

T.A. George and anr. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jul-07-1994

Reported in : 1994IIIAD(Delhi)494; AIR1995Delhi131; 55(1994)DLT151; 1994(30)DRJ153; (1994)108PLR11

Judge : Jaspal Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39

Appeal No. : First Appeal No. 203 of 1993

Appellant : T.A. George and anr.

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : Mukul Rohatagi,; Ravi Gupta,; Arun Jaitley,;

Judgement :

Jaspal Singh, J.

(1) The appeal calls for no judicial heroics to cope with the issues involved. it so happened that St. Sophias' Christian Education Society (here inafter called the Society) which was running a school in Kirti Nagar in the early seventies inducted in December 1983 one Mr. M.M. Samuel as its member and within a few days of having done so, made him the Chairman of the School Managing Committee. However, before that the Society had been allotted four acres of land at Paschim

Vihar for constructing and running a school thereon. No doubt a school duly recognised by the competent authorities is now running On that land but not perhaps without ripples. The reason is the legal battles being fought in the name of the Society in the corridors of the law courts. Fissures appeared in the year 1984 when Mr. Samuel was allegedly removed from the Chairmanship of the Managing Committee. Admittedly, despite this so-called removal, Mr. Samuel continued running and managing the school as its Chairman till February, 1988 when death removed him from the scene. His claim, it appears, was that the Society had elected a new Governing body sanctioning his continuance and that the so-called Governing body which took action against him was acting without any sanction of law, it having become defunct on account of its supersession by another duly elected body. The battle-lines were thus clearly drawn. The first salvo was fired in the form of Suit No. 101 Oof 1984 instituted by the present appellants seeking to restrain Mr. Samuel from interfering with the functioning of the society and an induction with regard to the premises. That suit is still pending but no ad-interim injunction has been granted so far. This was followed by Suit No.552 of 1984 against the Director of Education and C.B.S.E. seeking non-affiliation of the school being run by Mr. Samuel at Paschim Vihar. However, it appears that despite such efforts the school was upgraded up to. Senior Secondary level and the CBSE too granted affiliation. This was challenged through Writ Petition No.1744 of 1986 which was admittedly dismissed. Yet another suit filed by the appellants is 1346 of 1987 seeking to restrain the respondents from raising some construction at Paschim Vihar. As noticed above, Mr. Samuel died in February 1988. The following year saw the institution of yet another suit being number1610 of 1989. The ad-interim order passed in that case needs to be noticed. It was:

'ISSUE notice to defendants for 10th July, 1989. dusty. In the meanwhile, defendants by themselves and /or through their agents, employees are hereby restrained from interfering with the functioning of the society as well as the Managing Committee, appointed by plaintiff No.2. Defendants arc further restrained from holding any kind of demonstration within the school premises or Within the distance of 100 metres from the school premises. dusty.'

It may, however, be noticed, for I feel it to be important, that in the suit it was nowhere specifically pleaded that the appellants were in actual physical possession of the premises or that it were they who were running and managing the school and it appears from the subsequent suit No.2243 of 1992 of which this appeal is an offshoot that even at the time of the institution of the suit the appellants were not in actual physical possession of the suit premises nor were they running or managing the school at Paschim Vihar.

(2) A few things clearly emerge out from the past of this case and they need to be emphasised before striding ahead.. First, right from the day Mr. Samuel was appointed as the Chairman of the Managing Committee of the school in the year 1984 till his death in February 1988, it was he as the Chairman who was running and managing the school and was in physical possession of the land allotted to the school at Paschim Vihar and that at the time of the institution of the suit also it were the respondents who were in possession and who were managing the whole show. Yet another thing which I feel must be emphasised is that the stand of the respondents has all along been that they were the legally constituted managing Committee of the Society. In short there were and still are two separate managing Committees each claiming to the exclusion of the other, to be the duly and legally constituted body.

(3) Time now to come to Suit No.2243 of 1992. Significantly in the plaint no reference was made to the pendency of suit Nos. 1010 of 1984, 1048 of 1984, 552 of 1984 and suit No.1346 of 1987. A reference was made to some efforts at reconciliation made by Hon'ble Mr. Justice C.L. Chaudhary of this court. There was no mention as to whether that exercise was made in some suit and was it an endeavor at personal level. No reference was made that in Suit No. 1010 of 1984 an ad interim injunction with regard to the school at Paschim Vihar was sought but no relief had been granted. In fact no details of the pending cases were given. As already noticed, it was nowhere claimed specifically that the appellants who were plaintiffs in the suit were in actual physical possession of the premises or were running or managing the school. The fact that since 1984 only Mr. Samuel and other respondents had been in actual physical possession of the premises was suppressed. The court was also not informed that since 1984 the respondents had

been running and managing the school. It was also kept back from the court that there had been two parallel managing Committees and that the respondents also claimed to be a legally constituted managing Committee. The court was also kept in dark that on September 19, 1986 in Civil Writ No.1 744 of 1986 a Division Bench of this court had passed the following order:

'WE see no reason to interfere in our writ jurisdiction. There appear to be two groups each seeking its claim to the management of the society. In fact, civil suits are already pending in this court between the two groups. The disputes are substantially civil disputes and can properly be resolved by a civil court. Dismissed.'

