

Joginder Tuli vs State Nct Of Delhi & Ors on 17 January, 2022

Author: Subramonium Prasad

Bench: Subramonium Prasad

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 17th January, 2022
IN THE MATTER OF:
+ W.P.(CRL) 1006/2020 & CRL.M.A. 8649/2020
JOGINDER TULI Petitioner
Through: Petitioner - in person.
versus
STATE NCT OF DELHI & ORS. Respondents
Through: Ms. Richa Kapoor, ASC for the State
with Ms. Shivani Sharma and Ms.
Surabhi Katyal, Advocates with SI
Anil Kumar, PS G.K.
Mr. J.P. Sengh, Senior Advocate
along with Mr. R.L. Sinha, Ms.
Manisha Mehta, Ms. Ishita Mohanty
and Mr. Lakshya Dheer for the
interveners.
CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition has been filed under Article 226 read with Section 482 Cr.P.C. with the following prayer:

"a) Allow this writ petition and issue a writ of mandamus or any other writ, orders or directions to the Commissioner Of Police Respondent no.2 to conduct vigilance and fair inquiry under the supervision of a senior officer not less than the rank of ACP against the Respondents no 3 to 6 of P.S. Greater Kailash being in connivance and conspiracy with accused persons and not. conducting fair and legal enquiry on the petitioner's complaints dated W.P.(CRL) 1006/2020 PageBy:RAHUL 18.11.2019,14.01.2020,27.01.20'20 and 27.06.2020 for the past 8 months and threatening, intimidating and harassing the petitioner who' is a senior citizen 68 years old practicing advocate in Delhi High Court and Supreme Court;

b) To direct Respondent No.2 to complete inquiry into the complaints dated 18.11.2019 and 27.01.2020 of the petitioner by the officer not below the rank of ACP.

c) To direct Respondent No.2 to provide protection to the petitioner from the accused persons as well as from the Respondent No.3 to 6"

2. It is the case of the petitioner that he entered into an Agreement to Sell with one Ravinder Kumar Chugh R/o B-43, Greater Kailash-I, New Delhi-110048 (now deceased) on 05.07.1995 for purchase of one shop bearing No.32 admeasuring 145 sq. ft. on the ground floor of building for the sum of Rs.7,20,000/-.

3. It is stated that the possession of the said property was not handed over to him because the family of Ravinder Kumar Chugh (since deceased) had entered into a collaboration agreement with a builder named M/s Rock Contractors Private Limited and that the said Rock Contractors Private Limited did not construct the said premises.

4. According to the petitioner, the petitioner entered into Memorandum of Understanding (MoU) dated 17.10.2003 with the said Ravinder Kumar Chugh for purchase of 200 sq. ft. in B-43, Greater Kailash-I, New Delhi- 110048 from where chemist shop in the name of M/s R K Pharma was being run. The MoU notes that the vacant possession of the property has been handed over to the petitioner.

5. The petitioner gave a complaint on 18.11.2020 to the SHO, Police W.P.(CRL) 1006/2020 PageBy:RAHUL Station Greater Kailash stating that on 16.11.2019, the Petitioner's associate visited the Petitioner's property at Ground Floor, B-43, Greater Kailash and on reaching there, he saw one Arvinder Singh at the premises. It is stated that after an altercation took place, the police came to the scene of disturbance and asked the Petitioner to show the title documents of the property.

6. It is stated that the Petitioner supplied the title documents to the Police to demonstrate that he had purchased the property from one Ravinder Singh Chugh vide MoU dated 17.10.2003. The petitioner mentioned that the property was sealed following the orders of the monitoring committee constituted by the Hon'ble Supreme Court and the property was de-sealed by the order of the Municipal Corporation of Delhi (in short 'MCD') dated 21.08.2008 and he is in the possession of the said portion.

7. The Petitioner wrote a letter dated 17.01.2020 to the Commissioner of Delhi Police alleging that he was threatened and was spoken to in a derogatory language at the Police Station. It is stated that K.S. Bakshi, M.D. of M/s Rock Contractors Private Limited had been negotiating with the Petitioner since 2008 for the purchase of the 200 sq.ft area owned by the Petitioner at B-43 Greater Kailash, which was in his possession as per the MOU dated 17.10.2003. The Petitioner urged the Commissioner of Police to lodge an FIR against K.L. Bakshi's representatives under Sections 294, 504 and 506 IPC.

