
(1996) 08 DEL CK 0056

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 352 of 1993

O.P. Arora

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1996) 63 DLT 871 : (1996) 38 DRJ 725

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Vijay Kishan and B.K. Aggarwal, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) Petitioner has assailed the order dated 1-9-1993, passed by the trial court declining the petitioner's prayer made in an interim application for a direction to the respondent to accept the damages offered to be paid by the petitioner in accordance with the guidelines issued and acted upon by respondent.

(2) A brief resume of facts Along with the rival contentions, shred of unnecessary details, is necessary.

(3) A perpetual lease deed dated 2-9-1948 in respect of Plot No. G-8 Connaught Circus, New Delhi was granted to one Pandit Jagan Nath Ganju. A two and a half storied building was built. The respondent issued a notice for breaches on account of unauthorized constructions and misuse .This was followed by and order of re-entry. In the event, .petitioner subsequently vide a registered sale deed in January 1984, purchased the property. Petitioner applied to respondent L & Do formulation of the lease in his favor conveying willingness to pay damages. The respondent set out the terms and conditions and the damages payable for regularization of the breaches and cancellation of re-entry. The petitioner paid Rs.88,725.95 and agreed to pay the balance in 24 installments of Rs. 28,775.40 each.. On 24-3-1988, the petitioner entered into a supplementary lease deed

recording agreement to pay the amounts as aforesaid and to abide by the terms and conditions set out therein.

(4) The petitioner, thereafter, filed a suit for declaration and injunction in this Court bearing No. 1300/88 praying therein that the damages imposed vide letters dated 10-2-1987 and 31-3-1987, on account of misuse and unauthorized construction by tenants, be declared void and illegal. Petitioner further sought a restraint on the respondent from recovering the said damages or imposing the same as set out in the supplementary lease deed. Petitioner Along with the suit also filed an application under Order 39 Rules I and 2 CPC for restraining the respondent from recovering the balance amount of the damages for the period 1958 to 14-1-1987, or imposing further damages or from dispossessing the petitioner. The Court vide orders dated 14-10-1988, while deciding the I.A. directed the parties to maintain status quo.

(5) The petitioner moved the present application in December 1991, being I.A. 14522 of 1991. In the meanwhile, the suit had been transferred to the District Court and the above application came up before and was decided by the Additional District Judge, Delhi.

(6) The petitioner's case in the application was that the unauthorized constructions and misuse were admittedly carried out by the tenants and not by the petitioner or erstwhile Lessee/owner. The petitioner had taken all necessary steps for stopping the misuse and for eviction of tenants, who had made unauthorized construction. The petitioner succeeded in getting the eviction of the tenants and stopping the misuse. The respondent has duly inspected the premises on 8-9-1991 and satisfied itself that there is no misuse or unauthorized construction. As per the guidelines followed by L & D O, damages for misuse and unauthorized construction stand reduced to 1% if the same was on account of the tenants and the owner/landlord succeeds in getting the same stopped by taking recourse to Law. The petitioner, without prejudice to its rights and contentions, was willing to pay damages as per guidelines. It was, Therefore, prayed that respondent/defendant be directed to accept the damages at the rate of 1% as per guidelines.

(7) The application was opposed by the respondents, who while admitting the guidelines contended that the same were not applicable to the petitioner's case. This was because of the re- entry order that had been passed after service of notice on the petitioner's predecessor in interest, who ceased to have any interest. Further that petitioner was not the owner and mutation had not been affected in its favour. The charges for misuse and unauthorized connection were payable in full. The only concession that could be made available was reducing the penalty charges from 10% to 1%. The petitioner in its rejoinder reiterated that it was the owner. Reasonable time had to be given for getting the misuse stopped and unauthorized constructions moved by the tenant." the re-entry was illegal and it did not affect the ownership right unless it was through the Civil Court.

(8) The trial court vide the impugned order dated 1-9-1993, declined to direct the respondent to accept damages at the rate of 1%. However, it held that the petitioner was free to voluntarily pay any amount of damages to the respondent and if the respondent was not interested in accepting the same, petitioner could deposit "in Court. In case respondent does not accept the same, it would do so at its own risk.

