

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO.11447 OF 2008

Atul Chandra Gupta

... Petitioner

versus

Patna Municipal Corporation and others

... Respondents

With

CONTEMPT PETITION(C) NO.79/2010

IN

SPECIAL LEAVE PETITION (C) NO.11447 OF 2008

O R D E R

By this order we are disposing of the special leave petition filed by the petitioner against order dated 23.1.2008 passed by the Division Bench of the Patna High Court in LPA No.760 of 2007 and the contempt petition filed with the allegation that the private respondents have violated the stay order passed by this Court on 9.4.2009.

Shri Madan Lal Gupta (father of the petitioner) and Shri Durga Prasad Sharma (father of respondent No.3 - Shri Pramod Kumar Sharma) jointly purchased land appertaining to CS plot No.50 of Khata No.169, Tauzi No.519 corresponding to Municipal Survey No.1377 measuring 9.5 decimal situated at Mohalla Moharrampur, Old By Pass Road, Kankarbagh, Patna vide registered sale deed dated 28.4.1959. The petitioner's mother also purchased 13.74 decimal land comprised in CS plot No.53 of Khata No.164, Tauzi No.519 corresponding to Municipal Survey No.1379 situated at Chandmari Road, Mohalla Moharrampur, Old By Pass Road, Kankar Bagh, Patna by registered sale deed dated 20.7.1965.

After the death of his parents, the petitioner's name is said to have been entered in the records. He filed Partition Suit No.155 of 2003 in the Court of Sub-Judge XI, Patna against respondent No.3 and others. He also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC for temporary injunction. The trial Court rejected the application by recording detailed order dated 7.6.2007, the relevant portions of which are extracted below:

"6.A) Whether the case at prima facie holds for the petitioner? Both the parties have commonly accepted that a multi storied complex had been constructed by the respondent on the disputed land of Khasra No. 1377 and 1379 in combination of Khasra Nos. 1376 and 1380. The possession of the plaintiff is on 50% of the land of Khasra Nos. 1377 and 29 1/6% share is on the land of Khasra No. 1379. It is clear from the pleading of both the sides that at present on the spot there is no independent existence of plot nos. 1377 and 1379. Therefore in my opinion the petitioner do not deserve the prima facie case for issuance of the injunction.

6 (b) Whether the balance of convenience is in favour of the petitioner. From the papers as submitted by the respondent, it is clear that according to the records of the Municipal Corporation Khasra Nos. 1376, 1377, 1379 and 1380 is under possession of the respondent and as submitted by the Circle Officer, Patna, as per the plans approved by the P.R.D.A. a multi-storied building has been constructed upon the land of the above said Khasra. The P.R.D.A. have already rejected the claim of the petitioner. Therefore, in my view the balance of convenience for issuing the orders of injunction at present is not in favour of the plaintiff.

6(c) Whether the refusal to accept the petition for injunction shall cause an irreparable loss to the petitioner? I, have earlier clarified that the land in dispute is not in the possession of the plaintiff. Lands of Khasra Nos. 1376, 1377, 1379 and 1380 had been combined and a multi-storied building has already been constructed upon it. From this it is clear that there is no separate existence of the disputed Khasra Nos. 1377 and 1379 at present. According to the section 52 of the Transfer of Property Act, 1882. If a land in dispute or a movable property is transferred during the pendency of a suit in any Court then the interest of the purchaser shall be in accordance of the award

of the Court, the interest of the purchaser shall also be effected by the award of the Court immaterial of the fact whether the purchaser has been made a party or not of the suit in the Court, the effect of the award shall be extended to the purchaser. In my opinion the respondent during the pendency of the suit without the permission of the Court have got constructed one multi-storied building upon the land in dispute. In future if the plaintiff of the suit succeeds in obtaining the share in the disputed property then the construction done by the respondent shall be treated as illegal and the petitioner shall be entitled for the mesne profits during the period of pendency of the suit for causing destruction of the share of this property.

Thus, in my opinion in case of rejection of the suit for injunction the petitioner shall not suffer with the irreparable loss. Based on the above said pleading I come to this conclusion that the application of the petitioner for issuance of the injunction order is not worth to be passed. Thus, the petition as submitted by the plaintiff for issuing the injunction orders under Order 39, Rules 1 & 2 under Section 151 of the Civil Procedure Code is hereby rejected. It is being clarified that this order shall carry no effect on the merit as well demerits of this suit."

(emphasis supplied)

Miscellaneous Appeal No.415/2007 filed by the petitioner against the aforesaid order of the trial Court was disposed of by the Patna High Court vide order dated 9.7. 2010 and the trial Court was directed to proceed with the suit on day to day basis and disposed of the same within a period of one year.

During the pendency of the suit, respondent No.3 executed a special power of attorney in favour of respondent No.4 for getting the building plan sanctioned from Patna Regional Development Authority (for short, 'PRDA') for construction of multi-storied building on plot Nos. 1377 and 1379. Thereafter, respondent No.4 submitted building plans to PRDA and made an application for sanction thereof. He also filed an affidavit in support of the application. PRDA sanctioned the plan vide order dated 12.6.2004.

On coming to know of the aforesaid development, the petitioner filed application under Section 38 of the Bihar Regional Development Authority Act, 1981 (for short, 'the 1981 Act') and sought cancellation of the sanctioned plan and demolition of the construction. Initially, the Competent Authority directed stoppage of construction, but, after hearing the parties, the petitioner's application was dismissed on the ground that the suit filed by him was pending before the Court.

