

(2017) 01 DEL CK 0038

In the Delhi High Court

Case No : W.P.(C) No. 6419 of 2016

Maharaj Kumar Kaustouv Mani Pratap Shahi

APPELLANT

Vs

The Chairman, NDMC

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 237 DLT 313

Hon'ble Judges : Ms. Hima Kohli, J.

Bench : Single Bench

Advocate : Mr. Chandra Prakash, Advocate, for the Petitioner; Ms. Sakshi Popli, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ms. Hima Kohli, J. - The present petition has been filed by the petitioner praying inter alia that directions be issued to the respondent No.1/NDMC and the respondent No.2/Monitoring Committee appointed by the Supreme Court to de-seal premises bearing No.17, Jor Bagh, New Delhi, owned by him. The petitioner also seeks quashing/setting aside of the order dated 7.6.2016 passed by the Monitoring Committee, where under the respondent No.1/NDMC was directed to re-seal the subject premises and lodge a FIR against the offender.

2. The brief undisputed facts of the case are that on 5.8.2002, the petitioner had executed a lease deed for a period of five years w.e.f. 1.8.2002 in respect of the subject premises in favour of M/s. Your Kids R Our Kids (hereinafter referred to as "the lessee"). During the tenure of the said lease deed, the petitioner had to terminate the same due to non-payment of rent by the lessee. But they did not vacate the suit premises. On 27.6.2007, the petitioner informed the respondent/NDMC that his premises was being misused by the lessee and requested for intervention. In the meantime, vide order dated 7.5.2007 passed by the Supreme Court in WP(C)No.4677/1985 entitled "M.C. Mehta v. Union of India & Ors.", (2007) V SLT 1, the respondent No.2/Monitoring Committee was directed

to carry out sealing in respect of those premises, where large scale commercial activities were being carried out, in the presence of the functionaries of the MCD, DDA and NDMC.

3. Pursuant to the aforesaid order, the subject premises was sealed by the respondent No.1/NDMC on 31.8.2007. One month prior to that, in July, 2007, the petitioner had filed a suit for possession, mesne profits, etc., against the lessee before the learned District Judge, Tis Hazari Courts, registered as Suit No.396/07, wherein an ex parte order dated 27.7.2007 was passed directing the lessee to maintain status quo. After the respondent/NDMC sealed the subject premises on 31.8.2007, the lessee filed an application before the Supreme Court (IA No.2146/2007) for desealing the same on the ground that it was running a school from there. While rejecting the said application on merits, vide orders dated 8.10.2007, the Supreme Court granted the lessee time till the end of December, 2007 to stop the misuser and temporarily directed de-sealing. It was also clarified in the said order that it shall not be construed to be expression of any view in the litigation pending between the landlord (i.e. the petitioner herein) and the tenant/applicant.

4. Though the petition is silent on this aspect, the respondent/NDMC has stated in its counter affidavit that thereafter, the lessee had filed another application before the Supreme Court (IA No.2220/2007) asking for extension of time to remove the misuse from the subject premises. Vide order dated 14.12.2007, the Supreme Court extended the timeline till 31.3.2008, for the lessee/applicant to comply with its earlier orders. Despite the expiry of the extended time, the lessee did not comply with the said orders and consequently, in terms of the order dated 14.5.2008 passed by the respondent No.2/Monitoring Committee, the subject premises was resealed by the respondent No.1/NDMC on 19.5.2008.

5. It is not out of place to mention here that in the year 2007, the lessee had filed a civil suit 396/2007 against the petitioner praying inter alia for permanent and mandatory injunction. In the very same year, on the lessee failing to handover vacant peaceful possession of the subject premises to him and on its failure to tender the rent, the petitioner instituted a suit for possession, mesne profits, damages, etc., in the High Court, registered as CS(OS)No.93/2008. Vide judgment dated 15.9.2008, the said suit was decreed in favour of the petitioner and against the lessee.

6. Aggrieved by the aforesaid decision, the lessee had preferred an intra court appeal registered as RFA No.10/2009, which was dismissed vide order dated 27.1.2009. As a result, the judgment dated 15.9.2008 passed by the learned Single Judge in the captioned suit attained finality. For seeking execution of the said judgment, the petitioner proceeded to file an execution petition in the High Court, registered as Ex.P. No.356/2008. The lessee/Judgment Debtor entered appearance in the said petition and filed its objections, which were dismissed vide order dated 30.3.2009, with the following observations :-

"7 The judgment debtor has filed objections to the present execution petition on various grounds one of which is that the Supreme Court in case titled M.C. Mehta v. Union of India constituted a monitoring committee to seal the properties in which the commercial activities were being carried out in residential area. The property in dispute is still sealed under the directions given by the Supreme Court. The judgment debtor is not in the absolute physical possession of the property and thus, cannot handover the possession to the decree holder. He has also raised other objections on merit, which in my view, is out of consideration of this court in the execution petition and not sustainable in law.

