
(2010) 05 DEL CK 0188

In the Delhi High Court

Case No : Cont. Cas (C) 775-76 of 2005

M/s Darshmesh Tourist Taxi Ser.

APPELLANT

Vs

Kanta Prasad Sharma and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 447

Citation : (2010) 05 DEL CK 0188

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Geeta Luthra with Mr. A. Agrawal, for the Appellant; Sangeeta Chandra, for the DDA and Ms. Shradha Saxena, for Mr. O.P. Saxena, for the MCD, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Present contempt petition has been filed alleging disobedience and violation of order dated 17.08.2005 passed by this court. Counsel for the petitioner submits that petitioner had filed a writ petition, praying for appropriate direction to the respondents not to interfere in the functioning of the taxi stand at Arakpur Moochi Bagh, opposite Gurudwara Nanakpur, New Delhi. This Court on 17.08.2005 had passed the following orders:

WP (C) No. 13160-61/2005

Notice. Notice has been accepted on behalf of Respondents.

Learned counsel for the petitioner prays for the interim order. Learned counsel for the DDA states that the land in question was handed over to DDA by ministry of rehabilitation. Counter affidavit be filed within 3 days.

List on 24.08.2005. Till then status quo at the site would be maintained.

2. Counsel for petitioner submits that on 17.08.2005 when the status quo order was passed the petitioners were in continuous possession of the taxi stand and

were running their business from the site. Photographs have been placed on record to show that the petitioners were in possession of the site on 17.08.2005. It is next submitted that on 17.08.2005 at 5:30 p.m. after service of the orders the police officials came at the site and threatened that they would forcibly dispossess the petitioner despite the orders dated 17.08.2005. On the same day, the belongings and articles of the petitioner were seized and petitioner was arrested on the basis of an FIR registered u/s 447 IPC.

3. Per contra, Ms.Sangita Chandra, counsel for the DDA submits that respondents have not violated the orders passed by this court on 17.08.2005. On the other hand it is the petitioners, who had violated the orders of 17.08.2005 and in the garb of the aforesaid orders, the petitioners attempted to re-encroach upon the site in question, which is under the peaceful possession of the answering respondents. It is further submitted that letter dated 03.06.2005 was received by the Director, Horticulture (South) from the Director (LM), Headquarters, wherein it was pointed out that in pursuance of the orders passed by the Division Bench on 19.04.2005 in LPA No. 874/2004 & 879/2004 titled as Surta Vs. Union of India and others and Rai Singh and others v. Union of India and others respectively, the Horticulture Department may remove the taxi stand and other encroachment from the land. It is submitted that on 17.08.2005 no taxi stand existed at the site in question as the demolition had already been carried out by the land Management Wing at the site in question on 09.08.2005 with the Police Assistance. After removal of the taxi stand, the possession of the vacant site was handed over by the Section Officer (Horticulture), in charge of the site on the same day i.e. 09.08.2005 and since then the land in question is with the DDA Horticulture Department and is being maintained as part of green area of Nanakpura.

4. In order to prevent any further encroachment at the site, the Executive Engineer (SWD)/IV was requested on 10.08.2005 to provide fencing / boundary wall. A boundary wall was constructed and completed by 14.08.2005. Counsel also submits that when physical possession of the site was under possession and control of the DDA, the petitioners under the garb of status quo order passed on 17.08.2005 tried to re-encroach upon the site and the matter was reported to the police.

5. Counsel for DDA has drawn attention of the court to a copy of the report which was filed with the Police on the basis of which an FIR u/s 447 IPC was registered, showing the date of occurrence of 17.08.2005 in which police was informed that the taxi stand was removed on 09.08.2005 and on 17.08.2005 at 5'o clock, persons of taxi stand have again started parking their taxis and are trying to unauthorizedly occupy the DDA park.

6. Counsel has placed reliance on a communication dated 02.08.2005 addressed to the Deputy Commissioner of Police South West district, Vasant Vihar, seeking police aid for demolition programme for removal of encroachment to be held on 09.08.2005. In support of her plea that action was taken on 09.08.2005 and not

on 17.08.2005 as alleged, she has placed reliance on letter dated 10.08.2005 wherein the Deputy Director had requested the Executive Engineer for construction of the boundary wall. Communication dated 10.08.2005 reads as under:

To,

The Ex. Engineer (PWD)-IV,

DDA, Vasant Kunj,

New Delhi

Sub: Removal of Taxi Stand from Akarpur Moochi Bagh, (Nanakpura),

It is inform you that Taxi Stand existed at the site mentioned above has been removed and also taken under the possession of Hort. Divn. No.IV on 9.8.2005. It is therefore, requested to execute the following civil work at the site.

1. The boundary wall may kindly be provided from the site where the taxi stand was existing.
2. The boundary wall separating the green area and Taxi Stand may kindly be removed so that removed site of Taxi Stand could be maintained as part of green areas.
3. The boundary wall of parking portion may kindly be removed so that this portion may also be maintained as green area of Nanak Pura.
4. The damaged boundary wall of green area of Nanak Pura approx. 30 Metre may also be repaired at once.

You are, therefore, requested to look into the matter personally and aforesaid civil work may kindly be started at once to save the green area of ridge/ Nanak Pura.

An early action in the matter is requested. The report LM/ SHZ is also enclosed regarding removal of Taxi Stand.

Deputy Director (H)

Hort. Divn. No. IV, DDA

7. Counsel for DDA has also placed reliance on the demolition diary of the DDA to show that the taxi stand was removed on 09.08.2005 and physical possession was also taken. Relevant extract of the same reads as under:

LM/ SOUTH/ WEST ZONE

DDA

P.S. R.K. Puram D/P 9.8.05

Today demolition programme fixed for taxi stand in front of Nanak Pura

Gurdwara, it has been removed and physical possession of Horticulture Land has been taken by the Horticulture Department.

Sd/-

9.8.05

(Kamla Prasad Sharma)

So (Horticulture)

Sd/-

24.11.09

AD/LM/SWZ

8. I have heard counsel for the parties and perused the documents placed on record. The petitioner has placed reliance on photographs, which show that two tables as well as board of taxi stand are lying at the site as on 17.08.2005. The DDA has placed documents on record to show that the DDA sought police assistance for carrying out demolition of the taxi stand vide letter dated 02.08.2005 addressed to the Deputy Commissioner of Police. The letter dated 10.08.2005 shows that after removal of the taxi stand a request was made for construction of a boundary wall to protect the possession and the diary extracted above shows that after demolition, the possession was handed over by the Horticulture department on 09.08.2005. In the light of the aforesaid documents, I am satisfied that the possession of the site in question was taken by the DDA on 09.08.2005 and not on 17.08.2005, as alleged by the petitioner. The photographs show only two tables and persons sitting on chairs by itself would not mean that petitioner would be in lawful possession of the site in question on 17.08.2005. The aforesaid documents leave no room for doubt that the possession was taken by the DDA on 09.08.2005 and after passing the stay order, petitioner attempted to re-encroach upon the site. Accordingly, I find there is no disobedience of the orders of the court dated 17.08.2005.

9. At this stage, counsel for petitioner submits that DDA should be directed not to press the FIR and cooperate in compounding the FIR. Taking into consideration the subsequent events, DDA may consider the request of the petitioner.

10. Petition stands dismissed.