The petitioner challenged the rejection of his application in CWJC No.6512 of 2007. The learned Single Judge dismissed the writ petition by observing that even before filing of application by the petitioner for cancellation of plan, the building had been constructed and third party rights had been created. The learned Single Judge further observed that the interest of the petitioner has been protected by the trial Court, which is seized with the suit. LPA No.760 of 2007 filed by the petitioner was dismissed by the Division Bench by reiterating the reasons recorded by the learned Single Judge.

This petition was filed on 21.4.2008. Notice of the special leave petition was issued on 12.5.2008. On 9.4.2009, the Court passed the following order:

"On the prayer made on behalf of the respondents, four weeks' time is granted for filing counter affidavit; rejoinder, if any, be filed within two weeks thereafter.

List the matter for final disposal in the second week of August, 2009.

In the meantime, the parties are directed to maintain status quo as of today with regard to the flats in question."

After about one year, the petitioner filed Contempt Petition (C) No.79 of 2010 against respondent Nos. 3 and 4 in the special leave petition alleging that despite the order of status quo, respondent Nos. 3 and 4 sold the flats to third parties and respondent No.4 got the sale deed in respect of Flat No.501, Block-C in "Nutan Towers" registered after 9.4.2009.

In the counter affidavit filed by him in the contempt petition, respondent No.4 has averred that Flat No.501 was completed in the month of September, 2007; that the purchaser had paid the final instalment on 15.5.2008; that the stamp duty was deposited on 26.11.2008 and the deed was presented for registration on 30.3.2009. He has further averred that in the wake of announcement made by the State Government to hike the stamp duty, there was heavy rush for registration and the document presented by him could be taken up only on 15.4.2009 for registration and that on the said date neither the authorized representative of the respondents nor the Registrar was aware of the interim order passed by this Court. Respondent No.4 has also tendered unqualified apology and averred that he never had any intention of violating the order of this Court.

We have heard Dr. Rajeew Dhawan, learned senior counsel appearing for the petitioner and Shri Pallav Shishodia, learned senior counsel appearing for the respondents and carefully perused the record.

It is not in dispute that the plan submitted by the power of attorney holder of respondent No.3 for construction of multi-storied building was sanctioned by the Competent Authority on 5.5.2004 and the building was substantially completed by 2007. After more than one year, the petitioner filed the petition under Section 38 of the 1981 Act for cancellation of the sanctioned plan and for demolition of the construction. The concerned authority took cognizance of the fact that the partition suit filed by the petitioner was pending and held that there was no valid ground or justification to cancel the sanctioned plan at a belated stage.

It is also not in dispute that the injunction application filed by the petitioner in the partition suit was dismissed by the trial Court after due consideration of the points raised by the parties and that while doing so, the trial Court amply safeguarded the rights of the petitioner by ordering that if he succeeds in obtaining share in the disputed property, then the construction done by the respondents shall be treated as illegal and he shall be entitled to mesne profits during the pendency of the suit for causing destruction to his share of the property. The writ petition filed by the petitioner was dismissed by the learned Single Judge because the building had already been constructed and the rights of third parties had intervened. The learned Single Judge also noted that the trial Court had adequately protected the petitioner's interest and refused to nullify the sanctioned plan. For the same reasons, the Division Bench of the High Court dismissed the Letters Patent Appeal.

In our view, the reasons recorded by the learned Single Judge and the Division Bench for refusing to quash the sanction granted by PRDA for construction of multi-storied building are legally correct and the order under challenge does not call for interference under Article 136 of the Constitution. It is needless to say that if the petitioner succeeds in the pending suit, then his rights qua the property in dispute shall not be adversely affected on account of dismissal of the writ petition and the letters patent appeal.

In the result, the special leave petition is dismissed. However, it is made clear that the observations made by the trial Court and the High Court shall not influence final adjudication of the suit.

Contempt Petition (C) No.79 of 2010 in SLP(C) No.11447 of 2008.

We are of the view that there is no willful disobedience of the order of this Court dated 9.4.2009 as alleged by the petitioner. The contempt petition is accordingly dismissed.

.....J.
(G.S. SINGHVI)

.....J.
(C. NAGAPPAN)

New Delhi;
September 30, 2013.

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)No(s).11447/2008

(From the judgement and order dated 23/01/2008 in LPA No.760/2007 of The HIGH COURT OF PATNA)

ATUL CHANDRA GUPTA

Petitioner(s)

VERSUS

PATNA MUNICIPAL CORP. & ORS.

Respondent(s)

(With appln(s) for vacation of order dated 09.04.2009 and directions and with prayer for interim relief and office report)

(For final disposal)

With

Conmt.Pet.(C)No.79/2010 In SLP(C)No.11447/2008

Date: 30/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Dr.Rajeev Dhawan, Sr.Adv.
Mr. Lakshmi Raman Singh, AORFor Respondent(s) Mr.Pallav Shishodia, Sr.Adv.
Mr.Rudreshwar Singh, Adv.
Mr. Samir Ali Khan, AOR
Mr.Gopal Jha, Adv.

Mr. Sumeet Lall, AOR

Mr. Neeraj Shekhar, Adv.
Mr.Ashutosh Thakur, Adv.
Mr.Rajesh Maurya, Adv.UPON hearing counsel the Court made the following
O R D E R

Both the special leave petition and the contempt petition are dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)
