them to repair.

7. (5) Respondent/MCD had also carried out an inspection of the premises and taken the stand in the written statement that petitioner No. 1 was at liberty to carry out the repair. It is claimed that respondent Nos. 4 to 8 are intentionally obstructing the repair.

8. From the foregoing narrations of facts and events, it is clear that parties are neck deep in litigation. A number of civil proceedings inter se between them are pending, where MCD is also a party. The question of repair to the said premises, in particular, the latrine is also being raised in the civil proceedings. In these facts, it would not be a fit case for being entertained in the exercise of writ jurisdiction under Article 226 of the Constitution of India especially when civil courts are seized of the matter. It would be for the petitioner to move an appropriate application before the Civil Court in pending proceedings and seek appropriate relief. It is directed that any such application as and when moved before the Civil Court shall be promptly taken up and dealt with dispatch. Mr. S. Mukherjee, counsel for the respondent/MCD, states that for a period of three days, respondent shall maintain status quo to enable the petitioner to approach the Civil Court.

9. The writ petition is dismissed with the aforesaid observations.

10. A copy of the order be given dusty to counsel for the parties under the signatures of the Court Master of this Court.