8. I am of the considered opinion that the above said objections filed by the judgment debtor have no force and are untenable as the Supreme Court by its orders dated 8th October, 2007 and 11th December, 2007, clarified that the orders passed by it in the above said case would have no bearing on the litigation pending between the landlord and the tenant. The learned counsel for the decree holder states that the decree holder is prepared to receive the possession of the property in the present condition. In view thereof, the objections filed by the judgment debtor are misconceived, false, frivolous and contrary to the law. The same are dismissed with the cost of Rs. 50000/-.

9. As a result thereof, the warrants of possession in respect of the suit property be issued against the judgment debtor for delivery of possession of the entire suit property bearing no. 17, Jor Bagh, New Delhi irrespective of the fact that the suit property has been sealed as per orders of the Apex Court."

(emphasis added)

7. On a reading of the aforesaid order, it is clear that counsel for the petitioner (Decree Holder in the Execution petition) had stated that he was ready and willing to receive the possession of the premises in its present condition, in other words, in a sealed condition. It was in the light of the said submission that the executing court had issued warrants of possession in respect of the suit premises against the lessee/Judgment Debtor and noted that the said warrants, were being issued irrespective of the fact that the premises had been sealed under the orders of the Supreme Court. On execution of the aforesaid warrants of possession, the Bailiff had handed over the possession of the suit premises to the petitioner on 23.4.2009.

8. Though it is the contention of the learned counsel for the petitioner that the officers of the respondent/NDMC were present on the date when the warrants of possession were executed by the Bailiff, a copy of the Bailiff's report enclosed with the petition as Annexure P-12 does not reflect the said position. It does not mention anywhere that an officer of the respondent/NDMC was present on the spot.

9. After the Bailiff handed over possession of the premises to the petitioner on 27.4.2009, he addressed a letter to the Director Commercial, NDMC stating inter alia that he had taken over possession of the subject premises under the orders

of the Execution Court and therefore, the electricity connection at his premises, that had been temporarily disconnected, may be restored. On receiving such a request from the petitioner, apparently without consulting or informing the concerned wing dealing with unauthorized construction which had in the first place requested for disconnection of the electricity connection on the ground of misuse, the Electricity Wing of the respondent No.1/NDMC restored the electricity connection at the subject premises.

10. Thereafter, things remained hunky dory for the petitioner till 5.10.2015, when an officer of the respondent/NDMC happened to inspect the premises and submitted a status report in respect thereof before the respondent No.2/Monitoring Committee, wherein it was recorded that the subject premises was lying unsealed and vacant. A reference was made in the said report to the de-sealed status of the premises in terms of an order dated 30.3.2009, passed by the High Court in Ex.P.No.356/2008. In its meeting held on 07.06.2016, the respondent No.2/Monitoring Committee noted that there is nothing on the record of the NDMC to show that it had de-sealed the premises and delivered possession thereof to the petitioner and that he had misinterpreted the orders of the High Court and illegally broken the seal of the NDMC, in violation of the order dated 24.3.2006 passed by the Supreme Court. In view of the above, the respondent No.1/NDMC was directed to re-seal the subject premises and lodge a FIR against the offender.

11. Without clarifying the correct factual position to the respondent No.2/Monitoring Committee after making some efforts to obtain the relevant documents which had led to the passing of the order dated 30.3.2009 in Ex.P.No.356/2008, the respondent No.1/NDMC filed a complaint against the petitioner with PS Lodhi Colony, Delhi on 15.6.2016 and proceeded to reseal the subject premises on 16.6.2016. Aggrieved by the aforesaid action of the respondent No.1/NDMC, the present petition was filed on 11.7.2016.

12. Learned counsel for the petitioner argues that before passing the resealing order, the respondents ought to have afforded an opportunity of hearing to the petitioner to enable him to bring out the correct facts and clarify the background in which the warrants of possession were issued and executed in respect of the subject premises. He states that in any case, on an officer of the respondent No.1/NDMC conducting an inspection of the premises on 15.5.2015, the report submitted by him itself reflects that the premises was found lying vacant and there was no misuse on the said date and had this fact been brought to the notice of the respondent No.2/Monitoring Committee, the resealing order would not have been passed.

13. Ms. Popli, learned counsel for the respondent/NDMC concedes that even as per the averments made in para 10 of the counter affidavit, the status report filed by the NDMC on the directions of the Monitoring Committee had mentioned that "the premises was lying unsealed but vacant". This itself is a clear pointer in the direction that by then, the misuse had ceased.

