

Kanchild Mal and ors. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Oct-12-2007

Reported in : 2007(99)DRJ406

Judge : A.K. Sikri and; Rekha Sharma, JJ.

Acts : [Delhi Development Act, 1957](#) - Sections 14 and 29(2); Public Premises Act, 1971

Appeal No. : Writ Petitin (C) No. 4608 of 2007

Appellant : Kanchild Mal and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Gaurav Sarin, ; Charul Sarin, Advs. for DDA and ; Sanjay Ba

Advocate for Pet/Ap. : Ravinder Sethi, Sr. Adv. and; Naresh K. Thanai, Adv

Disposition : Petition Dismissed

Judgement :

Rekha Sharma, J.

1. I have had the privilege of reading the judgment prepared by my learned brother Justice A.K. Sikri. I give a separate judgment for the reasons which follow. However, first the introduction followed by the issues raised.

INTRODUCTION

2. The shops in question are admittedly on Government land and are on 80 feet wide Mathura Road in between Sai Hospital, Bhogal and Badarpur Road. Sometime in the year 2001, the Delhi Development Authority had initiated proceedings against the petitioners under Sections 14 & 29(2) of the [Delhi Development Act, 1957](#) alleging misuse of land. The notices/proceedings were, however, quashed on the ground that the petitioners were in occupation of the land prior in time to the coming in force of the first Master Plan in 1962.

3. Thereafter, the Delhi Development Authority initiated proceedings under the Public Premises Act, 1971 against the petitioners which led to an order of eviction. Admittedly, an appeal against the order is still pending before the Appellate Authority under the Act. In the year 2006 the petitioners filed writ petition(C) No. 16852-861/2006 seeking stay of demolition allegedly threatened by the Delhi Development Authority. It was pleaded therein that the constructions existed since before 1962. The learned Single Judge who was seized of the matter disposed of the writ petitions on February 6, 2007 with the direction to the Appellate Authority under the Public Premises Act to dispose of the appeals by not later than August 7, 2007 and a further direction to maintain status-quo as to petitioners' possession till the disposal of the said appeals by the Appellate Authority. As already noted above, the appeals are still pending. On June 9, 2007, the shops were sealed. My learned brother says they need to be de-sealed. I, with respect, feel otherwise.

ISSUES RAISED

4. During arguments, following points were urged:

I. That in the earlier writ petitions, the petitioners had claimed to be in possession prior to 1962 and in the year 1981, the Delhi Development Authority by claiming damages had acknowledged their possession.

II. That the order of the learned Single Judge of February 6, 2007 directing to maintain status-quo with regard to possession of the petitioners till the disposal of the appeals by the Appellate Authority under the Public Premises Act has attained

finality as no appeal was filed against that order.

III. That in view of the order of the learned Single Judge of February 6, 2007, the Monitoring Committee ought to have approached the Supreme Court for directions as it did in the case of Khatir Restaurant or with regard to encroachment on Right of Way on Ring Road at Ashram Chowk.

IV. That though the Delhi Development Authority was bound to obey the order of February 6, 2007 passed by the learned Single Judge yet it prepared a note for opinion of the Monitoring committee appointed by the Supreme Court and that the said act of the Delhi Development Authority smacks of mala fides.

V. That despite of order of February 6, 2006 Shri K.J.Rao, the member of Monitoring Committee appointed by the Supreme Court gave direction to seal the premises.

VI. That there being no specific order of the Supreme Court for sealing these shops and as the Supreme Court is not seized of constructions of pre-1962 era the order of the learned Single Judge dated February 6, 2006 ought to have been respected.

VII. That the act of sealing impinges upon the dignity of orders passed by the learned Single Judge.

5. As we all know by now, the Supreme Court has been seized of the matter relating to misuser, unauthorised constructions etc. All these matters in fact are sequel to directions given earlier with regard to hazardous and noxious industries and later shifting of other extensive industries. While such directions were being given more and more violations were brought to its notice. All this led the court to take up the issue of large scale misuse of residential premises for commercial use. In this respect, reference may be made to the orders of the Supreme Court passed from time to time in Writ Petition No. 725 of 1994 titled AQFMY v. Central Pollution Board. In M.C. Mehta v. UOI and Ors. Writ Petition (C) No. 4677 of 1985, the Supreme Court on February 16, 2006 gave as many as ten directions.

6. As per those directions, the violators were called upon to stop misuse on their own within 30 days and file an affidavit with Commissioner of MCD stating that the misuse had been stopped. However, where misuse was not stopped, it was directed 'sealing of the premises shall commence, first taking up violations on roads which are 80 feet wide and more'. The seals could be removed on the owner/occupier 'giving undertaking that the premises would be put to only authorised use.' As per direction No. 8, 'Particulars of cases where violators may have obtained orders of stay will be filed in this Court by MCD'. On March 24, 2006 in the same writ petition, the Supreme Court appointed a Monitoring Committee in order to 'oversee the sealing of offending premises.' The Court also dealt with the cases where the user may have been prior to September, 1962. In such cases, the Court directed:

That if an occupant of some premises claims benefit of the proviso to Section 14 of the Act (DDA Act 1957) and files an affidavit with MCD, to be immediately forwarded to the Monitoring Committee by MCD, stating that since the user was prior to September 1962, he is entitled to protection of the proviso to Section 14 and also stating further that he has not obtained any sanction of building/premises for construction of a residential building and would suffer the consequences of perjury and contempt of court, if the affidavit is found to be false, the Monitoring committee on consideration of such affidavit may direct MCD for the present not to seal such premises and, accordingly, MCD will not seal the premises of the above nature.

