

(2008) 11 DEL CK 0185

Delhi High Court

Case No: Review Petitions 205 and 209 of 2007 in Writ Petition (Civil) No. 3361 of 2007 and CM No"s. 8081, 8082, 8175 and 13297/07

Madan Lal Arora

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision: Nov. 28, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 340

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Rajendra Dutt, for the Appellant; Manpreet Kaur, for V.K. Tandon, for R-1 to 4, Deepak Khosla, for R-5 and S.C. Dhanda, for R-6, for the Respondent

Judgement

S. Muralidhar, J.

Review Petition Nos. 205/2007 & 209/2007

1. These two petitions seek review of an order passed by this Court on 23rd May 2007 disposing of Writ Petition (Civil) No. 3361 of 2007 and CM Application No. 6312 of 2007. The Review Petitioners are Respondent No. 5 Tej Pratap Singh and Respondent No. 6 Vinay Jain.

2. The Petitioner Madan Lal Arora filed the aforementioned writ petition stating that the Respondent Nos. 2 to 4 i.e. Tehsildar, Seema Puri, the Sub-Divisional Magistrate ("SDM") Seema Puri, and Area Patwari of Village Mandoli respectively were not acting in accordance with the provisions of Delhi Land Revenue Act and Rules framed thereunder in making entries in the Khasra register regarding crops cultivated in land comprised in Khasras No. 18/2, 18/3, 18/8, 18/14/1, 18/5/1, 10/24/2, 10/25 and 10/16 situated in Village Mandoli, Delhi. It was asserted that the petitioner had been cultivating the said land. It was further asserted by the Petitioner that although he had been cultivating the aforesaid land and sowing and harvesting the crops for long, since 1981-82 his cultivatory possession and the crops

sown by him were not being recorded.

3. On the basis of the above averments the following prayers were made in the writ petition:

It is, therefore, most respectfully prayed that your Lordship be pleased to issue appropriate writ, order or direction to the Respondents No. 2 to 4 for making entries in the Khasra register in respect of the harvesting of the crops of the petitioner in respect of the land bearing Khasra No. 18/2, 18/3, 18/8, 18/14/1, 18/5/1, 10/24/2, 10/25 and 10/16 situated within the Revenue Estate of Village Mandoli, Delhi as per spot in accordance with the provision of Delhi Land Revenue Rules.

4. Pursuant to the notice issued by this Court learned Counsel for the Respondents 2 to 4 appeared at the hearing on 23rd May 2007 and informed the Court that if a time bound direction were issued by this Court "the necessary exercise will be carried out within that time-frame." Accordingly, the writ petition was disposed of on 23rd May 2007 by the following order:

1. The only prayer in this writ petition is that the respondents 2 to 4 should act in accordance with the provision of the Delhi Land Revenue Act and the Rules thereunder and make entries in the Khasra register with regard to the crops standing on land bearing Khasra Nos. 18/2, 18/3, 18/8, 18/14/1, 18/5/1, 10/24/2, 10/25 and 10/16 situated within in the revenue estate of Village Mandoli, Delhi.

2. Learned Counsel for the respondents 1 to 4 states on instructions from the officer of the SDM Office present in Court that if any, a time-bound direction is issued by this Court, the necessary exercise will be carried out within that time- frame.

3. Accordingly, it is directed that within a period of four weeks from today, the respondents 2 to 4 will make field visit and record the necessary entries in Khasra register in accordance with law in respect of persons who are found in the cultivator possession of the lands in question. No further directions are called for.

