

(1996) 01 DEL CK 0083

In the Delhi High Court

Case No : Review Application No. 3 of 1993, Civil Miscellaneous Appeal No's. 403, 408 of 1993 and Civil Revision Appeal No. 651 of 1991

Harbhagwan Batra

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114

Citation : (1996) 1 AD 549 : (1996) 61 DLT 672

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Mukul Rohatagi, A.S. Gambhir, Ravinder Sethi and Sumeet Bansal, for the Appellant;

Judgement

P.K. Bahn, J.

(1) Vide order dated January 14, 1993, Civil Revision No. 651/91 was disposed of. Review Application was filed for modifying the aforesaid order. The contents of the order show that the parties were required to maintain the status quo with regard to the plot in dispute and the guards of the Delhi Development Authority were allowed to continue to be present at the spot for safeguarding the plot so that no encroachment over that plot takes place during the pendency of the suit in the Trial Court and even the petitioner who was the plaintiff in the lower Court was permitted to have his own guard for protecting the said plot from encroachers. The plea taken in the review application is that this order was beyond the scope of the civil revision and has the effect of dispossessing the plaintiff- petitioner from the suit property and also has the effect of modifying the order of interim relief granted in favor of the plain tiff by the lower Court which had become final as the appeal filed against that order had been dismissed. In order to appreciate the contentions raised by the parties in respect of this review application, it is necessary to refer to the facts in some details.

(2) The petitioner had brought a civil suit seeking only a relief of permanent

injunction restraining the Delhi Development Authority and the Municipal Corporation of Delhi from dispossessing the plaintiff from plots bearing No. 15-17, 18-21, 24-30 situated in Guru Ramdas C

(3) A written statement had been filed by the Delhi Development Authority in which it was pleaded by the Delhi Development Authority that the property in question belongs to the Government and that the property was part of the Khasra No-53/6 of Village Khureji Khas which has been acquired vide award No-22/70-71 and the possession of the same had been taken on October 28,1971 and since then it was placed at the management and disposal of the Delhi Development Authority u/s 22 of the Delhi Development Act. However, in para 3 it was stated that the plaintiff and Smt.Krishna Kumari had deposited the development charges in respect of the aforesaid plots. In para 4 of the written statement it was averred that the land belongs to the Delhi Development Authority and the construction of the boundary wall etc. on the land in dispute is illegal and unauthorised and the said encroachment is liable to be removed. It was also pleaded that the Delhi Development Authority has the authority and right to remove the unauthorised encroachment and no notice was required to be given to the plaintiff who was mere trespasser on the land in dispute. In para 8 it was averred by the Delhi Development Authority that the title and possession of the land was with the Delhi Development Authority. A Local Commissioner was also appointed by the lower Court in order to, prima facie, determine as to whether the plaintiff has been in possession of the property in question. The report of the Local Commissioner was in favor of the plaintiff and thus, the lower Court had granted interim injunction till the disposal of the suit restraining the Delhi Development Authority from dispossessing the plaintiff from the said property. The Delhi Development Authority had filed an appeal against that order which was dismissed.

(4) However, during the pendency of the suit the petitioner moved an application seeking permission of the Court for raising boundary wall around the property in question so that the property is not encroached upon by any third person and that application was dismissed and against that order the civil revision was filed. During the course of the pendency of the civil revision, on the request made by the petitioner himself the Court required the Delhi Development Authority to post security guard at the property in question so that the property is not encroached upon by any third person. It was in the light of the said order made by the Court on the prayer of the petitioner himself that the Court came to dispose of the civil revision ultimately by giving the directions mentioned above. It is true that the interim injunction order has been made in favor of the plaintiff which stands confirmed in appeal and in law the said order is to remain in force till the disposal of the suit and that order was not the subject-matter of the civil revision which was disposed of by me yet the question which now arises for consideration is: whether the order made by this Court while disposing of the civil revision should be reviewed or not ?

(5) The learned Counsel for the Delhi Development Authority has drawn my attention to the copies of the documents filed by the Delhi Development Authority in order to show that Khasra No.53/6 stood acquired and an award has been made since long and possession of 4 Bighas 12 bids was of land was taken in pursuance to the award and about 400 bids was of land was not taken possession of as it was built- up area and about 200 sq. yards of land was again encroached upon and thus, the petitioner, in fact, has no right to obtain the permanent injunction being the rank trespasser. He has referred to two judgments of the Supreme Court given in the cases of Premji Ratansey Shah & Others v. Union of India & Others, Jt 1994 (6) Sc 585 and Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, . However, the question whether the petitioner- plaintiff would be entitled to have the relief of permanent injunction or not on merits is a question which does not fall for consideration before this Court. It is for the Trial Court to decide the matter on merits after evidence is completed and arguments are addressed. The fact remains that an interim injunction which is to remain in force till the disposal of the suit already stands granted in favor of the plaintiff which order has become final till the disposal of the suit as it was not challenged before the High Court by the Delhi Development Authority. While disposing of the civil revision which was against an order by which the application of the petitioner for permission to construct the boundary wall was dismissed, this Court could not have jurisdiction or power to set aside the interim injunction order which had become final till the disposal of the suit. I, hence, recall the order by which I had disposed of the civil revision.

(6) On the request of the learned Counsel for the parties I have also heard arguments for deciding the said civil revision and I, thus, proceed to decide the said civil revision as well.

(7) It may be mentioned that the plaintiff had not filed any map of the property in question in respect of which he had sought permanent injunction. The Local Commissioner, who had visited the spot and had confirmed the factum of possession, has also not prepared any sketch of the property indicating as to how much area has been in possession of the plaintiff-petitioner. During the course of this review application, a Local Commissioner was appointed by this Court who has filed his report after he has taken the measurements at the spot and has prepared the site plan which is available on the record which indicates the property in dispute between the parties. It appears that about 749 sq. yards of land located on the eastern side in Khasra No.53/6 is in dispute wherein it was found that certain constructions have been raised by the petitioner which had been also demolished but some remnants of the foundations are still available at the site. On the western side of this disputed land is the vacant land measuring about 648.72 sq. yards which is now admittedly in possession of the Municipal Corporation of Delhi. At page 299 of the file, a sketch filed by the petitioner is available which indicates the area which is claimed to be in possession of the petitioner-plaintiff. It would not be proper to allow the petitioner to raise any

construction on the property in question because ultimately if the petitioner fails in the main suit the nature of the property would stand changed if the petitioner is allowed to raise any construction on the plot in question during the pendency of the suit. Prima facie, the documents filed by the Delhi Development Authority do indicate that this Khasra number in which the property in question stands located stood acquired and perhaps the possession was also taken by the Delhi Development Authority as alleged by the Delhi Development Authority and later on the said land was encroached upon and petitioner claims to have also raised certain construction on the portion of the said Khasra number. It would be a question of evidence whether the petitioner is a rank trespasser in that particular area and thus, is or is not entitled to have the relief of permanent injunction. Keeping in view the facts I come to the conclusion that the lower Court was justified in not allowing the petitioner to raise any construction on the plot in question. Hence, the civil revision is liable to be dismissed. I dismiss the civil revision. The parties are, however, left to bear their own costs. It is to be emphasized here that while disposing of another civil revision against an order disallowing amendment of the plaint a direction has been given by this Court that the suit be decided in six months but some years have passed still the suit is pending and it appears that the Delhi Development Authority has not been appearing in the Court and has even suffered ex-parte proceedings in the suit and the suit still continues to be pending. A direction shall go to the Court concerned again for deciding the suit expeditiously in accordance with law.