7. What is of further significance is what is said in paragraph 11 of the order. It runs as under:

The premises in respect of which the affidavits are not filed, the process of sealing shall commence as already directed w.e.f. 29.3.2006 in so far as the first phase is concerned. The sealing shall continue notwithstanding any order passed by any court....

8. On May 11, 2006 in the same writ petition, the Supreme Court while referring to above cited order directed as under:

On 24th March, 2006, it was directed that sealing shall continue notwithstanding any order passed by any court. Be that as it may, we reiterate that no court other than this Court will have any jurisdiction to make order of de-sealing of the premises under the orders of this Court.

9. On May 7, 2007, the Court further observed as under:

There appears to be difference of view as to how sealing can be carried out, in terms of the orders of this Court and whether sealing has to be done by DDA or MCD. To avoid any confusion, we direct that the Monitoring Committee shall carry on sealing in the presence of functionaries of MCD and DDA

10. If we look into the matter before us in the light of the above referred orders of the Supreme Court, following would clearly emerge out:

(i) The shops constituting misuse in question are on Government land and are situated on a road 80 feet wide which falls within the so called first phase and a notice as directed by the court was duly published.

(ii) Though the petitioners have pleaded to be in possession prior to September, 1962 there is no evidence in its support. In any case, the petitioners did not file any affidavit in terms of the order of the Supreme Court dated March 24, 2006 and thus can neither be heard now to say that their possession is prior to September, 1962 nor can that plea afford any protection to them. The protection may have been available to them had they filed the affidavit fulfilling all the requirements. Having not done so, they lost the opportunity of avoiding the sealing of the premises. Sealing having having taken place on account of fulfillment of all the requisite conditions and on account of non-filing of the requisite affidavit, relief of de-sealing cannot be granted now on the plea that they are in possession since before September 1962. Entertaining this plea and acting on it would negate and rather render ineffectual the order of the Supreme Court. Not only this, the order of the Supreme Court shows that mere possession prior to September 1962 in itself would not have avoided sealing. The owner/occupier was also required to say on affidavit that he had not obtained any sanction of building/premises for construction of a residential building besides rendering himself liable to perjury and

contempt. Why no such affidavit was filed? There is no Explanation. How can then the sealing be faulted and how can the plea that the petitioners have been in possession prior to September 1962 be now made a ground to ask for de-sealing?

(iii) Of course it was vehemently contended on behalf of the petitioners that on December 1, 2006 the learned Single Judge having ordered to maintain status-quo with regard to possession of the petitioners and having confirmed the same on February 6, 2007, the premises could not be sealed. The argument does seem attractive at first sight but loses its sheen the moment it is examined on the touchstone of the aforesaid orders passed by the Supreme Court. From the order of the Supreme Court of February 16, 2006 it would be borne out that when it was ordering stoppage of misuse by the violators themselves on their own and on their failure to do so, to commence sealing by the authorities, it was conscious of the fact that the violators might have obtained orders of stay. This is clearly borne out from direction NO. 8. Though the Court did direct MCD to file particulars of such case, significantly, it did not exclude such cases from the sway of its order to the authorities to commence sealing w.e.f. March 29, 2006.

(iv) That the offending premises were to be sealed w.e.f. March 29, 2006 irrespective of and notwithstanding any stay order by any court was further made clear by the Supreme Court in its order of March 24, 2006 which declares in clear and unambiguous terms that: The process of sealing shall commence as already directed w.e.f. 29-3-2000 insofar as the first phase is concerned. The sealing shall continue notwithstanding any order passed by any court.

11. These two orders of the Supreme Court, the orders of February 16, 2006 and March 24, 2006 were perhaps never brought to the notice of the learned Single Judge before whom complaint was with regard to threatened demolition. In any case, the sealing was done under the orders of the Supreme Court. Mr. K.J.Rao, as a member of the Monitoring Committee was only overseeing the implementation of those orders. If a note was put up before him by the DDA authorities that act too was within the boundaries of the directions given by the Supreme Court. May be in the case, of 'Khatir Restaurant' and 'Right of Way' the Monitoring Committee requested the Supreme Court for direction. We know not all

the facts of those cases. Mere asking of some directions in the some other matter neither dilutes nor obliterates the orders which in any case, fully apply to matters before us. As for Mr. Sanjay Bansal, the Court Commissioner appointed by this Court, he had no role to play. He said nothing and did nothing. Since the Supreme Court had made it clear that the sealing would continue 'notwithstanding any order passed passed by any Court', the order passed by the learned Single Judge presented no hurdle or impediment. The message of the words 'notwithstanding any order passed by any Court' is clear and loud. It silences rather totally obliterates the order of the learned Single Judge.

12. Once it is held that the premises were sealed under the orders of the Supreme Court, it is only the Supreme Court which has the jurisdiction to make an order of de-sealing. I say so on the authority of the Supreme Court itself. This is what the Supreme Court said on May 11, 2006:

Be that as it may, we reiterate that no court other than this Court will have the jurisdiction to make any order of de-sealing the premises sealed under the orders of this Court.

13. This is the command of the Supreme Court loud and clear. There is no how and why. All concerned must obey.

14. The writ petitions are dismissed.

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