8. The petitioner on 27.01.2020 gave another letter in continuation of his earlier complaints dated 18.11.2019 and 17.01.2020 reiterating his earlier complaint. The complainant enclosed the Collaboration Agreement dated 22.02.1989 entered into between Ravinder Kumar Chugh and M/s Rock W.P.(CRL) 1006/2020 PageBy:RAHUL Contractors Private Limited. It is stated that due to

failure in construction of shops till the year 2003 by M/s Rock Contractors Private Limited, Ravinder Kumar Chugh entered into the MoU dated 17.10.2003 with the petitioner.

9. It is stated in the complaint that the said shop, possession of which has been handed over to the complainant/petitioner, and was sealed by the MCD for violation of guidelines, has been de-sealed at the instance of the complainant/petitioner. The details of the area for which agreements have been entered into and the payment made in each agreement as given in the complaint are as under:-

Sr. No.	Date of Agreement	Area	Payment Made
1.	29.09.1990	135+135=270 sq. ft.	Rs.9,95,000/-
2.	05.07.1995	145 sq. ft. Shop No.32	Rs.7,20,000/-
3.	20.09.1997	200 sq. ft.	Rs.11,75,000/-
4.	08.02.1998	200 sq. ft.	Rs.6,00,000/-

10. The petitioner gave one more complaint on 27.06.2020 to the Commissioner of Delhi Police stating the that police was in connivance with one K S Bakshi, M.D. of M/s Rock Contractors Private Limited. The complaint also enumerates the shabby treatment meted out to him by the police officers. It is stated that the petitioner was called to Police Station Greater Kailash and was spoken to in a derogatory and abusive manner by the agents of K S Bakshi.

11. It is stated that despite handing over all the documents showing valid title to the petitioner, no action has been taken by the police on the complaints of the petitioner. It is stated that instead of taking action against W.P.(CRL) 1006/2020 PageBy:RAHUL the accused the police has sealed the premises which was in possession of the petitioner. The petitioner, therefore, has prayed for vigilance inquiry against the police officers. Since police had failed to take action on the complaints of the petitioner, the petitioner has approached this Court by filing the instant writ petition.

12. Notice was issued on 03.07.2020. Status Report has been filed. In the Status Report, it is stated that the petitioner is making a claim of a portion admeasuring 200 sq. ft. situated at B-43, Greater Kailash-I, New Delhi- 110048. It is stated that on 16.11.2019, a PCR call was received at Police Station Greater Kailash over the opening of locks in the said flat in the alleged portion. It is stated that Police reached the spot and found that two parties were fighting over the alleged portion. It is stated that to maintain peace and tranquillity, SI Karan Pal to whom the PCR call had been marked, reached the spot and asked both the parties to produce legal documents regarding the portion of the property. The Status Report states that rather than producing required documents, the petitioner filed complaint dated 18.11.2019 against the Arvinder Singh of M/s Infinity Buildwell Private Limited.

13. It is stated that SI Karan Pal was transferred and the case was handed over to SI Sanjeev Kumar who contacted the petitioner telephonically and requested him to hand over the requisite documents of ownership. It is stated that on 14.01.2020, the petitioner was not called to the Police Station and he came on his own will. The petitioner was asked to produce the documents pertaining to the

property. It is stated that instead of producing the documents, the petitioner filed a complaint dated 17.01.2020 alleging misbehaviour. It is stated that the enquiry officer requested for handing over W.P.(CRL) 1006/2020 PageBy:RAHUL documents and the petitioner handed over an MoU dated 17.10.2003 on an unnumbered stamp paper executed between him and Ravinder Kumar Chugh (since deceased). It is stated that MoU has no witnesses. Status Report also records that there is no proof of any payment to Ravinder Kumar Chugh regarding the property in question.

14. The Status Report also records that the chain of documents of the property in question showing the ownership of M/s Infinity Buildwell Private Limited was handed over by Arvinder Singh. Status Report also records that the petitioner had filed a civil suit being Civil Suit No.207857/2016 before the learned Additional Sessions Judge, South East, Saket for specific performance. However, the said suit has been dismissed on the ground of limitation.

15. The Status Report also records that the portion which is claimed by the petitioner was sealed because a chemist shop was being run from the alleged portion in the name of R K Pharma. It is stated that since as it was a part of the residential area, the Municipal Corporation of Delhi had sealed the premises of the chemist shop.

16. The petitioner, who is appearing in person, has taken this Court through the said documents stating that he had entered into an Agreement to Sell on 05.07.1995 for purchasing 145 sq. ft. of B-43, Greater Kailash-I to the consideration of Rs.7,20,000/-. He states that the possession of the property could not be handed over because the property was under

construction. An MoU was entered into between the petitioner and Ravinder Kumar Chugh for which he had entered into an collaboration agreement with one M/s Rock Contractors Private Limited.

