

Nisha Sharma vs.anil Kumar Gupta and Ors

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SooperKanoon Citation : sooperkanoon.com/1205064

Court : Delhi

Decided On : Mar-24-2017

Appellant : Nisha Sharma

Respondent : Anil Kumar Gupta and Ors

Advocate for Def. : Mr. D.K. Rustagi, Mr. Mayank Rustagi, Mr. Manish Kumar Srivastava, Mr. Gaurang Kanth, Ms. Biji Rajesh, Mr. Sunil Goel, Mr. Tanuj Agrawal

Advocate for Pet/Ap. : Mr. Deepak Anand, Mr. Devesh Tripathi, Mr. Unnati Mishra

Judgement :

* % IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on :

24. h March, 2017 + LPA3872016 & CM No.23552/2016 (stay) NISHA SHARMA Appellant Through: Mr. Deepak Anand, Adv. with Mr. Devesh Tripathi and Mr. Unnati Mishra, Adv. Versus ANIL KUMAR GUPTA AND ORS

... RESPONDENTS

Through: Mr. D.K. Rustagi, Adv. with Mr. Mayank Rustagi, Adv. for R-1 to R-4. Mr. Manish Kumar Srivastava, Adv. for R-5. Mr. Gaurang Kanth, Adv. with Ms. Biji Rajesh and Mr. Rahul Singhal, Adv. for R-6/DJB. Mr. Sunil Goel, Adv. with Mr. Tanuj Agrawal and Mr. Supreet Bimbora, Adv. for R-7, R-8 and R-9. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

Ms.G. ROHINI, CHIEF JUSTICE: CM No.23549/2016 (for condonation of delay) For the reasons stated in the application, delay in filing the appeal is condoned. The application stands disposed of. LPA No.387/2016 1. This appeal is preferred against the order of the learned Single Judge dated 30.03.2016 in W.P.(C) No.2095/2016. LPA No.387 /2016 Page 1 of 6 2. The appellant herein claims to be the owner of the property bearing No.469-472, Chandni Chowk, Delhi. W.P.(C) No.2095/2016 was filed by the respondent Nos.1 to 4 herein, who are the tenants of different shops in the property owned by the appellant, challenging the order dated 22.01.2016 of the Director, Directorate of Delhi Fire Service for compliance of the undertaking given by them in W.P.(C) No.5638-45/2005 and as recorded in the order dated 06.04.2005 in the said petition. The said writ petition was disposed of by the learned Single Judge by the order under appeal dated 30.03.2016, the operative portion of which reads as under:

"16. I am therefore of the view that the petitioners should be given an opportunity to construct the water tank. However some conditions need to be imposed including of deposit of certain amount in this Court as security for constructing the water tank within time, in a good-workman like manner and without causing a harm / damage to the remaining property and for complying with undertaking given the Court. Accordingly, the petitioners are permitted to construct the water tank only under their shops and subject to the following conditions: to (i) that if the petitioners within the period of 90 days from today do not complete the work of construction of underground water tank, the respondents no.1&2 would be entitled to disconnect the electricity and water supply to the shops in possession of the petitioners; (ii) the petitioners in carrying out the said work will not cause any disruptions to the egress and ingress to the other shops or to the upper floors of the property; (iii) the petitioners will carry out the work in non commercial hours and on holidays; LPA No.387 /2016 Page 2 of 6 (iv) the petitioners shall on or before 6th April, 2016 deposit a sum of Rs.10,00,000/- in this Court and on or before 19th April, 2016 deposit the balance sum of Rs.15,00,000/- in this Court as security aforesaid; (v) the said sum when deposited be kept in a maximum interest bearing deposit for a period of three months; (vi) if the amount is not deposited,

the petitioners shall immediately stop all the works in the shops in their possession and the permission granted to the petitioners shall stand withdrawn; and, (vii) the petitioners shall be jointly and severally liable for all consequences of the work to be so carried out."

3. As is evident from the orders passed earlier, the petitioners in W.P.(C)No.5638-45/2005 are bound to take all measures to make the said property fire safe. Alleging that they had failed to comply with the said undertaking, the impugned notice dated 22.01.2016 came to be issued by the Directorate of Delhi Fire Service.

