

(2002) 11 DEL CK 0070

In the Delhi High Court

Case No : Civil Revision Petition No. 1197 of 2000

Kailash Samrat and Others

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 101 DLT 333

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajesh Banati and R.N. Madaan, for the Appellant; Sangeeta Chandra, for the Respondent

Judgement

C.M. No. 2624/2002.

Sanjay Kishan Kaul, J.

This is an application seeking adjournment on the ground that the Senior Counsel is not available. This was also the reason on the last date of hearing for seeking adjournment itself. No ground made out for adjournment.

Dismissed.

C.R.No. 1197/2000:

1. The petitioner has impugned the orders of the learned Additional District Judge dated 13.11.2000 and the learned Sub-Judge dated 16.1.1989 in terms whereof the prayer of the petitioner for grant of interim injunction was declined.

2. The petitioner had filed the suit for injunction restraining the respondent from dispossessing the petitioner except in accordance with law and along with the suit an application for interim relief was filed. The factual matrix is limited inasmuch as one Shri Harbans Lal Samrat who was granted lease hold rights in pursuance to the lease deed dated 27th February, 1963 in respect of A-74, Outram Lines, Kingsway Camp measuring 52 square yards at a concessional

price since the petitioner was a refugee. The petitioners are the legal heirs of Shri Harbans Lal who has since expired. Shri Harbans Lal was running a restaurant under the name of "Samrat restaurant" after obtaining a license from the Municipal Corporation of Delhi.

3. The suit was filed by the petitioners who were apprehensive of the threatened action of DDA for demolition of the property and to dispossess the petitioners.

4. The petitioners failed to produce the lease deed before the Trial Court but the same was produced by the respondent. It would be relevant to re-produce two of the material terms of the lease deed which are para I(vi) and (xii).

"(vi) not without the written content of the Chief Commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or the same or permit the same to be used for any purpose other than that of a *single storeyed building consisting of one residential flat or a *double storeyed building consisting of one or two residential flats in all with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land;

(xii) if during the period of the lease the premises are required for a public purpose or for any administrative purpose by the Lesser, the Lesser shall at the expiry of a notice of fifteen days to the effect that the said premises are required for such purpose to be served upon the Lessee by an officer appointed by the Lesser in this behalf, be at liberty to take possession of the land together with all buildings, structures and appurtenances. The Lessee shall be entitled to compensation in respect of the land, buildings and structures. The compensation payable under this clause shall, in case of dispute be determined by the Lesser or by such officer as he may appoint for the purpose, as nearly as may be, in accordance, with the provisions of the Land Acquisition Act or regulation for the time being in force relating to the same and the decision of the Lesser or such officer shall be final and conclusive."

5. The contention of the petitioner before the Trial Court was that the property was made for residential-cum-commercial use. In view of the terms of the lease deed that the property is meant only for residential use, both the Courts below came to the conclusion that the user of the premises is for residential purpose. I find no infirmity with the said finding of the Trial Court.

6. It is also relevant to note that the respondent has been issuing notice to the petitioners from time to time for misuse of the property but the same has been continued. It is however, not disputed that the lease of the premises has not been cancelled for misuse or violation of Clause (vi) of the lease deed.

7. It is apparent from the impugned orders that the property of the petitioners was sought to be taken for a scheme to re-develop the area in question by the respondent and allotment was made to the petitioner of plot No. 1760,

measuring 160 square yards under the Kingsway Re-development Scheme. The petitioners, however, are not willing to accept the alternative plot claiming that the same is meant for residential use and they require an alternative commercial property. There is no force in this contention of the petitioners since the user of the property in question is for residential purpose and the petitioners have been granted the alternative property for the same purpose. It is, however, the option of the petitioners whether they would or would not like to accept the alternative site. Even today learned Counsel on instructions from the petitioners states that they are not willing to shift to the alternative site.

8. At the stage when the suit was filed there were encroachments by the petitioners on the open land which has since been removed. The existence of these encroachments have been noticed in the orders of the Court below.

9. The last issue which is to be considered is whether the petitioners are entitled to any interim relief in view of the fact that the property was meant for residential user and is being used for residential-cum-commercial use and the petitioners are not willing to accept the allotment of the alternative site. The Courts below came to the conclusion that the petitioners would be dis-entitled on this account.

10. In my considered view in case there is misuse of the residential property for commercial use, it is always open to the respondent to proceed against the petitioner for violation of the terms of Clause (vi) of the lease. The respondent has, however, not proceeded and passed the final orders in terms thereof.

11. Insofar as taking over the possession of the property is concerned, learned Counsel for the respondent has strongly relied upon Clause (xii) as mentioned above. It is, however, not disputed that the notice of 15 days required to be given under the said clause has in fact not been given though the respondent states that the allotment itself amounts to a notice.

12. I am unable to accept this contention of learned Counsel for the respondent and in my considered view the Courts below erred on this account and fail to exercise jurisdiction vested with them as the petitioners can be dispossessed from the property in question only in accordance with law which would imply that the terms and conditions of the lease deed have to be fulfilled . Nothing prevents respondent from issuing a notice under Clause (xii) and proceeding against the petitioners. This is more so as despite the offer of the respondent for grant of alternative site, the petitioners are not willing to accept the same. However, it does not imply that the requirement of Clause (xii) can be waived or that the allotment of an alternative site can be treated as a notice for the purpose of Clause (xii).

13. The matter in question involves depriving the petitioners the rights of the property under the lease deed. If it was free hold property acquisition proceedings would have been taken under the Land Acquisition Act. In the present case the rights are conferred by the lease deed and thus the petitioner

can be deprived of the rights conferred under the lease deed only on the terms and conditions prescribed in the lease deed which is as per Clause (xii). What was required under Clause (xii) is to give a 15 days notice and thereafter proceed to take possession of the property in question. However, the requirement of such a notice would be mandatory as that it will be open to the petitioners in such a case to impugn the said notice in accordance with law, if so advised. The petitioners cannot thus be deprived of this legal remedy.

14. Learned Counsel for the respondent has referred to the judgment of the learned Single Judge of the Syed Mohd. Mohsin Rizvi and Others Vs. State of U.P. and Others, to contend that this Court should not exercise jurisdiction under 115 of the Code of Civil Procedure, 1908. In the present case in view of the fact that there is no patent violation of law or any perversity manifest in the order. A reference has been made to the judgment of the Supreme Court in Sher Singh (dead) through LRs. v. Joint Director of Consolidation and Ors. AIR 1979 SC 1341. A reference has also been made to the judgment reported as Mrs. S. Kousalya Bai v. Commissioner, Corporation of Madras and Anr. 1996 AIHC 1261, of the Madras High Court to contend that if the party does not come with the clean hands, it is not entitled to any relief.

15. There can be no dispute on the scope of jurisdiction u/s 115 of the Code. However, provision is extremely clear that where subordinate Courts have failed to exercise jurisdiction so vested in it, Court in exercise of jurisdiction would come to rescue of the party. In my considered view the interim relief could not have been declined to the petitioner contrary to the settled principles of law that a person cannot be deprived of his property except in accordance with law. This is more so when a lease deed itself which has been relied upon by the respondent to claim its right for dispossession prescribes the procedure and admittedly the procedure prescribed of issuance of notice has not been followed.

16. In view of the aforesaid, the impugned orders of the Trial Court are set aside and it is directed that the petitioners shall not be deprived of the property in question except in accordance with law, the terms of which are specified in the lease deed itself, as mentioned aforesaid.

The revision petition is allowed leaving the parties to bear their own costs.