

(2009) 04 UK CK 0001
In the Uttarakhand High Court

Indira Market Vyapar Sangh

APPELLANT

Vs

Mussoorie Dehradun Development Authority and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226

Citation : (2011) 1 UC 254

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Judgement

V.K. Gupta, C.J.—With the consent of the learned Counsel for the parties, this petition is being disposed of today finally at the motion hearing stage.

2. Order dated 17.03.2005 passed by the learned District Judge, Dehradun dismissing the appeal filed by the petitioner against the order dated 05.01.2005 is under challenge in this petition filed under Article 226 of the Constitution of India.

3. By the order dated 05.01.2005, the learned Civil Judge (Senior Division), Dehradun, while allowing the application of respondent No. 2 in Civil Suit filed by her, had directed that the parties shall maintain status quo qua the use and occupation of the property in question.

4. The case of respondent No. 2 in the Trial Court was that she was allotted Toilet No. 9A on the ground floor of the Shopping Complex, but the allotment was subsequently cancelled. She challenged the cancellation order in a suit filed by her, but during the pendency of the suit, the cancellation order having been withdrawn and her grievance having been redressed, she withdrew the suit. Toilet No. 9A was once again allotted in her favour. Once again, however, the second allotment was cancelled forcing her to file second suit in the Trial Court challenging the second cancellation order. It was in this second suit that she prayed for the grant of Temporary Injunction which, as noticed at the out set was allowed vide order dated 05.01.2005 passed by the learned Trial Court.

5. The petitioner herein had not been impleaded as a defendant in the first suit or the second suit filed by respondent No. 2. We are not concerned here with the first suit.

6. As far as the second suit is concerned, the petitioner made an Impleadment Application in the Trial Court praying that it being a necessary and proper party, should be impleaded as a party defendant in the suit filed by respondent No. 2. The Trial Court on 28.01.2008 allowed the said Impleadment Application filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure. By allowing the said Impleadment Application, the learned Trial Court directed the plaintiff in the suit to take appropriate steps for impleading the petitioner as a defendant in the suit.

7. The aforesaid order dated 28.01.2008 passed by the learned Trial Court impleading the petitioner as a defendant in the suit was challenged by respondent No. 2 in this Court in Writ Petition No. 925 of 2008 (M/S). Vide judgment dated 02.07.2008 the writ petition was dismissed and the order dated 28.01.2008 was upheld. It is worthwhile to mention here that before filing writ petition, respondent No. 2 had challenged the aforesaid order in the appeal Court, which appeal was dismissed on 05.05.2008. This Court, while dismissing the writ petition on 02.07.2008, had categorically held that the petitioner was necessary and proper party in the suit, because the interests of the Shop Keepers have been entrusted to them and as to whether Shop No. 9A or Shop No. 18A were earmarked as Toilet places or not, is intrinsically interlinked as far as the determination of issues in controversy in the suit are concerned.

8. I am told that despite the order dated 28.01.2008, the petitioner has, actually and physically, yet not been impleaded as a defendant in the suit. This is both amazing and intriguing because in the light of the operative part of the aforesaid order, a mere formality of filing an amended plaint has to be observed. That has not been done. Whether the amended plaint was to be filed or a table amendment in the Cause Title of the Plaint was to be effected, this mere formality has not been done so far.

9. On 26.03.2009, based on the observations contained in the order passed on that date, I had appointed Mr. V.K.Kohli, Senior Advocate as a Special Commissioner to inspect the building in question and to submit report. Mr. V.K. Kohli has submitted his report vide his covering letter dated 30.03.2009. According to his report, Toilet No. 9A and Toilet No. 18A are on the ground and first floor respectively of this building. Even though these two rooms, namely, 9A and 18A were constructed and earmarked for use as Toilets, actually these are not being used as Toilets and do not have the fixtures and fittings of the Toilets. The relevant part of his report with respect to the aforesaid aspect is reproduced hereunder, which reads thus:-

(D) The toilet No. 9-A is in the ground floor and the toilet No. 18-A is in the first floor. The numbers allotted to these toilets was confirmed by the MDDA officers.

