
(1991) 08 DEL CK 0040

In the Delhi High Court

Case No : Civil Revision Appeal No. 820 of 1989

Rama Association (P) Ltd.

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Citation : (1991) 45 DLT 630

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : P.N. Lekhi, Subhash Mittal and Rajiv Nayar, for the Appellant;

Judgement

S.N. Sapra, J.

(1) The present revision petition is directed against the order dated February 15, 1989, whereby, the First Appellate Court, affirmed the order dated July 19, 1986, by which the trial Court had dismissed the application of petitioner, under Order 39 Rules 1 and 2 CPC ., for grant of temporary Injunction.

(2) Briefly stated, the facts and circumstances, giving rise to the institution of the present petition, are as under : Petitioner, which Is a private limited company, obtained perpetual leasehold rights, from the Delhi Development Authority, respondent herein, in respect of plot No. B-10, Lawrence Road Industrial Area, New Delhi, for a consideration of Rs. 3,13,000.00 , and a regular perpetual lease deed was executed. Thereafter, the construction was raised on the plot, after getting the necessary permission from the Authority from the Authorities. Petitioner has been running its own business in the premises. Clause 4(a) of the lease deed provides that the lessee shall not sell. transfer, assign or otherwise part with possession of whole or any part of the industrial plot, except with the previous consent, in writing of the Lesser. It may be pointed out that at the auction, the plot was purchased by M/s. Rama Associates, a partnership firm, comprising of Shri Rajinder Singh, Shri Devinder Singh, Tarlochan Singh, Shiv Devi and Rjinder Kaur. The partnership firm was converted into a private limited

company, with the same partners, becoming the Directors/ Subscribers. The firm also requested respondent to execute the lease-deed, in favor of the Company. At that time, affidavits were filed that original purchaser of land would not sell or transfer, their shares, representing value of land, without the prior permission of the Lesser.

(3) According to respondent the share were transferred and a majority of the shares were being held by the new Directors and the old Directors, who were the partners, were having nominal "shares. In other words, -according to respondent the control of the company had passed in to the new Directors and the original partners of M/s. Rama Associates, were having only 50 shares each. Petitioner was served with a letter dated August 1, 1983, by respondent there by, pointing out that petitioner had sub let the property to M/s. Lamina Packers and Mouldwel Corporation. In reply, petitioner informed respondent that M/s. Lamina Packers was a sister concern of petitioner and that there was no business of Mouldwel Corporation, that was being done, because, the idea was given up to start any such business. On October 13, 1983, petitioner was asked to furnish the list of the Directors and of the partners of M/s. Lamina Packers and Mouldwel Corporation.) The stand, taken by respondent was that if the Company had changed its Constitution or Subscribers/Shareholders " then the lease was liable to be determined. At the time of the execution of the lease deed, names of Directors of the companies were furnished. As, respondent threatened to terminate the lease of petitioner, so, it became necessary to file a suit for permanent injunction.

(4) Mr. P.N. Lekhi, learned Counsel for petitioner, contends that under law, no conditions can be imposed by respondent. In the lease-deed, which is contrary to the provisions of the Companies Act, 1956, and also opposed to the public policy. Petitioner is a separate legal entity, which is independent from its shareholders, and Directors. Clause Iii of the lease deed, thereby proceeding for automatic termination of the lease-deed, is not legal and constitutional" In fact, petitioner made out a prima facie case, but the Courts below have not applied their mind, in considering these questions. Mr. Lekhi further argued that the case was fully covered by the judgment of this Court in Scindia Potteries and Services Ltd. and Others Vs. Deputy Land and Development Officer, Government of India and Others, .

(5) Three well known principles govern the grant of temporary Injunction. These are; whether, plaintiff has a good prima facie case; in whose favor the balance of convenience lies and whether, plaintiff will suffer an irreparable loss and injury, if the temporary stay is not granted. If, plaintiff is able to raise * substantial questions, which require trial, then, the prima facie case is made out by plaintiff. At this stage, it is not for the Courts to indulge into deeper examination of the merits of the case or to scrutinise the documents closely.

(6) In Scindia Poteries & Services Ltd. & Others (supra) it was held : 4

"IT is well settled that the shareholders of the company are distinct from the company of which they hold shares. It is well settled since *Salomon v. Salomon*, 1897, Appeal Cases 22 (HL), that company is separate and distinct legal entity, and this principle has been reiterated and adopted by the Supreme Court in a number of cases. I am not able to accept this contention that sale of shares is sale of land. The effect of sale of shares may result in passing of control over the lands to the person to whom the shares are sold, but shares themselves being movable, as contemplated by the Sales of Goods Act and as held by the Supreme Court in *Air (53) 1966 Supreme Court 1393 Commissioner of Income Tax v. Standard Vacuum Oil Co.*, that "a share is an interest measured by a sum of money" cannot be land as such. For this reason, the provisions of the Delhi Land (Restriction on Transfer) Act, 1972 cannot be called in aid for the purpose of seeking modification of the order, and seeking an order restraining sale of shares."

(7) Clauses 4(a) and 4 (aa) of the lease deed read as under :

"4(A) the lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot except with the previous consent in writing of the Lesser which he shall be entitled to refuse in his absolute discretion. 4(aa) A copy of partnership deed/Memorandum of Articles of Association as on the date of execution of this lease deed is annexed herewith as Schedule II of this deed. The names of the persons with their signatures Constituting the lessee partnership firm" private limited company are also stated on the margin of every " page of this deed. This Lease/Sub Lease shall stand automatically terminated if there is any change in the constitution of the partnership firm/Private Limited Company (as on the date of the execution this deed) with the prior approval of the Lesser.

(8) In all these clauses, is an embargo not to sub-let, assign or part with possession, except with the previous consent in writing of the Lesser and further, that if there is any change in the Constitution of the Company, prior approval shall be taken from the Lesser. Under law, the Company is a legal entity, separate and distinct from its shareholders and Directors. the lease deed is in favor of the Company, which continues to be the lessee. The question, whether, the reduction of the number of shares, in favor of the original Directors/Promoters, and change of few Directors, would result in automatic termination of the lease, cannot be decided at this stage and for this, trial has to be held. But, admittedly the Company is a legal entity and is the lessee, in whose favor the perpetual lease-deed was executed by the President of India. The original shareholders continue to be the shareholders, though number of their shareholdings have been reduced by transfer. The change of some of the Directors, prima facie does not affect the status of a company. In this regard, reference may be made to the case *Scindia Poteries & Services Ltd. & Others* (supra).

(9) In my view, plaintiff was able to make out a strong prima facie case, and the

balance of convenience is also in favor of petitioner, because if the lease is terminated and re-entry is effected, then, it is the petitioner, who will suffer an irreparable loss and injury. After getting the lease, petitioner has raised a building on the plot, for commercial activities. For this, it is the petitioner who will suffer an irreparable loss and injury, if the stay is not granted.

(10) Under the circumstances of the case, I am of the view that the Courts below have acted contrary to the principles of law and, as such, the impugned orders are perverse. The revision petition is allowed and the impugned orders are set aside. The result is that the application, filed by petitioner, under Order 39 Rules I and 2 Cpc, is allowed. Respondent is restrained from cancelling or terminating the lease of petitioner/plaintiff, with respect to industrial plot No. B-10, Lawrence Road, Industrial Area, New Delhi, till the disposal of the suit.

(11) The trial Court is directed to decide the suit, as expeditiously as possible.