
(1995) 03 DEL CK 0077

In the Delhi High Court

Case No : Interim Application No. 12017 of 1994 and Suit No. 2927 of 1994

Satendra Nath

APPELLANT

Vs

Sushila Rani and Others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1995) 59 DLT 373 : (1995) 34 DRJ 104

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : J.M. Sabarwal and Madhu Tawetia, for the Appellant;

Judgement

Usha Mehra, J.

(1) SH.SATENDER Nath alleges to be the grandson of original tenant Sh. Sarveshwar Nath Nigam. The said Shri Sarveshwar Nath Nigam was inducted as a tenant on the ground floor of the premises in question vide registered tenancy agreement dated 26.1.1938. In the present suit the plaintiff has alleged that the unauthorised construction was in existence from the date of the inception of this tenancy. There has in fact been no unauthorised construction. The plaintiff only carried out permissible repairs for which under the building bye-laws of the Corporation, as per the building bye-law No.6.4.1, for these repairs no sanction of the Corporation was required. Moreover the construction having been carried out by the plaintiff the notice under Delhi Municipal Corporation Act (In short the Act) ought to have been served on the plaintiff. In the absence of such a notice, the action of sealing and demolition is against the law. He had enquired from the landlords about the notice, they have also not received any such notice. Hence the suit. Along with this suit an application hearing 1.A. No.12017/94 seeking an interim injunction against the defendants has been filed. Vide ex parte order dated 30.12.1994, the Vacation Judge of this Court directed the parties to maintain status quo.

(2) Notice of this application was issued to the defendants. Defendants No. 1 and 2 namely Smt. Sushila Rani and Mr. Y. N. Gupta, they are the landlords of the premises in question. Defendant No.3 is the Municipal Corporation of Delhi (in Short M.C.D.). On receipt of the notice of this application the M.C.D. contested this application, inter alia. on the grounds that plaintiff having alleged himself to be a tenant has no right to ask for the notice under the Act. Moreover, this is a collusive suit filed in connivance of landlords. He has concealed material facts from this Court. The averments made in the suit filed by defendant No.1, Smt. Sushila Rani, hearing S.No.2757/94 are para materia the same as in the present plaint. These facts amply prove that the present plaintiff has been put up by defendants No. 1 and 2 i.e. the landlords in order to obtain stay order because they themselves failed to obtain the same against M.C.D.'s order of sealing and demolition. Defendant No.2 who is one of the landlord had filed an appeal under the Act before the Appellate Tribunal. After hearing the Parties, the Tribunal vide order dated 23.12.94 declined to stay the said demolition. Defendants No.1 and 2 have not filed any reply.

(3) However, one Shri Sri Krishan Somani has filed an application seeking impleadment which was listed as I.A.475/95. He wants to intervene on the ground that the plaintiff has concealed the material facts from this Court. That he has vested interest in this litigation. He had in fact originally filed a suit against the landlords i.e. defendants 1 & 2 herein and against tenants of ground floor namely Shri Narender Nath Nigam and Dineshwar Nath Nigam, sons of the original tenant Shri S.N.Nigam, which was listed as Soil No.790/94 before Shri Gurdeep Kumar, Civil Judge, Delhi.

(4) Shri Narender Nath Nigam was impleaded as defendant No.3 in that suit. The landlords i.e. defendants 1 & 2, herein as well as tenants made statements before Sh.Gurdeep Kumar, Civil Judge, on 23.11.94. On the basis of their statements the suit was disposed of.. He further pleaded that Sh.S.N.Nigam, the original tenant left behind Narender Nath Nigam and Dineshwar nath Nigam. After the death of the original tenant, his sons became tenant of this ground floor of the property in question. In his suit, he had asked for restraining the defendants from raising unauthorised construction on the ground floor. Therefore, he is interested in the present suit. He has placed on record the statement made by Narender Nath Nigam the tenant in Suit No.790/94 before Civil Judge. In that suit Mr.Nartender Nath Nigam stated that the construction or for that matter repairs were not being carried out by him. These were carried out by the landlords. All the defendants there under look not to raise any unauthorised construction on the ground floor nor would construct the basement. On the other hand Landlords i.e. defendants 1 & 2 herein in S.No-790/94 admitted that they were carrying out the alleged construction on the ground floor and under look that in future they will not carry out the same.

