

Ms. Surinderjit and Others Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-17-1992

Reported in : AIR1993Delhi130; 1992(24)DRJ237

Judge : C.L. Chaudhary, J.

Acts : [Delhi Development Act, 1957](#) - Sections 31-A; [Constitution of India](#) - Articles 14 and 226

Appeal No. : C.M. No. 3125 of 1992 in C.W. No. 1517 of 1992

Appellant : Ms. Surinderjit and Others

Respondent : Delhi Development Authority

Advocate for Def. : Rajiv Nayyar, Adv.

Advocate for Pet/Ap. : S.P. Kalra and; P.C. Dhingra, Advs

Judgement :

ORDER

1. The petitioners who are four in number have filed this writ petition under Article 226 of the [Constitution of India](#) seeking mandamus and direction to Delhi Development Authority to unseal the building located at L-II/86, New Mahabir Nagar Extension, Outer Ring Road, New Delhi with further direction not to demolish the above-said building without following the procedure prescribed in

law.

2. The case set up by the petitioners is that they are bona fide and innocent purchasers of various portions of the building constructed on the plot known as L-II/86, New Mahabir Nagar Extension, Outer Ring Road, New Delhi. According to their knowledge the building in question was constructed 7 years back. The property is assessed to House Tax. Delhi Electric Supply Undertaking has also sanctioned electricity connection in the building and the telephones are also installed in the building by Mahanagar Telephone Nigam Limited. The petitioners have been able to obtain a copy of the Khasra Girdawari dated 11-10-1985 of the property which discloses that the property in question is located in Khasra No. 35/155 and the plot in question is about 173 Sq. Yds. and falls in abadi area. The plot stands duly mutated in the name of one Shri Raja Singh s/o Shri Watan Singh. All the petitioners have purchased various portions of the building constructed on this plot from one Mr. Ashok Kumar Manchanda or his attorney and have already made the full payment of the property purchased by them.

3. The petitioners have been able to ascertain that the property has not been notified as the Development area under the Delhi Development Act. In fact the petitioners have been able to obtain a copy of the letter dated 27-12-1983 written by the Joint Director (U VC), Delhi Development Authority to Shri Santokh Singh, Welfare Federation, Mahabir Nagar Extension, New Delhi stating that various portions of the said colony have been handed over to the MCD and the rest of the portions were to be handed, over to MCD. It is also pleaded that the village Nangli Jalib has been declared as the urbanised village and is exempt from the provisions of the Building Bye-Laws of DDA, MCD and the NDMC. The Building Bye-Laws of DDA are therefore not applicable to the property in question.

4. On 10-2-1992 at about 2 p.m. some officers of the DDA came to the property along with the police and without giving any notice, the petitioners and other persons occupying the properties were asked to immediately vacate the building. Within 15 minutes the petitioners were forced out of the building and the DDA officers with the police help rolled down the shutters and affixed their locks, A notice was also put up on the said building, which read as under:--

'This building has been sealed. If any person breaks the seal, will be booked under the law. Deputy Director (LM)Date: 10-2-1992 LPB (West) DDA'

The petitioners protested against the arbitrary and high-handed attitude of the DDA officers. In spite of their repeated protests and requests for the reason why the locks have been put they were not informed about this thing. The petitioners also lodged FIR with the Police Station, Tilak Nagar, but without any result. They tried to contact the officers of the DDA, but none disclosed them the reasons or orders for sealing the property. According to the petitioner, under the law, before the DDA could seal and put its own lock on the building the persons who were in occupation of the building for the last several years have a right to be issued notice, heard and given an opportunity to represent themselves. The DDA could not act unilaterally, contrary to the provisions of natural justice and provisions of law. Even up to the date of filing of the writ petition no copy of the order for sealing the building has been supplied to the petitioners or served on any of them. The petitioners are petty shopkeepers who have invested their life savings to purchase portions of the said property. They are entirely dependent upon their business being carried on from the suit property for meeting their day to day expenses and livelihood. All the goods and files, records and furniture and the belongings of the petitioners are lying within the premises in question. The petitioners are not even in a position to have a look at their records and files and carry on their daily business. Irreparable harm is being caused to the petitioners.

