

Rakesh Sinha Vs. State and ors.

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Court : Delhi

Decided On : Sep-18-1998

Reported in : 76(1998)DLT533; 1998(47)DRJ595

Judge : Devinder Gupta and; N.G. Nandi, JJ.

Acts : Service Law

Appeal No. : Crl. W. No. 478/98

Appellant : Rakesh Sinha

Respondent : State and ors.

Advocate for Def. : S.S. Gandhi, Adv. for respondents Nos. 1 and 2

Advocate for Pet/Ap. : Bhupesh Narula, Adv

Disposition : Application dismissed

Judgement :

Devinder Gupta, J.

1. In this petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. instituted on 27.5.1998, direction is sought against respondents Nos. 1 and 2 to register a case against respondents Nos. 3 to 8 for the cognizable offences, alleged to have been committed by them and further to

restore possession to the petitioner of the premises bearing No. 80/77-A Malviya Nagar, New Delhi.

2. The petitioner claimed that he had been working as a Music Teacher in Malviya Public School and was allotted the aforementioned school premises in December, 1992. He had been requesting the school authorities for increase in salary and to confirm his services, which was not done. After the death of B.K.Chawla in January, 1990, it is alleged that his sons, namely respondents Nos. 5 and 6 came to his premises Along with respondent No. 7 on 28th and 29th January, 1998 and threatened the petitioner that in case the premises are not vacated, he would be killed. A complaint to that effect was lodged with the police. The petitioner claims that apprehending danger to his life, on 1.2.1998 he left his home town Ghaziabad, after taking leave. On 7.2.1998, when he came back, he wanted to approach his residence, but was prevented by respondents Nos. 5 to 8. On the same day, a letter was sent to the Principal of the school for permission to remain on leave.

3. Again, on 9.2.1998, it is alleged that he tried to enter the premises, but was prevented from doing so. When the petitioner told the aforementioned respondents that he had come along with his brother to take his luggage and to vacate the premises, he found considerable luggage removed from the premises. On inquiry, the aforementioned respondents informed that the petitioner will have to sign on stamp papers and only thereafter the remaining luggage will be returned. The petitioner was handed over few papers. He could not understand as to what was written thereon. Not only the petitioner was made to sign, but signatures of his brother were also obtained. The petitioner states that in this manner, he was made to resign forcibly. As such, on 23.2.1998, the complaint (Annexure-C) was sent by the petitioner to Deputy Commissioner of Police, Crime Branch for registration of proper case and for return of luggage. When no action was taken and no case was registered, he had no option, but to approach the Court.

4. After show cause notice to respondents Nos. 1 and 2 only, Mr. Gandhi put in appearance on 13.8.1998 and a statement was made that FIR will be duly registered on the basis of the petitioner's complaint dated 23.2.1998 (Annexure-C)

within a period of two days. In view of this statement, the two prayers did not survive for consideration. On that day, learned counsel for the petitioner contended that the petition would now survive for consideration with regard to the prayer for restoration of possession.

5. We have heard learned counsel for the petitioner and Mr. Gandhi on behalf of respondents Nos. 1 and 2. Learned counsel for the petitioner placing reliance upon decision of this Court in *Anju Devi v. Commissioner of Police and Ors.*, : 55(1994)DLT167 vehemently urged that extraordinary jurisdiction under Section 226 can be exercised in appropriate cases for restoration of possession. It is also one of such cases where powers under Article 226 of the Constitution of India deserve to be exercised.

6. Having considered the facts, as disclosed in the petition with the accompanying documents and having gone through the aforementioned decision cited at the Bar, we are of the view that it is not a fit case for exercise of extraordinary jurisdiction by this Court for putting the petitioner back in possession of the premises. No such prayer for restoration of possession was made by the petitioner in his complaint dated 23.2.1998 (Annexure-C). The only prayers made therein are for return of certain luggage, which according to the petitioner had not been restored to him and for revocation of the resignation letter. With respect to the so called forcible obtaining of resignation, the petitioner has already approached the Competent Authority, namely, the Tribunal constituted under Delhi Education Act for redressal of his grievance. The alleged school accommodation admittedly was in occupation of the petitioner only as licensee. Till it is not held that his resignation was obtained by force or coercion etc., there can be no question of restoration of possession. In *Anju Devi's* case (supra), extraordinary jurisdiction was exercised in the peculiar facts of that case and that only when the Court returned a finding that the police had played a role in the entire episode of putting the respondents therein in possession of the property, which act was held to be beyond jurisdiction. In the instant case, it is not the petitioner's case that possession was obtained by the school authorities from him with the help of police or by the authority having no jurisdiction. So long the resignation is not declared invalid, the petitioner will have no right to stay in the premises. As such, no direction deserves to be issued in this

petition for restoration of possession, as claimed. The petition stands disposed of.

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