4. It was recorded by the learned Single Judge in the order dated 16.03.2016 that the non-compliance of the undertaking was only to the extent of construction of 50,000 ltrs. capacity water storage tank. It appears that the landlord/appellant before us resisted construction of the water storage tank. Having taken note of the same, the learned Single Judge directed in the order dated 16.03.2016 as under:

"9. What is found is that though the place at which water storage tank is to be constructed has been identified and both the petitioners as well as the landlord are willing to bear the cost of construction of the water storage tank but the contractor to carry out the said work has not been identified because of mistrust between the petitioners and the landlord. Both feel that LPA No.387 /2016 Page 3 of 6 5. allowing access to the property for the purpose of construction of water storage tank in the hands of the contractor of the other may cause prejudice.

10. It has as such been suggested that the construction of water storage tank at the place already identified and agreed upon be done by a contractor with the best ratings of DFS.

11. The counsel for the DFS appearing on advance notice states that she will obtain instructions in this regard.

12. That leaves the question of cost of construction to be borne.

13. It has been enquired from the counsel for the landlord whether the landlord, if bears the cost, as he seeks, would claim any increase in rent from the petitioners

for the reason of having borne that cost.

14. The counsel for the landlord states that if the landlord bears the costs, he will not claim any additional right against the petitioners on account thereof and the same will even otherwise not create any equities in his favour.

15. As requested by the counsel for the DFS, list on 22nd March, 2016.

16. The counsels for the petitioners and the counsel for the landlord to on the next date of hearing also place before this Court the drawings identifying the place where the construction is to be carried out as well as the structural engineering computations if any made."

In continuation of the above order dated 16.03.2016, the order under appeal dated 30.03.2016 came to be passed by the learned Single Judge (extracted in para-2 supra). LPA No.387 /2016 Page 4 of 6 6. It is contended by the learned counsel for the appellant that the appellant being the owner of the premises, construction if any in the said premises should be carried out under her supervision only. It is also contended that the learned Single Judge failed to appreciate that it was agreed between the parties in Contempt Case No.690/2010 that underground water tank will be constructed on the basis of the drawings submitted on behalf of the appellant and under the supervision of her representative. The further contention is that the learned Single Judge should not have directed construction of the water tank without appointing any Structural Engineer to supervise the said construction.

7. We have also heard the learned counsel appearing for the respondents.

8. Perusal of the record shows that both the parties are apprehensive to allow the other party to undertake the construction of the underground water tank. Though, the appellant is the landlady but the respondent Nos. 1 to 4 who are tenants, want to retain possession of the shops and do not want any ingress-egress of the landlord in the shops. Admittedly, the underground water tank is proposed to be constructed under the two shops which are in the possession of the respondent Nos. 1 and 2.

9. The litigation between the parties is pending before this Court since 2005 when the Delhi Fire Services served a notice on the appellant as well as the respondents to comply with the fire safety measures. Despite various directions as well as mutual agreements between the parties, the dispute in relation to construction of underground water tank is still pending.

10. We find from the records that in Cont. Cas (C) No.690/2010, both the parties agreed that underground water tank will be constructed on the basis of drawings submitted by Mr. S. N. Sinha and Dr. Maqsood E. Nazar under LPA No.387 /2016 Page 5 of 6 the supervision of Mr. Maqsood E. Nazar. Later in the said contempt proceedings, the respondents have also traced five contractors who were willing to carry out the work under the supervision of Dr. Maqsood E. Nazar but till date no contractor has been engaged due to mistrust between the parties which resulted in delay in the construction of the underground water tank and Delhi Fire Services served another show cause notice to the parties which was challenged before the learned Single Judge.

11. Apparently, the learned Single Judge vide impugned directions has taken into account the interests of both the parties. However, we are of the view that the respondents No.1 to 4 cannot shy away from the consent given by them before the learned Single Judge in Cont. Cas (C) No.690/2010 that the construction will be supervised by Dr. Maqsood E. Nazar.

12. Accordingly, we direct that the construction of the underground water tank will be carried out in accordance with law and under the supervision of Dr. Maqsood E. Nazar as agreed between the parties during the contempt proceedings in Cont. Cas (C) No.690/2010. Rest of the directions of the learned Single Judge shall remain valid and binding on both the parties.

13. With the above direction, the present appeal stands disposed of. CHIEF JUSTICE SANGITA DHINGRA SEHGAL, J MARCH 24 2017 kks LPA No.387 /2016 Page 6 of 6