

Veena Rahan And Ors vs State And Anr on 23 February, 2021

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ TEST.CAS. 111/2014

VEENA RAHAN AND ORS
Through

..... Petiti

Versus

STATE AND ANR

..... Respondents

Through Mr.Kuljeet Rawal, Advocate for
objector/applicant

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 23.02.2021 This hearing is conducted through video-conferencing. IA No. 2772/2021 (u/O 26 R 9 CPC on behalf of the Objector)

1. The present application is filed by the objector-Sh.Raj Kumar Malhotra seeking the following reliefs:-

"(a) appoint a Local Commissioner to visit premises i.e. Property bearing Municipal No. 3611 (Flat No. 11) Ward No. IX, Sham Bhawan, Darya Ganj, New Delhi alongwith the keys as available in the custody of the Court, confirm whether property is still lying locked under said lock and opened with same key is as per SDM statement and keys deposited in Court, while further giving liberty to Local commissioner to put fresh new lock, in any case, at the premises to avoid any uncalled for misuse of the property and deposit new key with old lock and key before this Hon'ble Court for safe custody as per earlier order dated 30th January, 2019 of this learned Court.

(b) further that the Local Commissioner may also be directed to make report by visit inside the property, while permitting him to break open the lock, if the need so arise and to give report about the status as existing at site i.e. at the property/site bearing Municipal No. 3611(Flat No. 11) Ward No. IX, Sham Bhawan, Darya Ganj, New Delhi, while he be further allowed to take photographs thereof at site and submit report of the status existing at the site on the date of visit.

(c) the Local Commissioner be provided assistance from P.S./Kotwali Darya Ganj, through the SHO for the complete compliance of the inspection by the Local Commissioner."

2. By this application, the objector-Mr.Raj Kumar Malhotra has pointed out that during the pendency of this matter, a valuation was to be done of the property in Darya Ganj. This court on 30.01.2019 passed the following order:-

"2. Valuation report in respect of one of the properties is yet to be submitted. The SDM has written a letter dated 4th July, 2017 stating that the valuation of the property bearing Flat No.3611, Ward XI, Sham Bhawan, Darya Ganj, New Delhi could not be conducted as Flat No.3601 to 3615 are a cluster of properties and the specific flat, which is the subject matter of the Will dated 13th February, 2009 of Late Smt. Sushila Malhotra, cannot be identified by him. It is, accordingly, directed that one of the Petitioners and the Objector, Mr.Raj Kumar Malhotra will render their assistance to the SDM, and if need be, accompany the SDM to identify the said property so that the valuation report can be filed before the next date. If the premises is found locked, after identification, the SDM shall make an enquiry as to who is in possession of the property, with the help of the local SHO. If nobody is found in actual physical possession of the property, the SDM to measure the property after breaking open the locks. The keys may then be deposited along with the valuation report, before this Court."

3. Thereafter, on 31.07.2019 this court passed the following order.

"1. Mr. Varun Kumar Tikmani, ld. counsel appearing for the State submits that the bailiff from the SDM office is present today. Valuation of the property bearing municipal no.3611 (Flat No.11), Ward No. XI, Sham Bhawan, Darya Ganj, New Delhi has been conducted. The said property is now locked and the keys have also been deposited today before the Court. Both the valuation report as also the keys are taken on record. Let the keys be kept in the safe custody of Deputy Registrar (Original). Copy of the valuation report be supplied to Id. counsels for the parties."

4. Hence, based on the above orders it is pleaded that the keys of the property in question in Darya Ganj are deposited in the safe custody of this court i.e. with the Deputy Registrar (Original).

5. The case of the applicant is that he received a phone call from neighbours that somebody has broken open the locks of the property at Darya Ganj and that they have occasionally seen visitors entering the property. The applicant has confirmed that situation from the neighbours. It is pleaded that some mischief and misuse is being done by some miscreants/persons by breaking open the lock fixed at the site by the SDM pursuant to the orders of this court. Hence, the present plea to appoint a Local Commissioner to visit the said property bearing Municipal No. 3611 (Flat No. 11), Ward No. XI (wrongly mentioned as Ward No. IX in the application) , Sham Bhawan, Darya Ganj to ascertain the exact status of the site. The applicant has also attached some photographs of the site.

6. I may note that despite service of an advance copy, none has appeared for the petitioners.
7. Given the nature of the averments made in the application, it would be in the interest of justice that a Local Commissioner is appointed to visit the premises in question and to ascertain the exact position. The application is accordingly allowed.
8. Mr.Sarvesh Rai, Advocate (Mobile No.; +91-7838641793) is appointed as a Local commissioner to visit the aforesaid premises.
9. The keys of the premises in question which are deposited in Court be handed over to the Local Commissioner. The Local Commissioner shall visit the aforesaid property and enter the premises by opening the lock that was affixed on the previous occasion. In case a new lock is found, the Local Commissioner is authorised to break open the said lock and to determine as to who has broken the lock/is in possession. The Local Commissioner is allowed to take photographs of the property in question. After the commission is over, the keys of the premises i.e. the old keys or the new keys, if a new lock is found shall be deposited in this court (It is clarified that if a new lock is found, the learned Local Commissioner shall affix a fresh lock at the main door). The SHO of the concerned police station/Kotwali, Darya Ganj will provide complete assistance and protection to the Local Commissioner. The Local Commissioner may be accompanied by a representative of the objector and of the petitioners. The objector/applicant will serve a copy of this order to the learned counsel for the petitioners before carrying out the inspection.
10. The fee of the Local commissioner is fixed at Rs. 50,000/- plus out of pocket expenses to be paid by the applicant in advance.
11. This order shall not be uploaded till the lapse of a period of two weeks from today.
12. A copy of this order be given dasti under the signatures of the Court Master to the learned counsel for the applicant and to the learned Local Commissioner.
13. The application stands disposed of.

JAYANT NATH, J FEBRUARY 23, 2021/rb