

Shaik Ziaul Hakim vs Delhi Development Authority & Ors on 6 April, 2023

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 213/2023
SHAIK ZIAUL HAKIM

.....
Through: Mr. Vijay Sharma, Mr. Shantanu Bhardwaj, Mr. Nishant Gupta
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Defendants

Through: Mr. Sanjay Katyal, SC with Mr. Nihal Singh, Advocate for D
Mr. Puneet Yadav, ASC for D
7/MCD.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 06.04.2023 I.A. 6336/2023 (for exemption) The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial. The application stands disposed of.

I.A. 6337/2023 (under Section 80 R/W Section 151 of CPC) As the defendant Nos. 1 and 7 have entered appearance, this application has rendered infructuous.

The application stands disposed of.

CS(OS) 213/2023

1. The plaint be registered as a suit. Mr. Sanjay Katyal, learned Standing Counsel for the defendant No. 1- Delhi Development Authority ["DDA"], and Mr. Puneet Yadav, learned counsel for the defendant No. 7- Municipal Corporation of Delhi ["MCD"], waive formal service of summons on behalf of the said defendants. The said defendants may file their written statements within 30 days from today.

2. Summons be issued to the defendant Nos. 2 to 6 by all permissible modes on filing of process fee. Dasti service, in addition, is also permitted. Affidavit of service be filed within one week after service.

3. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.
4. The plaintiff is at liberty to file replications thereto within fifteen days after filing of the written statements. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.
5. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
6. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
7. List before the Joint Registrar for marking of exhibits on 23.05.2023.
8. List before the Court on 19.07.2023.

I.A. 6335/2023 (under Order XXXIX Rules 1 and 2 of CPC)

1. Issue notice. Mr. Katyal accepts notice on behalf of DDA and Mr. Yadav accepts notice on behalf of MCD The Defendants Nos. 2 to 6 be served by all permissible modes. Dasti service, in addition, is also permitted.
2. By way of this application, the plaintiff seeks an order of injunction against DDA from demolishing or dispossessing him from the suit property [Second and Third Floor of property bearing No. B-60, Vivek Vihar Phase-II, Delhi-110095] ["the suit property"], and from interfering in the plaintiff's possession of the suit property.
3. The plaintiff's claim to the title of the suit property arises out of a registered sale deed dated 29.04.2022, by which he claims to have purchased the suit property for a consideration of 2 crores from the defendant Nos. 2 to 6 herein. The plaintiff states that the defendant Nos. 3 to 6 acquired the suit property by virtue of a sale deed dated 31.07.2021, executed by one Mr. Mohan Kumar in their favour, and in favour of one Mr. Saurav Singh Raghav, who thereafter sold his share in the suit property to the defendant No. 2 herein, by a sale deed dated 25.10.2021. The plaintiff also relied upon a purported conveyance deed dated 01.02.2021 executed by DDA in favour of the said Mr. Mohan Kumar.
4. The plaintiff earlier filed a writ petition [W.P.(C) 17212/2022] in this Court against DDA seeking a direction against demolition of the suit property. The writ petition was disposed of vide a judgment dated 23.03.2023, passed by a co-ordinate Bench, wherein DDA inter alia submitted that the conveyance deed dated 01.02.2021, (purportedly executed by DDA in favour of Mohan Kumar) was fraudulent and forged. DDA denied having executed any conveyance deed in favour of the original vendor, and took the position that the suit property had not been allotted to any person. The learned

Single Judge has inter alia recorded the following findings:-

"XXXX XXXX XXXX

9. The documents placed on record by the Respondent evidences that DDA had duly issued communication(s) and put each of the Vendees to knowledge vide notice(s) dated 17.02.2022 that they are trespassing on a government property and directed them to stop construction on the subject property.

10. The Vendees responded to the said notice(s) dated 17.02.2022 by a common reply dated 07.03.2022. Thus, the Vendees were aware of the controversy and inquiry initiated by the Respondent against the subject property. However, despite notice the Vendees proceeded to execute the Sale Deed dated 29.04.2022 in favour of the Petitioner herein.

11. Pertinently, in the Sale Deed dated 29.04.2022, the Vendees have not disclosed to the Petitioner herein regarding the notice(s) dated 17.02.2022 issued by the Respondent DDA and the proceedings pending before DDA.