4. The writ petition and the pending application stand disposed of.

5. Order be given Dasti to learned Counsel for the parties.

5. On 29th May 2007 Vinay Jain, Respondent No. 5 in the writ petition filed a Review Petition No. 209 of 2007 stating that the Petitioner Madan Lal Arora has suppressed the fact that "the land bearing Khasra No. 18/2 (4-16) and 18/8 (4-16) situated in Village Mandoli was purchased by Dalmia Latex Limited and Shri Vinay Jain is its Director." A copy of the sale deed dated 11th December 2006 by which the applicant had purchased the aforementioned lands in Village Mandoli was enclosed with the review petition. It was further stated in the review petition that the applicant Dalmia Latex Limited had filed Suit No. 208 of 2007 against Madan Lal Arora for a permanent injunction. After notice was issued in the application seeking interim injunction, an order was passed by the Civil Judge on 21 st April 2007 restraining

Madan Lal Arora from dispossessing the applicant Dalmia Latex Limited from the land bearing Khasra No. 18/2 (4-16) and 18/8 (4-16) situated in the revenue estate of Village Mandoli, Delhi. It was further pointed out in Review Petition No. 209 of 2007 that Madan Lal Arora had himself, as Special Power of Attorney of his wife and other family members, filed a suit titled Smt. Krishna Arora and Ors. v. Tej Pratap Singh seeking permanent injunction in respect of Khasra Nos. 18/2, 18/3, 18/8, 14/1, 18/5/1, 10/24/2, 10/25 and 10/16 in Village Mandoli, Delhi. Dalmia Latex Limited was impleaded as Defendant No. 2 in the said suit. Although an application for interim injunction was filed in the said suit no orders granting an interim injunction in favour of the plaintiff Krishna Arora and others was passed. The aforementioned suit by Madan Lal Arora appears to have been filed on 16th April 2007.

6. Tej Pratap Singh Respondent No. 6 in W.P.(C) No. 3361 of 2007 filed Review Application No. 205 of 2007 on 28th May 2007 in which he disclosed that he is the recorded bhumidar in actual, physical cultivatory possession of Khasra No. 18/3 (4-16), 18/14/1 (1-17). He stated that as regards Khasra No. 18/2 and 18/8 they were transferred to Respondent No. 6 Dalmia Latex Limited by a registered sale deed dated 11th December 2006. Since Madan Lal Arora was seeking to interfere with the possession of Tej Pratap Singh, the latter filed Suit No. 212 of 2007 titled Tej Pratap Singh v. Madan Lal Arora seeking a permanent injunction. In the application filed in the said suit an interim injunction was granted by the Civil Judge, Delhi on 21st April 2007 in favour of Tej Pratap Singh restraining Madan Lal Arora from interfering with the possession of the land in the aforementioned Khasra Nos. 18/3 and 18/14/1 in Village Mandoli.

7. From the aforementioned narration in both the review petitions, it appears that in respect of the lands mentioned in the writ petition, three suits were in fact filed in the civil court and were pending on the date of filing of the writ petition i.e. 2nd May 2007. In fact by that date interim orders in favour of the Respondents 5 and 6 in their respective suits had been passed by the Civil Court restraining the Petitioner Madan Lal Arora from interfering with the possession of these respondents of their respective lands i.e. Khasra Nos. 18/3 and 18/14/1 (Tej Pratap Singh) and 18/8 and 18/2 (Dalmia Latex Limited). By the said order dated 21st April 2007 the Civil Judge also dismissed an application filed by Madan Lal Arora for the appointment of a Local Commissioner. As regards the prayer for interim injunction, the relevant portion of the order dated 21st April 2007 passed in the suit of Dalmia Latex Limited reads as under:

At this stage counsel for the plaintiff states that the plaintiff apprehends his illegal dispossession at the hands of the defendant No. 1.

In this regard it is stated by the counsel for the defendant No. 1 that the plaintiff is neither the owner nor in possession of the suit property. The defendant No. 1 in order to substantiate his defence has relied upon the photocopy of the complaint and FIR lodged by the Gaon Sabha Mandoli against the defendant No. 1 I have gone

through the aforesaid documents. In this regard it be seen that the aforesaid documents nowhere goes to show that the defendant No. 1 is in possession of the suit property. What maximum can be inferred from these documents is that the defendant No. 1 had tried to encroach upon the suit property.

