
(1999) 07 DEL CK 0061

In the Delhi High Court

Case No : Suit No. 373/94

Mohan Lal

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 19-07-1999

Acts Referred:

Citation : (1999) 5 AD 592 : (2000) 1 CivCC 423 : (1999) 81 DLT 313 : (2000) 1 RCR(Civil) 82

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Manoj Ohir, for the Appellant;

Judgement

Manmohan Sarin, J.—The plaintiff instituted the above suit for permanent injunction seeking to restrain the defendant MCD from demolishing and/or sealing property bearing No. N-15 & 16, Vishnu Garden, New Delhi and also from causing any obstruction or interference in any manner in the peaceful possession of the said property. The plaintiff claims to be the owner of the property in possession and has filed the Khatauni being Ex. PW1/1 and Ex. PW1/2.

2. The plaintiff's case is that the property in question was built in the year 1967 and has been used since 1971 for residential cum commercial purposes. The plaintiff contends that on 14.2.1994, the staff of the defendant Corporation without having served any notice u/s 343(1) of the MCD Act came to the site and attempted to demolish the premises in question. The plaintiff is being used for the purposes of shops. There is a tenant by the name of M/s N.K. Steel Works, who had been carrying on its business and has a trade license granted by the Municipal Corporation. The plaintiff also relies on the receipts of house tax paid at the commercial rates.

3. Vide order dated 16.2.1994, summons were directed to be issued to the defendant for 24.8.1994. In the application moved under Order XXXIX Rules 1 and 2 CPC, by an ex parte order, the defendant MCD was restrained from

demolishing or sealing the property bearing No. 15 & 16, Vishnu Garden, New Delhi and also from interfering with the peaceful possession of the plaintiff over the same.

4. This case amply demonstrates the callous neglect of the defendant MCD in defending the suit. The Municipal Corporation of Delhi was duly served for 24.8.1994, when adjournment was sought on the ground of their counsel Mr. K.K. Bucher being indisposed. Thereafter, between 28.8.1994 to 14.3.1997, repeated adjournments were sought on eight dates namely 23.1.1995, 24.1.1995, 28.2.1995, 8.8.1995, 22.1.1996, 20.5.1996, 26.9.1996 and 14.3.1997 on one ground or the other for filing of the written statement. These included non-availability of the counsel, file not being available and other conceivable causes. Ultimately, since none appeared on behalf of the MCD on 14.3.1997 and 11.8.1997, the court directed notice to the standing counsel, who was duly served but there was no appearance on behalf of the counsel on 16.1.1998. Municipal Corporation of Delhi was accordingly proceeded ex parte on 3.9.1998.

5. The plaintiff was directed to file an affidavit by way of evidence. The plaintiff filed the affidavit by way of evidence dated 20.11.1998. The various documents in support of the plaintiff's averments have been exhibited. The documents deserving notice are Ex.PW1/3, which is a certificate issued by the MCD confirming the commercial use of the premises since 1971. The house tax receipts have been proved as Ex.PW1/5 to PW1/15, the telephone bills have been proved as Ex.PW1/16 to PW1/19. The trading license of the tenant M/s. N.K. Steel Works on the ground floor has been proved as Ex. PW1/20, and electricity bills as Ex. PW1/20 to PW.1/23. The registration under the shop and Establishment Act has been proved as Ex.PW. 1/24.

6. From the foregoing documents, the plaintiff has proved on record the existence of electricity and telephone connection as well as the commercial usage of the premises from 1971. The plaintiff's case is that no notice whatsoever of the threatened demolition action or any show cause notice has been served on the plaintiff by the MCD in respect of the threatened action.

7. From the foregoing, the plaintiff has made out a case for the grant of permanent injunction. In these circumstances, defendants are restrained, by a decree of permanent injunction, from demolishing or sealing the property of the plaintiff bearing Nos. N-15 and 16, Vishnu Garden, New Delhi and from causing any obstruction or interference in any manner in the peaceful possession and enjoyment of the premises without the due process of law and issuing requisite statutory notice.

8. The suit is decreed in the above terms with no order as to costs.