17. It is stated that since the possession of the property could not be W.P.(CRL) 1006/2020 PageBy:RAHUL handed over, an MoU was entered into for purchase of 200 sq. ft. in B-43 Greater Kailash-I as the said portion was a shop. Memorandum of Understanding records that the full consideration of the amount has already been paid and further records that vacant possession of the property has been handed over to the petitioner.

18. The petitioner states that this property was sealed because a chemist shop was running in the premises and the shop was being run by the erstwhile owners of the property. He states that he was receiving Rs.50,000/- as rent. He states that the shop was sealed in the year 2008. He states that an affidavit was given to the MCD as no commercial activity was being conducted. He states that on the basis of the said affidavit, the shop was de-sealed vide letter dated 21.08.2008 and he had the possession of the same.

19. The petitioner states that the associate of the petitioner went to the shop on 16.11.2019 for the purpose of renovation but he was not permitted to enter the shop. It is stated that the police was called. Police reached the spot and respondent No.4, SI Karan Chaudhary asked for documents and even after submitting those documents, the petitioner was not permitted to enter the shop. He

submits that the police have failed to investigate the matter over seven months since the first complaint was filed by him. He submits that the police are acting in a prejudicial manner by not investigating the matter thoroughly and he has numerous times appealed to the S.H.O., PS G.K. and the Commissioner of Police, South Delhi urging a probe into the matter, but no action was taken against the M/s Infinity Buildwell Pvt. Ltd. He questioned the inert conduct of police and argued that he was manhandled, spoken to abusively and belittled by Arvinder W.P.(CRL) 1006/2020 PageBy:RAHUL Singh in the presence of Police Officers. He submits that he was called to the police station frequently despite submitting the relevant documents concerning the property. Further, the police have not taken the offenders into custody and he submits that three Investigating Officers have been changed in the matter so far and every newly appointed I.O., he argued, asks for the same property papers repeatedly. He states that it has now transpired that the shop has been sealed by the Police. He states that the action should be taken against the police official for restraining him from entering his own premises. He states that action should also be taken against the Police for not taking action against the accused and in sealing the shop since 2019 which they did not have the authority to do so.

20. Ms. Richa Kapoor, learned ASC, states that a PCR call dated 16.11.2019 was received at Police Station Greater Kailash regarding opening of locks. It is stated that the said complaint was reduced in writing vide G.D. No.11A. It is stated that the case was assigned to SI Karan who asked for documents. It is stated that instead of giving documents, a complaint was filed against SI Karan stating that he has connived with the occupants and is restraining the petitioner to enter into the premises. It is stated that SI Karan was transferred and the case was assigned to SI Sanjeev Kumar.

21. Ms. Richa Kapoor, learned ASC, states that the petitioner was asked to produce the documents and he took some time for producing the documents. She states that instead of producing the documents, he filed a complaint on 17.01.2020. She states that on 27.01.2020, a third complaint was given. On 27.06.2020, a fourth complaint was given against the Investigating Officer. She states that other than an unstamped and W.P.(CRL) 1006/2020 PageBy:RAHUL unregistered MoU, there is nothing to show that the petitioner was in possession of the property. She states that no possession letter from the MCD has been shown from which it can be ascertained that the MCD had handed over the possession of the premises in question to the petitioner after de-sealing. She also states that no MCD tax receipts, electricity bills or details of payment of rent by tenant etc. has been shown by the petitioner to show his possession of the area.

22. It is stated that the petitioner has not even given the details of the tenants to show that they were in the possession and he was being paid rent. She further states that an agreement dated 15.11.2020 was arrived at between the petitioner and one Shrikant Sharma who is an associate advocate of the petitioner but the stamp paper was of a later date. She submits, thus far, the Petitioner has only handed a copy of the MOU dated 17.10.2003 between him and Mr. Ravinder Chugh, whereas Arvinder Singh, representative of Infinity Buildwell Pvt. Ltd. produced the complete set of documents proving its legal title over the property. She submits that he further presented the documents of a pharmacy that previously existed at the place of shop before it was sealed by the MCD.

23. It is stated that in the absence of any possession, there is no necessity of conducting any vigilance inquiry and the complaint has been closed. It is also stated that in any event, the property subsequently has been sold to some other person and the building has been demolished.

