

(1996) 03 DEL CK 0064**Delhi High Court****Case No:** CM (M) No. 315 of 1994

Nahar Singh

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision: March 8, 1996**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 9, 115
- Delhi Development Act, 1957 - Section 30(1)

Citation: (1997) 40 DRJ 802**Hon'ble Judges:** A.B. Saharya, J**Bench:** Single Bench**Advocate:** S.P. Pandey and R.S. Rana, for the Appellant; Alak Kumar, for the Respondent**Judgement**

Arun B. Saharya, J.

C.M.1017/96 (Application for exemption)

1. Allowed.

C.M.1016/96

2. By this application the petitioner has prayed for (i) setting aside order dated 7th February, 1996 and restoration of C.M. No. 785/95: and (ii) restoration of the earlier interim order dated 17th October, 1994.

3. In the main petition, being C.R.No. 599/94, notice was issued to the respondent to show cause why the petition be not admitted. On an application for interim relief being C.M. No. 2326/94, order dated 17th October, 1994 was passed restraining the respondent from demolishing the structure in question.

4. On 23rd February, 1995 no one appeared for the petitioner and the main case was dismissed. On merits of the case also the following observation was made in the order

"The impugned order clearly says that the property in suit falls in development area No. 172 and demolition order had been passed u/s 30(1) of the DDA Act-after giving proper notice to the plaintiff."

5. As a result of the order dated 23rd February, 1995 the interim dated 17th October, 1994 stood automatically vacated.

6. The petitioner filed C.M. No. 785/95 for setting aside order dated 23rd February, 1995 and restoration of the main case. This too was dismissed in default on 7th February, 1996.

7. This is the background in which the petitioner has moved the present application.

8. It has been explained in paragraphs 5,6 & 7 of the application that on 22nd November, 1995, when the hearing of CM 785/95 was adjourned, the then counsel for the petitioner inadvertently noted 20th February, 1996 as the hearing date instead of 7th February, 1996, and that his absence on 7th February, 1996 was unintentional. This Explanation appears to be satisfactory. Accordingly, order dated 7th February, 1996 is set aside and C.M. No. 785/95 is directed to be restored to its original number.

9. The second prayer, for restoration of the earlier interim order dated 17th October, 1994, however, cannot be granted. That order stood automatically vacated on 23rd February, 1995. Even otherwise, the observation made on merits of the case in that order would defeat the earlier interim order. Moreover, during pendency of C.M. No. 785/95, no fresh order for revival or continuation of interim injunction was made at any time, when the matter was adjourned from 9th March, 1995 onwards. In these circumstances, I am not inclined to restore the earlier mentioned interim order passed on 17th October, 1994, which stood automatically vacated as far back as on 23rd February, 1995.

10. The application is, Therefore, partly allowed.

C.M.785/95

11. By this application the petitioner has prayed for setting aside order dated 23rd February, 1995 dismissing the main revision petition. Here again, it has been explained in paragraphs 2 & 3 of the application that on 23rd February, 1995 learned counsel for the petitioner remained busy with certain other matters before some other Benches of this Court and was unable to appear at the time when the case was called on for hearing; and that by the time he came to attend the case it was too late the case had been dismissed. This Explanation also appears to be satisfactory. Consequently, order dated 23rd February, 1995 is set aside and the main case, being C.R.599/94, is restored to its original number. The application is, accordingly, allowed.

C.R.599/94

12. Heard at length.

13. The petitioner had filed a suit for restraining the respondent from demolishing the structure raised over the land in question. The learned Trial Court, after full-fledged trial, found that the property fell in the notified development area and the impugned demolition order had been passed after giving proper notice under Sub-section (1) of Section 30 of Delhi Development Authority Act, 1957. Consequently, the suit was dismissed.

14. Aggrieved by it, the petitioner preferred an appeal. On his application for grant of interim order, by the impugned order dated 24th May, 1994, the learned Appellate Court has relied upon the statement of DW-1 Mohd. Musta Queen, Junior Engineer of DDA and found no *prima facie* case made out for grant of interim injunction pending decision of the appeal.

15. The various pleas sought to be urged by the petitioner would not be decided in the present proceedings as the same relate to merits of the appeal which is still pending in the lower Appellate Court. Suffice it to say that the learned Appellate Court has passed the impugned order, in its discretion, on the basis of the evidence on record, and it cannot be said that the court has acted in exercise of jurisdiction illegally or with material irregularity. Dismissed.