Per contra the plaintiff in order to prove his ownership and possession has placed on record a photocopy of the registered sale deed executed in favour of the plaintiff by the defendant No. 2 wherein vide para 3 the actual and physical possession of the suit property has been handed over to the plaintiff.

The plaintiff has also placed on record a photocopy of the khasra girdawari for the year 2006-07 wherein the defendant No. 2 (from whom the plaintiff claim its title) has been shown in possession of the suit property. Today the plaintiff has also placed on record certain photographs showing that the plaintiff is in possession of the suit property. In view of the aforesaid the defendants are hereby restrained from dispossessing the plaintiff from the suit property bearing Khasra No. 18/8 (measuring 416) Khasra No. 18/2 (measuring 4-16) situated in the Revenue Estate of Village Mandoli, Shahdara as shown with the red colour in the suit plain till the next date of hearing.

8. A similar order was passed by the Civil Judge on the same date i.e. 21st April 2007 in favour of Tej Pratap Singh in the suit filed by him. From the proceedings of that date it appears that in both suits the defendant Madan Lal Arora was served and was represented by the counsel.

9. In his reply filed to the review petition, Madan Lal Arora has not denied the pendency of the civil suits or the passing of the aforementioned interim orders by the Civil Judge. However, no explanation has been offered for not mentioning those facts in the writ petition. That there can be absolutely no manner of doubt that the Petitioner has not come with clean hands and has deliberately suppressed relevant and material facts before this Court. This conduct of the Petitioner, who has suffered adverse orders in the Civil Court on 21st April 2007, and has filed the writ petition on 2nd May 2007 in respect of the very land which forms subject matter of the suits, is most reprehensible. This is a blatant attempt to overreach the civil court and to mislead this Court into passing of an order directing survey of the properties by the revenue authorities to record the names of those cultivating the land. Had this Court been informed of the subsistence of the interim orders passed by the Civil Court, no such order as passed on 23rd May 2007 could have been passed in respect of the khasra Nos. covered by the said interim orders of the civil court.

10. Learned Counsel for the Petitioner Mr. Rajinder Dutt submitted that the order passed in the writ petition should be maintained in respect of the other Khasra Nos. leaving out the four Khasra Nos. in respect of which the interim injunctions subsisted.

11. Considering the fact that the Petitioner has willingly suppressed material facts before this Court, it is not possible to grant any relief to him. Moreover, the suit filed by the Petitioner in respect of the remaining Khasra Nos. is already pending in the Civil Court. This Court, therefore, is not inclined to entertain this plea.

12. A grievance was made by learned Counsel for the Petitioner that despite the order dated 30th May 2007, which kept the order dated 23rd May 2007 in abeyance, the Respondents No. 5 and 6 had destroyed the crops on the land. Aggrieved by the said conduct, the Petitioner has filed CM Application No. 13297 of 2007 u/s 340 Cr.PC.

13. It must be noted that no status quo order was passed by this Court on 30th May 2007 much less on 23rd May 2007. It cannot, therefore, be said that any order passed by this Court was violated by the Respondents. In any event if the Petitioner has grievance about the Respondents 5 and 6 taking forcible possession, it is always open to the Petitioner to seek appropriate remedies. The application u/s 340 Cr.PC is in the circumstances clearly misconceived.

14. For the aforementioned reasons, the Review Petitions Nos. 205 of 2007 and 209 of 2007 are hereby allowed. The order dated 23rd May 2007 passed by this Court in W.P.(C) No. 3361 of 2007 is hereby recalled. The Writ Petition (Civil) No. 3361 of 2007 and CM Application No. 6312 of 2007 are restored to file and for the aforementioned reasons dismissed on merits. CM Application No. 13297 of 2007 is dismissed on merits. CM Applications No. 8175/2007, 8081/2007, 8082/2007 stand disposed of.

15. The Petitioner will pay to the Respondents 2 to 4, 5 and 6 costs of Rs. 10,000/- each within a period of four weeks from today.