(5) I have heard, learned counsellor the parties and perused the record. Defendant No.1, Smt. Sushila Rani filed a suit in this Court asking injunction

against" M.C.D. on the grounds that the repairs which she was carrying out on the ground floor did not require any permission under the Building Bye-law No.6.4.1. That no unauthorised construction was being carried out by her. The said suit was dismissed as withdrawn vide order of this Court dated 12.1.95. Perusal of the plaint in Suit No.2757/94 shows that the averments made by the present plaintiff in para 7 is virtually reproduction of the contents of para No..5 of the plaint in Suit No.2757/94 filed by defendant No.1. Similarly contents of paras 8 to 10 of the present plaint are verbatim in the same as paras 6,7 & 7-A of the suit No.2757/94 filed by defendant No. 1: Not only the averments the facts alleged in these paras, even the dates, lines, commas and full stops have been copied from that plaint in Suit No.2757/94. In the corresponding paras of defendant No.1's plaint bearing S.No.2757/94 i.e. paras 6,7, & 7-A, defendant No.1 herein had categorically stated that she was carrying out the repairs and had completed the same. In view of this admission of the landlady in her So il No.2757/94 that she was carrying out the construction on the ground floor of the premises in question, similarly in view of the admission by Mr.Y.N.Gupta, defendant No.2 herein, in his appeal filed before the Appellate Tribunal, M.C.D., that he had carried out the construction on the ground floor, it does not lie in the mouth of the present plaintiff to contend that it is in fact he who carried out the repair is construction against which M.C.D. wants to take action. The revision filed by defendant No.2 against the order of the Appellate Tribunal was listed as Civil Misc. (Main) No,36/95. This court upheld the decision of the Appellate Tribunal and opined that the defendant No.2 herein, appellant in Appeal No.543/AI/MCD/94 had concealed the material facts.

(6) From the narrations of these facts, it is clear that the plaintiff has deliberately concealed these material facts. Mr.Y.N.Gupta, defendant No.2, herein had filed an appeal in respect of 16 unauthorised shops built on the ground floor of the property in question. If the plaintiff had raised these 30 shops on the ground floor then what prevented the landlords from saying so. They on the contrary in their respective suits and appeal took the stand that construction alleged to be unauthorised was carried out by them. They took the stand that it was only permissible repairs. plaintiff would have known about landlord filing those suits. But there is not even a whisper in the plaint filed by the plaintiff to the said effect. Mr.J.M.Sabharwal, counsel for the plaintiff did say that plaintiff was not a party in those suits hence he could not have known about the plea taken by landlords. I am surprised at this argument of the counsel for plaintiff. So much water had flown from the time M.C.D. served the notice on Mr. Raj Kumar Nigam, who it is stated was carrying out the unauthorised construction by building shops on behalf of the landlords and the plaintiff remained silent spectator. So much litigation had gone by & between the landlords and the M.C.D. as well as the intervenors, wherein the Courts prima facie opined that it was the landlords who carried out the unauthorised construction. Matter did not rest at that-in fact in a suit filed by the present intervenor the landlords and the sons of the original tenant made statements that unauthorised construction was being carried out by

the landlords, It is unbelievable that the plaintiff had not known about all these litigations going on between the landlords, the tenants of the ground floor, the Corporation and the intervenor ? Who can believe that? The present suit is, Therefore, gross abuse of the process and misuse of the law and justice and is aimed squarely against the public interest. It would not be wrong to say that there is force in the arguments of Mrs.Madhu Tewalia when she said that the present plaintiff appears to have been put up by the landlords, i.e. defendants 1 & 2 herein to obtain the stay and which through him they managed and thereafter raised large scale unauthorised construction. As against 16 unauthorised shops, now plaintiff is saying there are 30 shops built on the ground floor.

(7) The fact that landlords had admitted that they carried out this construction, the plaintiff prima facie has not been able to prove that this construction was raised by him. Moreover, under the garb of ex parte stay, as against 16 unauthorized shops they have now constructed 30 shops inspite of the status quo order of the Appellate Tribunal. This shows the scant regard such parties have for the dignity of law. This is exactly what was felt by the Appellate Tribunal in his order dated 23.12.94. He was pained to conclude that the appellant i.e. defendant No.2 herein was not entitled to any interim stay, because inspite of the direction of that court to the Parties, to maintain status quo he carried on unauthorised construction in violation of his own undertaking given to that Court. The landlords in the garb of this ex parte stay has taken the benefit by raising large scale unauthorised construction on the ground floor. They have constructed 30 unauthorised shops on the ground floor. This is nothing but a gross abuse of the process of law and justice.