24. Mr. J P Sengh, learned Senior Advocate for the interveners, states that the property initially belonged to one Sushila Devi, mother of Ravinder Kumar Chugh. He states that she had passed away on 04.12.1996. He states that the Agreement to Sell dated 05.07.1995 pertained to 145 sq. ft. of W.P.(CRL) 1006/2020 PageBy:RAHUL property and possession was to be given after the completion of construction. He states that the present MoU dated 17.10.2003 does not mention the earlier Agreement to Sell nor does it give any schedule as to which portion of the property has been given. He states that there is no proof that any amount is being paid. No receipt has been shown either in the MoU or in the Agreement to Sell. He states that the amount in the MoU is Rs.7,20,000/- whereas in the written submissions, it is Rs.9,30,000/-.

25. Heard Mr. Joginder Tuli, the petitioner appearing in person, Ms.Richa Kapoor, learned ASC for the State, and Mr. J P Sengh, learned Senior Advocate for the interveners and perused the material on record.

26. The petitioner approached this Court seeking a writ of mandamus for a direction to the Commissioner of Police to conduct vigilance inquiry under the supervision of a senior officer of not less than the rank of ACP against the respondent No.3 to 6 of Greater Kailash Police Station on the ground that being in conspiracy with the accused persons, they have not conducted a fair enquiry in complaints dated 18.11.2019, 14.01.2020, 27.01.2020, 27.06.2020.

27. The case of the petitioner is that he is in possession of 200 sq. ft. of commercial space situated at B-43, Greater Kailash-I. To prove his possession, the petitioner relies on an Agreement to Sell dated 05.07.1995 for purchase of one shop bearing B-43, Greater Kailash-I, admeasuring 145 sq. ft. on the ground floor building. It is the case of the petitioner that the possession of the property could not be handed over to the petitioner because B-43, Greater Kailash-I was under construction by virtue of collaboration agreement entered into between vendor M/s Rock Contractors Private Limited and Ravinder Kumar Chugh (since deceased). The petitioner W.P.(CRL) 1006/2020 PageBy:RAHUL primarily places reliance on a MoU dated 17.10.2003 entered into between the petitioner and Ravinder Kumar Chugh. The MoU records that Ravinder Kumar Chugh shall transfer 200 sq. ft. of the property located at B-43, Greater Kailash-I in view of the full consideration already paid by the petitioner to Ravinder Kumar Chugh.

28. Though the MoU records that the area which has been handed over to the petitioner has been described in the schedule, there is no schedule attached to the MoU. The MoU also does not record the amount of consideration that has been paid. The MoU is as vague as it can be. Apart from the fact that it does not reveal the amount of consideration the description of the area whose possession was handed over has not been mentioned in the MoU and there is no schedule attached to the MoU. The petitioner has also filed a legal notice dated 27.07.2006 sent to one Mrs. Manpreet Kaur and Mrs. Jaswinder Kaur stating that they were the tenants of B-43, Greater Kailash-I, New Delhi-110048 paying a consolidated rent of Rs.15,000/- per month and that they have not given the

monthly rent, but the same is not discernible.

29. To demonstrate that the petitioner was in possession of B-43, Greater Kailash-I, the petitioner also filed a letter and an affidavit signed by him dated 19.06.2008 sent by Municipal Corporation of Delhi for a request to de-seal an office area measuring 200 sq. ft. in the rear portion of the property being B-43, Greater Kailash-I and has stated that the property office space is lying vacant for the past four years and the property has been sealed in view of the directions of the Supreme Court in *M.C. Mehta v. Union of India*. The petitioner relies on the letter sent by the MCD to him wherein it is stated that there would be temporary de-sealing for three days W.P.(CRL) 1006/2020 PageBy:RAHUL for the which the concerned J.E. of the area would visit the premises. It is also stated that as no one was available, the premises could not be de-sealed and the petitioner was directed to contact the concerned J.E. to get premises de-sealed. The petitioner also filed the rent agreement entered into between him and one Shrikant Sharma, who is his junior, showing that on 16.11.2019 the shop had been given to him on tenancy. The petitioner also enclosed photographs showing a small portion with shutter wherein it is written "Shop No. 20-21". The petitioner has also filed some receipts as part of payment of shop in B-43, Greater Kailash-I, which reads as under:-

Sr. No.	Receipt dated	Amount
1.	26.09.1996	Rs.50,000/-
2.	18.11.1996	Rs.50,000/-
3.	18.12.1996	Rs.50,000/-
4.	02.02.1997	Rs.2,50,000/-
5.	02.03.1997	Rs.55,000/-
6.	02.04.1997	Rs.50,000/-
7.	02.05.1997	Rs.50,000/-
8.	12.05.1997	Rs.1,50,000/-
9.	02.09.1997	Rs.50,000/-
10.	02.07.1997	Rs.50,000/-
11.	12.07.1997	Rs.55,000/-
12.	19.07.1997	Rs.30,000/-

The receipts do not show as to for what purpose and for what portion the money was paid.