(9) Learned counsel for the petitioner has forcefully assailed part of the reasoning in the impugned order. Mr. Vijay Kishan argued that the trial court had grievously erred in not granting relief because of the status quo order given on 14-10-1988 in I.A. 3252 of 1988 and the same having not been challenged by any of the parties. Mr. Vijay Kishan submitted order dated 14-10-1988 of status quo passed on the petitioner's application under Order 39 Rules I and 2 CPC for restraining the respondents from recovering the damages for misuse and unauthorized constructions cannot come in the way of granting the relief sought in the application. Further that the trial Court erred in proceeding on the basis that as if an application for interim injunction under Order 39 Rules I and 2 CPC was being decided. He submitted that the Court failed to notice that the present application had been filed on the basis of subsequent events namely stoppage of misuse and eviction of tenants through legal process, after filing of the suits. The trial court should have molded and granted relief taking into consideration the subsequent events. Mr. Vijay Kishan argued that the whole suit could be disposed of without further trial upon a decision on the legal issues raised in the application and on implementation of the guidelines. Mr. Vijay Kishan cited a number of authorities to urge that misuse contrary to lease terms could be stopped, even if the landlord himself had let out the property for purpose prohibited *Faqir Chand Vs. Shri Ram Rattan Bhanot*, . Further that the legislative intent was to stop misuse rather than to cancel the lease and take back possession. Mr. Kishan also cited authorities in support of the contention that action for re-entry would be bad if the landlord has initiated legal action against the tenant for stopping the misuse and for eviction and the proceedings were pending. *Amrit Lal Seth Vs. Union of India and Another*, , *Dewan Daulat Rai Kapoor Vs. Union of India and Another*, & *S. Aggarwal Vs. Union of India and Others*, . He also relied on *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, in support of his contention that guidelines were binding. The order of re-entry was assailed as being illegal and without jurisdiction. It is not necessary to consider the authorities cited in these proceedings.

(10) As noticed earlier, respondents have taken the stand that. re-entry having been ordered on 9-5-1988, the petitioner did not acquire any rights as lessee since the original owner could not have sold it after re-entry. Learned counsel for respondent Mr. B.K. Aggarwal, argued that the petitioner, who had applied for mutation of property in his favour, had accepted the terms entered into by supplementary lease deed, which was conditional on petitioner's fulfilling the terms and conditions for payment of damages and penalties specified therein.

The withdrawal of re-entry was subject to fulfillment of these conditions. The petitioner instead of fulfilling the agreed terms filed the present suit and obtained the status quo order. The order of re-entry remained and the guidelines were not applicable to the petitioner.

(11) On a consideration of the entire matter, I find that the part of the reasoning given in the impugned order namely that because of the earlier status quo order, the relief sought in the application cannot be given, is not correct. However, the ultimate conclusion reached cannot be faulted with. The trial court had erred in holding that the status quo order barred the consideration of the application. Nevertheless, I find that the application on which the impugned order was passed, raised a number of contentious points e.g. Validity and subsistence of re-entry order. Status of the petitioner being that of a lessee or simply of a purchaser of the re-entered property. The affect of non-adherence of the terms and conditions of the supplementary lease deed and the effect thereof. The plea of estoppel as regards the terms and conditions of the supplementary lease deed. Applicability of the guidelines to the petitioner's case.

(12) It is not necessary to go into the merits of the rival contentions in respect of these issues. It is sufficient to notice that the directions as sought in the application for acceptance of the damages by the respondents at the rate of 1%, presuppose applicability of the guidelines and a decision on these issues in favor of the petitioner. In these circumstances, the decision of the trial court declining to have these issues disposed of through an interim application cannot be faulted with or said to be one vitiated by error of jurisdiction or resulting in substantial miscarriage of justice, warranting interference in the exercise of jurisdiction under Article 227. The petition under Article 227 liable to be dismissed and is so dismissed. However, considering that the issues involved are primarily legal ones with minimal factual controversies, it would be in the interest of justice to direct that the trial court dispose of the suit as expeditiously as possible. It is so directed.