

Smt. Shyama Aggarwal & Ors vs Govt. Of Nct Of Delhi & Ors on 29 April, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 930/2022
SMT. SHYAMA AGGARWAL & ORS.

.....
Through: Mr.Rajesh Yadav, Sr. Advoca
Mr.Aayush Malhotra, Advoc

versus

GOVT. OF NCT OF DELHI & ORS.

Through: Mr.Sanjay Lao,
State with SI
Punjabi Bagh.
Mr.Gaganmeet S
Advocate for R

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 29.04.2022

1. Exemption allowed, subject to just exceptions.
2. The application stands disposed of.

W.P.(CRL) 930/2022 & CRL.M.A.Nos.7840/2022

3. This petition is filed against the impugned order dated 14.02.2022 whereby the SDM (Punjabi Bagh) has directed as under :

Whereas a Settlement Deed has been signed between the parties wherein parties have agreed to comply the settlement, it is an agreement which has to be read wholistically and no clause can be read in isolation or exclusively in suppression of other clauses. No settlement can permit any of the parties to disregard the right of privacy of the other parties nor obstruct the ingress and egress of any of the residents.

Now therefore, the respondents are hereby restrained from parking their vehicles in

the area adjacent to the main door on the common passage side and window of bedroom of Smt. Pushpinder Kaur. Further, no washing of vehicles shall take place in the common area nor any of the parties overflow the flower pots in a way that leads to the passage becoming dirty and slippery. The respondents are directed to stop all activities causing nuisance in the common passage with immediate effect and to present before this court on 25.02.2022 and show cause as to why this order should not be made absolute.

4. The parties are residing in a 2261.11 sq.yds. house at plot No.45/77, Punjabi Bagh, Delhi.

5. The parties are co-owners having share of 25% each in the property. There has been a civil dispute and a civil suit CS SCJ/451/2019 was filed seeking injunction from constructing a pucca room for the chowkidars on the passage/driveway adjacent to the plots. The parties then went in mediation and vide Mediation Settlement dated 10.05.2019 had partitioned their shares leaving a space/road measuring 261.11 sq.yds for parking of cars for the occupants of units shown as blue and yellow in the colored site plan, annexed as Annexure A to the Settlement Deed dated 10.05.2019.

6. The following portion of the settlement is relevant for the disposal of this petition :

(13) That the parties to this settlement have agreed that the portion shown in brown colour in the site plan, Annexure-A shall be used as common-passage. However the Third Party and Fourth Party i.e. the parties with back portions/units, may use this common-passage as drive-way as this is their only way for ingress/egress and shall also have the liberty to park their vehicles in the common passage from the backside of the common passage but only upto 55 ft. (i.e. half-way mark of the length of the common passage) and not beyond and that too on their respective sides only.

(14) The common passage is jointly owned by all parties in an undivided manner. In this regard, it is further clearly agreed and understood between the parties that none of the parties shall have the right for erection of any construction, projection, fixing AC or window projection etc in the said passage which will remain a joint and common passage and this passage shall always remain undivided and free from any misuse subject however to clause (12) hereinabove. However the said common passage may be used for recreational/social activities, if needed.

(15) That the parties to this settlement shall not make any obstructions or constructions or encroachments in the common passage/drive-way or cause hindrance in the use and enjoyment of all common areas/facilities/services and shall not allow rubbish, dust or refuse to be accumulated or thrown away in the said common areas.

7. The said settlement was approved by the learned Mediator at Delhi Mediation Centre, Tis Hazari Courts, Delhi on 10.05.2019 and ultimately this settlement was approved by the Court vide order dated 03.06.2019 wherein it observed as under :

1. The parties have reached an amicable settlement, the terms and conditions of which have been contained in settlement deed dt. 10.05.2019 running into 12 pages and partition deed dated 10.05.2019 running into 11 pages and originals of which are enclosed herewith as Annexures 'X' & 'Y' duly signed by the parties and their relatives on each page and the parties are bound to comply with its terms and condition in letter and spirit.

2. Annexures 'X' and 'Y' be read as part and parcel of this settlement agreement.

3. That the plaintiff shall appear before the Ld. Referral court on 03.06.2019 for making appropriate statement for disposing of present suit.