Not only this, the appellants in the plaint rather gave an impression as if the respondents were claiming their rights only on the basis of their being heirs of Mr. samuel. An attempt was made to show that the claim being on the basis of succession, the respondents had no legal right as Mr. Samuel' had only been appointed as the chairman of the Managing Committee of the school -a post which was; in any case, not heritable. And it was in such a situation that the following ex parte order of injunction was passed by My Lord Mr. Justice Dalveer Bhandari on July 8, 1992:

'8.7.92Present: Mr. George Vergese for counsel for the plaintiff. Suit No.2242/92 Let the suit be registered. Summons be issued to the defendants on plaintiff filing the process fee and regd. covers within three days for 20th November, 1992 returnable before the Deputy Registrar. is No.9101/92 Notice for 14th August, 1992. In view of the facts and circumstances explained in this application it has become imperative to grant ex-parte injunction. Accordingly defendants, their agents and employees are restrained from interfering with the functioning of the society as well as the Managing Committee. The defendants are further restrained from holding any kind of demonstration within the area of 100 yds from the school premises or within the school premises situated at A-2, Paschim Vihar, New Delhi till further orders. Compliance of Order 39 Rule 3 be made within three days. sd/- July 8, 1992. Dalveer Bhandari, J.'

This still is not the end of the matter. Although Order 39 rule 3 of the Code of Civil Procedure was to be complied with within three days, there was no such compliance and before the respondents could be served, the present appellants moved an application under Section 151 of the Code of Civil Procedure seeking police aid for implementation of the order. The court ordered for its notice to the other side but the appellants avoided getting the respondents served by not filing the process fee and on August 31, 1992 obtained the following ex parte order:

'PRESENT:Mr. P. L . Sabastian, counsel for the plaintiff. I.A No.10741/92 This application has been filed under Section 151 of the Code of Civil Procedure. Notice to the otherside for 16th October, 1992. Meanwhile Station I house Officer of Police Station Paschim Vihar, New Delhi, is directed to comply with the order of the court dated 8th July, 1992 and file a compliance report within two weeks from today. sd/- August 31,1992. Dalveer Bhandari,J.'

The game was thus accomplished. The respondents who were all along in possession since 1984 were ousted physically with the assistance of the police.. It was only when the respondents appeared before the court and presented their side of the story that the learned judge did away with the order passed earlier and instead appointed an outsider as Principal of the School for interim period directing him to run and manage the school till the application under Order 39 was finally disposed of. However, before this court could really dispose of the application, the suit was sent back to the District Judge on account of some changes in the pecuniary jurisdiction of this Court.The District Judge in turn assigned it to Mr. S.N.Dhingra an additional District Judge who, by holding that the appellants had not approached the Court with clean hands and were guilty of suppression of material facts, dismissed the application under Order 39 rules 1 & 2 of the Code of Civil Procedure and restored the status quo ante with the direction that the appellants before me shall not interfere in any manner with the management of the school run by the respondents who

'SHALL be in the control and management of the school at A-2 Paschim Vihar as before 7-7-1992'. Hence this appeal.

(4) The appellants say that the respondents have no right in law to be in possession of the premises or to run and manage the school and secondly that the learned Additional District Judge was not justified in saying that they had not approached the court with clean hands and as such were not entitled to the equitable relief of ad-interim injunction.

(5) It is because of the contentions raised that in the preceding paragraphs I took the precaution of not only unravelling the past history but also the rival claims of the parties. It would be nauseating to repeat them again. Suffice to say that both sides claim to be the legally constituted bodies authorised to possess the premises and run and manage the school at Paschim Vihar. It would be too slippery in the present state of fluidity to jump to any conclusion. The issue raised is contentious and needs much deeper probe for which tools are yet to be provided by the parties in the shape of evidence. However, one thing is certain and it, and as already noticed, is that right from the appointment of Mr. Samuel as the Chairman of the Managing Committee the appellants have not been having any say in the management or running of the school nor were they in possession of the premises at the time of the institution of the suit or much before that. This being the position coupled with the claim that the respondents are the legally constituted persons to run the show, I do not think the order of the learned Additional District Judge can be faulted.