(8) Even otherwise the plaintiff has not placed anything on record to show that he is the grand son of late Sh. S. N. Nigam, the original tenant. If he has been the grand son and a tenant on the ground floor then he ought to have known that the intervenor filed a suit against the sons of the original tenant, which was listed as S.No.790/94, wherein the sons of the original tenants made a statement on 23.11.94. They pleaded themselves to be the tenant of this ground floor and stated that they were not carrying out any repairs or construction. It was the landlord who was doing it. This fact has been deliberately concealed by the plaintiff that is how he got the ex parte injunction. There is not even a whisper of the said fact in the suit filed by the present plaintiff. This also shows that the plaintiff has not come to this Court with clean hands and hence not entitled to any discretionary relief.

(9) It is well settled principle of law that a party who seeks discretionary relief must come to the Court with clean hands. But from the narration of the above facts, it is clear that the plaintiff has concealed very material facts from this Court. He has concealed the factum of intervenor's filing a suit against the tenants i.e. sons of the original tenants for raising unauthorised construction of shops on the ground floor. He did not disclose that Mr. Narender Nath Nigam the

tenant of the ground floor made a statement before Sh.Gurdeep Kumar, Civil Judge, Delhi on 23.11.94. Reading of the said statements made by the defendants in Suit No-790/94 clearly show that this unauthorised construction was being carried out by the landlords, hence an inference can be drawn that the present plaintiff has been put up by landlords with an object to obtain the relief of injunction which they themselves failed to get. As already observed above and for the sake of repetition, the plaintiff has not placed any evidence to show that he carried out construction is tenant. On the contrary, the facts on record and as discussed above show that the sons of the original tenant, namely, Shri Narender Nath Nigam and Dineshwar Nath Nigam state themselves to be the tenants of the ground floor of the house in-question. Not even a whisper is there in the plaint that the original tenant Sh.S.N. Nigam left his sons who claimed themselves to be the tenants of this very ground floor. Presuming that he also is a tenant Along with the sons of late S.N.Nigam, then he must have known about the statements made by them before the Civil Judge on 23.11.94 in SuitNo.790/94, which fact he has concealed from this Court. The mere fact that he was not a party will not absolve him from his liability to disclose all material facts namely who else was leant on this floor Along with him after the death of late S.N.Nigam the original leant. Sons. of the original tenants, claiming themselves to be the tenants had stated in Suit No.790/94 that they were not carrying out any construction. The shops had been built by the landlords and it was the landlords who were carrying out the alleged repairs/construction. In view of this admission on the part of the tenant and the landlords of this premises, the plaintiff cannot be allowed to urge that he was ignorant even about his uncles statement made before a competent Court. The stand taken by the present plaintiff is contrary to the stand taken by another tenant namely Shri" N.N.Nigam. Since the landlords admitted that they were carrying out the alleged repairs which according to M.C.D. was unauthorised construction hence the Corporation rightly served the notice on the landlords through the person who actually was carrying out the construction at the site i.e. Shri Raj Kumar Nigam. In response to that notice, defendant No.2 filed an appeal before the Appellate Tribunal, M.C.D. urging that these were only repairs and not construction and that these repairs were permissible. Now it does not lie with the plaintiff to contend that notice ought to have been served on him. If it is presumed he is tenant then also he is not entitled to any notice in view of the stand of the landlords.

(10) Admittedly, 30 shops have been constructed on the ground floor of this premises, for which no plan has been got sanctioned from the concerned Authority. Therefore, the Corporation treated it to be an unauthorised construction and passed the order of sealing on 24.11.94 against which order, appeal was accepted by the learned Appellate Tribunal on 1.12.94, pursuant to which fresh show cause notice was issued by the M.C.D. to defendant No.2. Defendant No.2 again filed appeal and under look not to carry out any further construction. This statement was made on 1.12.94. In violation of that

undertaking, large scale unauthorised construction has been carried out by defendants 1 & 2 against which complaints were received by the MCD. In view of the large scale unauthorised construction without obtaining sanctioned" plan and which according to M.C.D. are against the building bye- laws, the M.C.D.. served show cause notice to defendants 1 & 2 on 5.12.95, The demolition order was passed on 13.12.94 in respect of these unauthorised construction of 16-20 shops. Now it is stated by the plaintiff that 30 shops have been constructed. This shows that between 13th to 29th December, 1994, when the present suit was filed, almost 10 more shops have been constructed on this ground floor of the premises in question which shows the motive for asking interim stay.

(11) For the reasons stated above I find that plaintiff has not been able to show any prima facie case nor the balance of convenience is in his favor. Rather if the injunction is allowed there are more chances of large scale construction if ultimately found unauthorised would be against public interest. Even otherwise I do not consider it a fit case where discretionary relief of injunction should be granted in favor of the plaintiff, particularly when the plaintiff has not come to this court with clean hands and has concealed material facts from this court. The application is accordingly dismissed with cost of Rs.2,000.00. The interim stay granted stand vacated.