4. It is further agreed between the parties that the above-said settlement has been arrived at between the parties voluntarily and without any duress or coercion etc. and the contents of the settlement have been read over and explained to the parties in their vernacular language.

8. Learned senior counsel for the petitioner then referred to Section 133 Cr.P.C. to say these exercises can be done by the learned SDM only in the matter of grave urgency and where public nuisance is caused. To this effect he has also referred to *Suhelkhan Khudyarkhan & Anr. Vs. State of Maharashtra & Ors.* (2009) 5 SCC 586 to show the difference between public nuisance and private nuisance. Following paragraphs are relevant :

7. "8 Section 133 of the Code appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading "Public nuisance". The term "nuisance" as used in law is not a term capable of exact definition and it has been pointed out in *Halsbury's Laws of England* that:

"even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort".

In *Vasant Manga Nikumba v. Baburao Bhikanna Naidu* (1995 Supp (4) SCC 54) it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. Xxx

12. The provisions of Section 133 of the Code can be called in aid to remove public nuisance caused by discharge of effluents and air discharge causing hardship to the general public. To that extent, the learned counsel for the appellant is correct in his submission. The above position is highlighted in

State of M.P. v. Kedia Leather and Liquor Ltd. At SCC pp..393-94, paras 8,9 & 12.

8. "10. A proceeding under Section 133 is of a summary nature. It appears as a part of Chapter X of the Code which relates to maintenance of public order and tranquility. The Chapter has been classified into four categories. Sections 129 to 132 come under the category of "unlawful assemblies". Sections 133 to 143 come under the category of "public nuisance". Section 144 comes under the category of "urgent cases of nuisance or apprehended danger"

and the last category covers Sections 145 to 149 relating to "disputes as to immovable property". Nuisances are of two kinds, i.e. (i) Public; and (ii) Private. 'Public nuisance' or 'common nuisance' as defined in Section 268 of the Indian Penal Code, 1860 (in short the 'IPC') is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. 'Private nuisance' on the other hand, affects some individuals as distinguished from the public at large. The remedies are of two kinds - civil and criminal. The remedies under the civil law are of two kinds. One is under Section 91 of the Code of Civil Procedure, 1908 (in short 'CPC'). Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him. There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC. The second provides for summary proceedings under Sections 133 to 144 of the Code, and the third relates to remedies under special or local laws. Sub-section (2) of Section 133 postulates that no order duly made by a Magistrate under this Section shall be called in question in any civil Court. The provisions of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Section 133 and 144 of the Code shows that while the former is more specific the latter is more general. xxxxxxxx

9. It is submitted by learned senior counsel for the petitioner despite these proceedings the dispute once again started qua the parking of cars by the petitioners herein. A complaint was filed by respondent No.3 qua such parking of the cars in front of the gate of her house, to the SHO, Punjabi Bagh, Delhi which matter was then referred to SDM who then gave notice under Section 133 Cr.P.C. to the petitioners herein and ultimately passed the impugned order dated 14.02.2022, as above.

10. It is the submission of learned counsel for the petitioner per Settlement dated 10.05.2019 the petitioner has every right to park her car upto 55 ft. i.e. half way mark of the length of the common passage, though not beyond that and the petitioner is parking her car only upto such limit as is in Clause 13 of the Settlement dated 10.05.2019.

11. In the circumstances, let formal notice be issued to the respondents.

12. The learned counsel for the respondents No.2 and 3 appears on advance notice submit the petitioners have been parking their cars and washing it in front of her door(s).

13. Learned standing counsel for State to file status report before the next date of hearing and till then the impugned order dated 14.02.2022 shall remain stayed. The petitioners are however directed not to park their cars in front of door as shown at page 184 of the paper book.

14. The plea qua the removal of pots and air conditioners from the parking space per mediation settlement shall be considered on the next date of hearing.

15. Reply be also filed by respondents No.2 and 3 with an advance copy to learned counsel for the petitioner.

16. It is stated by learned counsel for the State on instructions from SI Amit Kumar, further proceedings are not being conducted by learned SDM.

17. List on 18.10.2022.

YOGESH KHANNA, J.

APRIL 29, 2022 VLD