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30. On the basis of these documents, the petitioner states that he is the owner in possession of the property and that he has been restrained from entering his own property by Infinity Buildwill Private Limited and the Police are hand in glove with them. None of these documents establishes the possession of the petitioner. The MoU as rightly submitted by Ms. Richa Kapoor, learned ASC, is not registered. It does not contain any witnesses and it does not even have a schedule describing the property whose possession has been given to the petitioner. The MoU does not show the total amount of consideration. The electricity bills, MCD tax receipts and details of bank accounts where the rent is being deposited has not been supplied. The receipts provided are unstamped and also do not show as to why the money has been given. The petitioner relies on legal notice dated 27.07.2006 sent to the Mrs. Manpreet Kaur and Mrs. Jaswinder Kaur. Those persons have not been produced by

the petitioner to establish his possession. The reliance on the affidavit and letter dated 21.08.2008 sent by the MCD asking the petitioner to contact the concerned J.E. of the area cannot be pressed into service by the petitioner because there was nothing to show that the possession was handed over to the petitioner at any point of time by the MCD. The petitioner has filed a suit bearing No. Civil Suit No.207857/2016 before the learned Additional Sessions Judge, South East, Saket for specific performance which has been dismissed on 08.12.2017. On being asked whether an appeal has been filed, the petitioner states that the same has been filed but has not been numbered yet. Four years have passed and the appeal has not yet been numbered. The petitioner has chosen not to file any suit for enforcement of the MoU dated 27.06.2020.

31. Though the MoU does not record the amount of consideration that has W.P.(CRL) 1006/2020 PageBy:RAHUL been paid, in the written submissions, the petitioner has stated that he has paid Rs.9,50,000/- without recoding the manner by which the amount has been paid. The petitioner also cannot rely on the Section 53A of the Transfer of Property Act in the absence of any documents or semblance of proof showing that the petitioner was in possession.

32. It is well settled that in order to give benefits of Section 53A of the Transfer of Property Act, the document relied upon must be a registered document. Any unregistered document cannot be looked into by the court and cannot be relied upon on or taken into evidence in view of Section 17(1A) read with Section 49 of the Registration Act. Thus, benefit of Section 53A could have been given to the respondent, if and only if the alleged Agreement to Sell cum receipt satisfied the provisions of Section 17(1) A of the Registration Act (Refer Arun Kumar Tandon v. Akash Telecom Pvt. Ltd. & Anr. MANU/DE/0545/2010).

33. Even assuming that the MoU should be read as an Agreement to Sell and the petitioner has been in possession for which there is no evidence at all, this Court in Earthtech Enterprises Ltd. v. Kuljit Singh Butalia, 199 (2013) DLT 194 has observed as under:-

"12. A bare perusal of the aforesaid provision makes it clear that a person can protect his possession under Section 53-A of the Transfer of Property Act on the plea of part performance only if it is armed with a registered document. Even on the basis of a written agreement he cannot protect his possession. In this case, plea of existing oral agreement has been set. In any event, in this case, appellant cannot protect his possession under the shield of Section 53-A of the Transfer of Property Act. Even otherwise, mere Agreement to Sell of an immovable property, even if W.P.(CRL) 1006/2020 PageBy:RAHUL the plea of oral agreement is accepted for the sake of argument, would not create any right in favour of the tenant-appellant to hold over the possession of the suit property."

34. No fault can be found with the stand of the State that the petitioner has failed to produce any document which can establish possession. Had the petitioner been in lawful possession, he definitely would have filed a suit under Section 6 of the Specific Relief Act within six months of being dispossessed and the date of dispossession which admittedly is 16.11.2019. Thus has not been done. The complaints given by the petitioner to the Police for conducting inquiry with subsequent

writ petition is ,therefore, completely unfounded. The present petition looks like an attempt by the petitioner to get the possession of the property and to get over the limitation for filing the suit which disables him to file a suit for specific performance for the MoU dated 17.10.2003.

35. The writ petition is dismissed with the above observations along within pending application(s), if any.

SUBRAMONIUM PRASAD, J

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