None of these toilet i.e. 9-A and 18-A are being used as toilets neither by the public nor by the respondent No. 2 & 3. There are no fixtures and fittings in these toilets, but the original existence of these toilets cannot be ruled out as there are some signs of pipes and other accessories of the toilets, which seems to have been removed. In Toilet No. 9-A, goods of Smt. Sumitra Devi, respondent No. 2 were lying, as informed by Shri Harshvardhan Dua i.e. respondent No. 3, son of respondent No. 2. This toilet was found locked and the same was unlocked by Shri Harshgvardhan Dua. So far Toilet No. 18-A is concerned, it is also being used for keeping goods and the same was also not being used as toilet. On observation it would easily be made out that originally it was a toilet, though there are no fittings and fixtures, but signs with regard to laying of pipes and other accessories of the toilet were visible. In the second floor, there is also a small room which I was informed by the officer of the MDDA, that it was earmarked for toilet.

10. This room was also found locked and one Shri Sanjay unlocked it. I was also informed by the officers of the MDDA that it was never allotted to anyone and in this room some unserviceable goods such as glass, wooden planks, Cartons etc. were lying."

11. I accept the aforesaid report because it is factually correct. What emerges factually is that two rooms, being rooms 9A and 18A were originally constructed and earmarked as Toilets in the ground and first floors of the building in question. What also emerges is that apart from these two rooms on the two floors, there is no Toilet in the building, except a room earmarked for this purpose on the second floor, which also is not being used as a Toilet. The entire building is without a toilet. Be that as it may, these two rooms- 9A and 18A were allotted in favour of respondents Nos. 2 & 3 and were in occupation and use by these respondents, but not as Toilets. A perusal of the file shows that respondent No. 1 later realising that this action was wrong, cancelled the allotment. It is in this background that the two suits were filed by respondents 2 and 3 in the Trial Court.

12. When the impugned order dated 05.01.2005 was passed by the Trial Court, the petitioner was not a party defendant in the suit. Even though the Trial Court held in favour of the plaintiff about the prima facie nature of the suit, in so far as advantage or disadvantage or comparative hardship or lack of it is concerned, it decided this issue without the petitioner being a party defendant in the suit before the Court. The question of balance of convenience or relative advantage or dis-advantage or relative hardship or lack of it intrinsically involved discussion and appreciation of the fact, whether public at large, had any role to play in this entire controversy or not. It also involved discussion and appreciation of the fact whether by the allotment of the aforesaid two rooms in favour of respondents 2 and 3, the public was being deprived of any facility or not. A careful perusal of both the orders - Order dated 05.01.2005 passed by the learned Trial Court and the order dated 17.03.2005 passed by the learned District Judge - shows that

this aspect was not at all considered by any of these two Courts, understandably because the petitioner was not a party defendant in the suit.

13. For the aforesaid reasons, both the aforesaid orders are set aside. While disposing of this petition finally, the following order is being passed containing the directions hereinbelow mentioned:

(1) The plaintiffs in both the suits shall carry out table amendments in the plaints and implead the petitioner as defendant in the two suits. This shall be done within one week from today, failing which, suits shall stand dismissed without any further reference.

(2) The Temporary Injunction Applications filed by the plaintiffs in both the suits shall stand revived. The petitioner herein shall file written statements in both the suits and replies to the Temporary Injunction Applications within ten days from today. Time shall not be extended.

(3) The learned Trial Court shall proceed to hear the Temporary Injunction Applications in both the suits in the light of the averments contained in the plaints, written-statements, Temporary Injunction Applications and replications of the plaintiffs to the written statements and rejoinder to the replies in the Temporary Injunction Applications to be filed within one week thereafter and shall dispose of the Temporary Injunction Applications afresh on their own merits and in accordance with law, uninfluenced by the earlier orders passed, within two months from the date of communication of this order.

14. The petition stands disposed of finally.