5. As nothing was heard from the DDA the petitioners were obliged to file an application/appeal before the Appellate Tribunal of the DDA. It was explained in the appeal that in spite of best efforts and repeated requests and even written letters the DDA has failed to furnish and give a copy of the order under which it has sealed the building. The Appellate Tribunal was of the opinion at the time of hearing of the appeal that without certified copy of the impugned order the appeal was not maintainable. However, on the appeal filed by the other petitioners the Tribunal was pleased to issue notice to the DDA to produce, the file and the order for sealing of the building to determine whether the Tribunal had jurisdiction to entertain the appeal or not. On 27-3-1992, after repeated adjournments, the DDA produced the record/order before the Tribunal in a sealed cover and the following

statement was made by the Deputy Director and the counsel for the DDA :--

'Premises No. 1-2/86, Mahabir Nagar Extension involved in this appeal were sealed under the orders of Vice Chairman of the DDA in connection with a Vigilance Enquiry against the staff of the DDA and that I have brought the concerned file and have shown to the court a copy of the order under which the building was sealed but since it is confidential matter and the inquiry is still in progress I am not finding the copy of the said order contained in the documents brought by me. The premises have not been sealed by the respondent in exercise of the powers vested in the respondent by Section 31A of the D. D. Act.'

From the statement made on behalf of the DDA, the Tribunal held that the appeal was not maintainable. It is alleged that the action of the DDA to seal the property under orders of the Vice Chairman pursuant to Vigilance Enquiry is absolutely illegal, invalid, incorrect and arbitrary. The DDA has no power to seal any building on its whims and fancy without following procedure prescribed under law complying with principles of natural justice. The pendency of the vigilance proceedings against the officers of DDA does not empower and give authority to Vice Chairman to seal the building. The Vice Chairman has got no arbitrary power or authority to seal any building except the powers conferred on him under the law.

6. The writ petition came up for admission before a Division Bench of the Court on 20-4-1992 and the Rule was issued. Thereafter the petitioner has filed an application being C. M. 3125/1992, which is under disposal, for direction to the DDA to de-seal the property and further restraining the DDA from demolishing the property. The allegations made in the application are similar to those made in the writ petition.

7. Notice of this application was given to the DD A. Despite four opportunities no reply to this application has been filed. Mr. Rajiv Nayyar, appeared on behalf of the DDA and addressed arguments. Mr. Nayyar contended that the land in question was acquired in the year 1974 and it was put at the disposal of the DDA for development. In support of his contention he has filed a copy of the award of the acquisition of the land. It was further contended by Mr. Nayyar that the petitioners are trespassers and they have raised a building without any authority of law and

that is why the DDA has sealed the property.

On the other hand the contention of Mr. Kalra, appearing for the petitioners is that the contention now raised by Mr. Nayyar was not put forward before the Appellate Tribunal. It was further contended by Mr. Kalra that the petitioners have purchased the property and they are in possession. The DDA could seal the property or take any other action in accordance with the provisions of the relevant laws. The order of the Vice Chairman for sealing of the property is arbitrary and without authority of law. There is no other provision except Section 31A of the DD Act under which an order for sealing of the property could be made. Even under section 31-A, no order for sealing of the property could be made unless the petitioners were given a reasonable opportunity to show cause against the proposed action. No such opportunity was afforded to the petitioners. In support of his contention Mr. Kalra relied upon a judgment of this Court delivered in the case of Asian Hotels Limited v. DDA : C.W.P. 750/1990 decided on 12-3-1990, wherein it was held that the person in occupation must be heard before passing any order for sealing of the property.

8. I have given my thoughtful consideration to the matter involved. In my opinion the contention of Mr. Kalra is well founded. As disclosed in the petition the property was constructed long back. The petitioners were in occupation of the property. Besides Sections 31-A of the Act, the Vice Chairman had no authority or power to pass any order for sealing of the property. Even while exercising power under Section 31-A of the Act, by the Authority, the petitioners' are entitled to a show cause notice and reasonable opportunity of being heard. The order passed by the Vice Chairman is obviously in violation of Section 31A of the D. D. Act and cannot be sustained.

9. The other contention of Mr. Kalra is that the DDA threatens to demolish the property without following the procedure prescribed under the law. I have considered this contention also. In my opinion the DDA has no right to demolish the property without following the procedure prescribed under the Act.

10. In view of my discussion above, I hold that the order of the Vice Chairman for sealing the property is without any authority and cannot be sustained. I direct the

DDA to de-seal the property within 72 hours. The DDA is further restrained from demolishing the property without following the procedure prescribed under the Act. It is made clear that this order shall not prejudice the rights of the authorities to pass an order under Section 31A of the Act after complying with the requirements of the law. The C. M. is disposed of in these terms.

11. Petition allowed.

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