(6) Woodroffe has rightly observed in his 'Law Relating to Injunctions' (12th Edn. page 101) that the 'power which the court possesses of granting injunctions whether interlocutory or perpetual (however salutary) should be very cautiously exercised and only upon clear and satisfactory grounds, otherwise it may work the greatest injury'. The very fact that the exparte injunction sought and granted to the appellants by this court was later on not confirmed by the same learned single Judge goes to show that the appellants were, if I may say so, not found to have made out a case for such an order. The arrangement made with regard to the appointment of an outsider as the Principal was merely an interim measure but surely that arrangement was also to the disadvantage of the respondents since it too, like the earlier order, ousted them from running and managing the school, something which they had been doing since the year 1984. In any case, what the

learned Additional District Judge has done is that he has while dismissing the application under Order 39 Rules 1 & 2, restored the status quo ante which had first been disturbed by an order of this court and which order itself was found by this court to be not worthy enough to require continuance and secondly by nomination of an outsider as a Principal despite there being no material to prima facie prove any mismanagement by the respondents and which, in any case, was an interim measure till the disposal of the application under Order 39. I feel that the order cannot be faulted since it restores the position which was effective right from the year 1984 and which, for what has been recorded above, did not merit any disturbance not at least at the stage of interim injunction. I may also say, with respect, that the impugned order is in total confirmity with the long established principles governing the law of injunctions. As we all know, injunctions were derived from, and are the modern counterpart of, interdicts of Roman Law and the impugned order which rightly reinstates the respondents after the disturbance by the two orders of this Court, reminds me of the ordinary form of the interdict which, as restored by Keller, was as follows:

'THE place whence thou, Numerous Negidius, thy slaves or procurator, has this year violently ousted Aulus Agerius, his slaves or procurator, as he alleges, which he possessed without violence, clandestinely, or permission in respect of thee, in that place do thou reinstate him'.

(7) It needs no reminding that injunctions are a form of equitable relief and have to be adjusted in aid of equity and justice to the facts of each particular case. No court has ventured, nor will I, to lay down absolute propositions and thereby forge fetters. 'However, some principles are too well-entrenched and if at all we need to be reminded, they are: (1) Whether the petitioner has made out a prima facie case; (2) whether the balance of convenience is in his favor i.e. whether it would cause greater inconvenience to him if the injunction is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if the temporary injunction is granted; and (3) whether the petitioner would suffer irreparable injury. And what do we find in the present case? Both sides, by forcefully projecting themselves as rightful claimants have made it difficult to tilt in favor of the appellants. But then, let us take it, for argument's sake,

that the appellants have made out a prima facie case for the grant of an ad-interim injunction order, but then the mere circumstance that the appellants have a prima facie case does not necessarily mean that the order of temporary injunction must follow. The court has also to consider the question of irreparable or serious injury and the balance of convenience. With the first condition as sine qua non, the petitioner must satisfy at least two conditions conjunctively. Surely, and I say it on authority, a mere proof of one of the three conditions would not take the appellants out of woods. And, what about the remaining two? The respondents being in long undisturbed possession and having run and managed the school since 1984 and the appellants being clearly out of possession, can it be said that balance of convenience lies in favor of the appellants? Surely not. An interim injunction being essentially an equitable and a discretionary remedy, I am firmly of the belief that court will also have to be satisfied that the comparative mischief or inconvenience which may likely arise from withholding an injunction will be greater than that which may arise from granting it. And, the appellants fail to meet this requirement too. Afterall, an injunction is not and cannot be granted as a matter of course.

(8) True, the learned Additional District Judge has not gone into the three principles referred to above nor has he discussed the matter in their light. He should have. Any how, to satisfy its conscience this court has.

(9) Let us recollect again. The learned Additional District Judge has, dismissed the application of the appellants for grant of ad-interim injunction on the ground that they had not approached the Court with clean hands and had suppressed material facts. I tend to agree. He has laid bare the facts in support. So have I in the preceding paragraphs. The appellants were bound to state all the material facts. They not only suppressed them but even misrepresented them to a significant extent. For an ex parte interim injunction the Court requires uberrima fides on the part of the applicant. This being the accepted legal position right from the days of King's Bench Division Judgment in the king v. The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington 1917(1) Kb 486 the learned Additional Judge legally could and rightly did refuse to grant to the appellants the relief of temporary injunction. As for the order of reinstatement, it was to flow naturally. In any case it is just and proper for the reasons already

supplied by me above.

(10) The impugned order is confirmed. However, I do feel that it would be in the interest of Justice if two-conditions are imposed and which I do. They are: (1) The respondents shall not make any additions to or structural changes in the buildings already in existence without prior permission of the trial court, and (2) the respondents shall keep and maintain regular books of accounts and shall get the accounts audited and checked by a Chartered Accountant every year and a copy of the report shall be submitted to the trial court with due promptitude.

(11) The appeal is dismissed with costs. Counsel fee assessed at RS.1000.00

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