14. In the above fact and circumstances, it is not understood as to why were the subsequent developments not brought to the notice of the respondent No.2/Monitoring Committee. In any event, in the order dated 30.3.2009 passed in the execution proceedings, the statement of the counsel for the petitioner (Decree Holder herein) was recorded to the effect that he was ready and willing to receive possession of the suit premises in the present condition, i.e., on an "as is where is basis". Therefore, a part of the fault lies as the door of the petitioner who knowing very well that the premises had been sealed in the first instance, on the directions of the respondent No.2/Monitoring Committee, ought to have intimated the respondent No.1/NDMC in advance about passing of the order dated 30.3.2009 in the execution petition so that an officer would have been deputed to remain present at the premises on the date the Bailiff was directed to execute the warrants of possession.

15. Having failed to take any such precautions, and without intimating the respondent No.1/NDMC about the change of status, on receiving possession from the Bailiff, the petitioner proceeded to occupy the subject premises. It was only when the Monitoring Committee called upon the respondent No.1/NDMC in September, 2015 to conduct an inspection of the premises that action was taken to dispatch officers there and file a status report. The report submitted by the respondent No.1/NDMC to the respondent No.2/Monitoring Committee clearly states that the premises had not been permanently de-sealed by the NDMC and that the de-sealing was done in terms of the orders passed in Ex.P. No.356/2008. At that very stage, had the respondent/NDMC made some efforts to seek time and inspect the records of the Execution Petition filed by the petitioner so as to verify the orders passed therein, thing would not have come to such a pass. However, no such efforts were made by the respondents. Consequently, based on the report submitted by the respondent No.1/NDMC, the respondent No.2/Monitoring Committee directed re-sealing of the subject premises, and that too without affording an opportunity of hearing to the petitioner.

16. It has been held in several judicial pronouncements that before an order is passed against a person that entails civil consequences, a notice to show cause is necessarily envisaged under Article 14 of the Constitution of India. The object behind the same is that a person against whom an action is proposed to be taken which is to his detriment, ought to be provided an opportunity of hearing so that he can defend himself [Refer: Cantonment Board, Dinapore & Ors. v. Taramani Devi, AIR 1992 SC 61, Canara Bank v. V.K. Awasthy; AIR 2005 SC 2090 and M/s. Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner & Ors., AIR 2014 SC 295]

17. In the case of Sanjeev Bhatiani v. UOI reported as 2014 (143) DRJ 398, where the respondent No.2/Delhi Cantonment Board's order directing demolition of some construction raised by the petitioner was challenged in a writ petition on the ground that no opportunity of a hearing was granted, this Court had observed as follow:-

"14. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving a reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. This principle will hold good irrespective of whether the power conferred on a statutory body or a tribunal is administrative or quasi-judicial in nature.

15. In the opinion of this Court, the requirement of an opportunity of hearing being given to the petitioner before an order of demolition was passed by the respondent No.2/Board under Section 248 of the Delhi Cantonment Act, 2006 was a prerequisite. There is nothing in the language of Section 248 or any other provision in the said Statute that would negate such an opportunity being given to the petitioner. If such a requirement is not read into the provision, it would be open to challenge on the ground of violation of Article 14 of the Constitution of India for non-compliance of the principles of natural justice that flow from the Rule of Law."

(emphasis added)

18. In view of the aforesaid legal position, this court is of the opinion that the order passed by the respondent No.2/Monitoring Committee on the basis of the report submitted by the respondent No.1/NDMC, without granting a hearing to the petitioner, cannot be sustained. Knowing very well that such an order had civil consequence and would result in depriving the petitioner of his right to enjoy his premises, a speaking order ought to have been passed by the respondents only after affording an opportunity of hearing to the petitioner. Had the petitioner been heard and then an order passed, if aggrieved, he would have had the option of seeking the remedies available to him in law and at that stage, he could not have urged that he was not given a chance to plead his case before the respondent No.2/Monitoring Committee. Because the respondent No.2/Monitoring Committee passed an order dated 7.6.2016 and the respondent No.1/NDMC proceeded to re-seal the premises on 16.6.2016, behind the petitioner's back and without following the principles of natural justice, he was left high and dry and had no option but to rush to the Court for relief.

19. Accordingly, the present petition is allowed, subject to the condition that the petitioner shall submit an affidavit to the respondent No.1/NDMC, undertaking inter alia that he shall use the premises strictly in terms of the lease granted in his favour and further, that he shall pay any legal charges/penalties towards the past misuse, as and when raised by the respondent No.1/NDMC. The said affidavit shall be filed within four weeks from today. Immediately upon receiving the affidavit, the respondent No.1/NDMC shall fix a date and time for the petitioner to be remain present on the spot, for de-sealing the premises and handing back the possession to him.

20. Counsel for the respondent/NDMC states that necessary action of raising a demand, if any, on the petitioner on account of misuse charges, etc., shall be taken within four weeks.

21. The writ petition is allowed and disposed of. In the facts of the case, the parties are left to bear their own expenses.