(2006) 08 DEL CK 0230

In the Delhi High Court

Case No : Writ Petition (C) 6886 of 2005

Pushpa Garg APPELLANT

Vs

M.C.D. RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:
Income Tax Act, 1961 — Section 148

Citation : (2006) 08 DEL CK 0230

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.S. Kela and Dheeraj Kumar, Ajay Jha, for the Appellant;

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—Issue rule. With consent of counsel for the parties the matter was heard for final disposal.

2. The Writ Petitioner in these proceedings claims a direction to the Respondents, particularly the Municipal Corporation of Delhi (MCD) to restore the building and documents, in respect of which a controversy or dispute has arisen between the Petitioner and the third Respondent namely Premises No. 8/11, Roop Nagar, Delhi to its original position.

3. The Petitioner claims inter alias that an appropriate direction to demolish second and third floor on the property and also take action against default officers who allegedly permit the unauthorized construction to be proceeded with.

4. The materials on record disclose that the property was originally owned by Bishan Swarup Bansal who had four daughters. The Petitioner is one of the daughters; the third Respondent claims the property rights from one of the other daughters. The third Respondent had filed a suit for permanent and mandatory injunction against the Petitioner seeking him to be restrained from interfering with the possession. In the course of those proceedings the Petitioner admittedly filed a counter claim in which it was contended that the premises being occupied

by the third Respondent was unauthorizedly put up. Apparently one of the issues is that as per a Will said to have been executed by the owner late Shri Bishan Swarup Bansal, the legatees were granted one flat each and also imposed a restriction on not selling the flat but in the first instance offering a pre-entry clause.

5. Learned Counsel for Respondent No. 3 (plaintiff in the proceedings) relied upon the averments made by the Petitioner in the course of the counter claim as also the written statement to say that the allegations vis-a-vis unauthorized construction have been made in those proceedings also and that the same are pending adjudication. It was also contended that one of the allegations made in these proceedings namely as to the alleged tempering of the will in as much as the site plan attached to it, is said to have been changed, was also urged in the course of certain interlocutory proceedings, filed by the plaintiff (Respondent No. 3 in these proceedings). The Trial Court had prima facie held against the Petitioner in those proceedings. I have been taken through the averments in the suit namely civil suit No. 284/2004 and also the writ petition. I am of the opinion that the disputes raised in these proceedings as well as the disputes arising consideration and determination by the Civil Court are substantially similar if not identical. The Petitioner''s counsel Mr. Kela, appearing on behalf of the Petitioner, further urged that the issue of the correctness of the record with the Sub-Registrar does not directly arise for consideration in the suit.

6. It is apparent from the above discussion that the dispute in this case is primarily between two sets of legal representatives i.e. heirs or persons claiming them in terms of the will of late Bishan Swarup Bansal. The question as to whether the premises occupied by the third respondent (the plaintiff in the civil proceedings) are lawful, and whether the construction is authorized directly in issue in these proceedings. As observed by the Civil Judge in the Order dated 18.12.2004 such issues require consideration after evidence is led on behalf of the parties. It is a settled proposition that a writ court, expressing judicial review in Article 226 proceedings ought not to decide title disputes and purely private civil disputes which require analysis of oral testimony and consideration of documentary evidence. The other settled principle, is that in such public law related proceedings (as writ proceedings unquestionably are) the court requires from adjudicating upon disputed questions of fact.

7. During the pendency of this writ petition notice had been issued to the Income Tax Department. The Court had inter alias directed on 29.11.2005 that the Income Tax Department ought to conduct an inquiry having regard to certain averments in the counter affidavit of the third Respondent and the rejoinder of the Petitioner. Mr. Jha, appearing on behalf of the Income tax Department has placed on record a status report to the effect that notice u/s 148 of the Income Tax Act has been issued to Shri Pawan Kumar Goel for the assessment year 2003-04 and the property in question has been referred to the District Valuation Officer. The said status report is hereby taken on record. It is open to the Income

tax Authorities to continue with the proceedings and take steps in accordance with law; they may record the statements of all the concerned parties. The enquiry need not be confined the parties in these proceedings and may include other persons who were parties to the transaction, if in the opinion of the Income Tax Authorities, such course of action is warranted.

8. As far as the contention that the question regarding the genuineness of the site plan annexed along with the will is concerned, I am of the opinion that when the parties are before the Civil Court essentially in respect of a private dispute it is essential the aggrieved party to either amend its counter claim or institute independent proceedings, seeking proper relief by way of a decree or cancellation of the will along with the map. This course of action would be appropriate since there cannot be two sets of cases, one pending on the file of this Court and the other in the Civil Court, dealing with overlapping issues. The course suggested would be appropriate, and avoid multiplicity of litigation, and the possibility of conflicting orders. Besides, the question of whether the site map annexed with the will, was forged or result of any manipulation, would inevitably need enquiry and recording of deposition, which the civil court would be better equipped to do, since the parties are already failing each other in litigation before it.

9. In view of the above discussion, the writ petition is disposed off granting liberty to the Petitioner to take such steps to approach the Civil Court and to initiate appropriate proceedings or amend the counter claim in the pending civil suit as the case may be.

10. It is made clear that the disposal of the writ petition is independent of the proceedings which may be initiated by the Income Tax Authorities in accordance with the provisions of law; if the fact situation so warrants.