XXXX XXXX XXXX

13. The subject property is admittedly a government property and the title vests with the Respondent, DDA. In the facts of this case, the Petitioner is not entitled to relief of injunction; since DDA has categorically denied allotting the Plot or executing any lease deed or conveyance deed for the said Plot in favour of any person. The Respondent has categorically denied executing the Conveyance Deed dated 01.02.2021, which is the fundamental document relied upon by the Petitioner for claiming the title.

13.1. The Respondent has placed on record sufficient documents evidencing the non-execution of the purported lease deed and purported Conveyance Deed relied upon by the Petitioner. 13.2. The Petitioner does not have in his possession receipts evidencing payment towards ground rent or conversion charges payable along-with conversion application of the said Plot or the conversion application.

XXXX XXXX XXXX

14. This Court is of the opinion that the Petitioner does not have any title, interest or claim in the subject property and therefore, the Petitioner is not entitled for the reliefs as sought in the present writ petition.

XXXX XXXX XXXX

16. Even if it is assumed that the Petitioner was unaware about the notice(s) dated 17.02.2022 served on the Vendees, this Court is of the opinion that the Petitioner is not remediless and is at liberty to initiate appropriate proceedings against the Vendees (including Saurav Singh Raghav) as

per the terms of the Sale Deed. In this context, Clauses 9 and 12 of the Sale Deed dated 29.04.2022 are relevant, which reads as under:

"Clause 9:- That if proved otherwise or the VENDEE is deprived off the above said Property at any time, in future after the execution and registration of this Sale Deed, in full or in part thereof, owing to the above reason or reasons whatsoever in respect of the same, the VENDORS hereby undertake before the VENDEE that they shall be entirely remain liable and responsible to indemnify the VENDEE for the same in all manners by their all moveable and immovable properties and all other assets.

xxxx xxxx xxxx Clause 12:- That it is declared by both, the parties that the said Property has never been booked by MCD/DDAJSTF or any other Government Authority for unauthorized construction. If at any point of time, it is noticed that the said Property is booked for unauthorized construction, parties will be self liable and responsible and registration of instrument will stand null and void."

The Petitioner is entitled to raise his claims for refund of sale consideration and damages against the Vendees (including Saurav Singh Raghav) before the appropriate authority, in accordance with law. The Petitioner is also at liberty to initiate criminal proceedings against the said Vendees (including Saurav Singh Raghav) for non- disclosure of the notice(s) issued by Respondent. No notice required within the meaning of Section 30 of the Delhi Development Authority Act, 1957 xxxx xxxx xxxx

25. The writ petition has been filed seeking a relief of simpliciter injunction against the demolition of the subject property proposed on 19th December, 2022 by DDA. Since the edifice of the claim is based on Conveyance Deed dated 01.02.2021, the execution of which document has been specifically denied by the DDA and which was also put to the notice of the Vendees and concerned authorities, the entire basis for seeking an unconditional injunction against the demolition of the subject property does not exist since the Respondent has shown that the Petitioner and the Vendees are ranked trespassers on the same.

26. In view of the above facts and circumstances, the injunction on the demolition of the subject property as sought by the Petitioner cannot be granted by this Court since the Petitioner does not have any title in the subject property."

[Emphasis supplied.]

5. The judgement of the learned Single Judge was carried in appeal by the plaintiff herein [LPA 170/2023]. The Division Bench, vide an order dated 07.03.2023, permitted the plaintiff to withdraw the appeal with liberty to file a civil suit. It was also observed that, in case a civil suit is filed, the same shall be decided based on the evidence adduced by the parties.

6. The plaintiff's claim for an ad-interim injunction, at this stage, is, in my view, in the teeth of the findings of the learned Single Judge which have not been disturbed or set aside by the Division Bench. While the Division Bench has observed that the decision in the suit will be based upon the

evidence tendered, at the stage of grant of ad interim injunction, the onus is upon the plaintiff to establish a prima facie case in their favour. The findings of the Single Judge, which relate to the very same suit property, and are based upon the same documents upon which the present suit is also based, continue to subsist against the plaintiff, at least for the purposes of assessment of a prima facie case.

7. The plaintiff's request for grant of an ex-parte order of injunction is, therefore, rejected.

8. Replies to the application may be filed within four weeks. Rejoinder thereto, if any, may be filed within two weeks thereafter.

9. List on 19.07.2023.

PRATEEK JALAN, J APRIL 6, 2023/"Bhupi"/