2023 STPL(Web) 81 SC
SUPREME COURT OF INDIA

(C.T. RAVIKUMAR AND SANJAY KUMAR JJ.)

RAM KISHAN (DECEASED) THROUGH LEGAL REPRESENTATIVES & ANR.

Appellants

VERSUS

MANISH KUMAR & ANR.

Respondents

Civil Appeal Nos. 4538-4539 of 2023 With Writ Petition (Civil) No. 692 of 2023-Decided on 24-7-2023

Civil
Cantonment Board – De sealing of Property - Writ fails

JUDGMENT

C.T. Ravikumar, J.-In the captioned Civil Appeals by Special Leave, the appellants assail order dated 11.11.2021 in CM (M) No.998 of 2021 and the judgment and order dated 10.04.2023 in CM (M) No.1089 of 2022 passed by the High Court of Delhi at New Delhi. In the abovementioned Writ Petition, the petitioner prays for issuance of a writ of mandamus and/or for an appropriate Digitally signed by writ/order or direction in the nature of mandamus, directing the Delhi Cantonment Board (hereinafter referred to as, 'the DCB') to de seal the subject property i.e., CB-97, Naraina Village, Delhi Cantt. Obviously, the subject property involved in the Civil Appeals and the Writ Petition is one and the same. The parties are referred to in this judgment in accordance with their status and rank in the captioned Civil Appeals unless otherwise specifically mentioned.

2. Heard, Mr. Abhishek Sharma, learned counsel for the appellants and Mrs. Avnish Ahlawat, learned counsel for the respondents. Civil Appeal Nos. 4538-4539 of 2023

3. CM (M) No.998 of 2021 was filed by Sh. Ram Kishan, appellant No.1 (deceased) herein who was defendant No.1 in Civil Suit No.759 of 2018 instituted by the first respondent herein. Deceased Ram Kishan filed the said petition under Article 227 of the Constitution of India on being aggrieved by the dismissal of his application filed under Section 151 of the Code of Civil Procedure, 1908 (for brevity, 'CPC') seeking dismissal of the said Civil Suit, as per the order dated 13.04.2021. The High Court as per the impugned order dated 11.11.2021, dismissed the petition and confirmed the order of the Trial Court. On 10.04.2023 the Trial Court, on the application of the first respondent/the plaintiff under Order XIV, Rule 5, CPC, for deletion of issue Nos.1 and 2 framed in Civil Suit No.759 of 2018, allowed it and deleted issue Nos.1 and 2. The same was challenged by the appellants in CM (M) No.1089 of 2022 and it was disposed of as per judgment dated 10.04.2023. The aforesaid order dated 11.11.2021 and judgment dated 10.04.2023 are under challenge in the captioned Civil Appeals. Though there is delay in filing the Special Leave Petition against the order dated 11.11.2021, we condone the delay in filing the same.

4. Essentially, the contention unsuccessfully raised before the Trial Court and the High Court by the appellant herein for dismissal of Civil Suit No.759 of 2018 was that in view of the order dated 25.09.2020 passed by this Court in Praveen Kumar v. Delhi Cantonment Board & Ors. in Writ Petition (C) No.723 of

2020, the subject suit filed by the plaintiff could not be entertained. In fact, the same contention was reiterated before us.

5. A perusal of the order of the Trial Court dated 13.04.2021 and the High Court dated 11.11.2021 would reveal that the Courts had considered the prayer for dismissal of the suit founded on the decision in Praveen Kumar's case (supra). In the contextual situation, it is only apposite to refer to the relevant portions of the order of this Court dated 25.09.2020 in Praveen Kumar's case (supra), that read thus: -

> "13. By the petitioner having accepted the jurisdiction of DCB over the land in question, the controversy which has been initiated by him would come to an end. The petitioner is at liberty to submit a building plan for sanction to DCB. Without this Court determining whether the building plan should be sanctioned, we direct the DCB to take a decision on the building plan to be submitted, within a period of four weeks from the date of its submission. The decision of the DCB shall be taken in accordance with law and the prevailing building regulations and bye laws. In the event that the petitioner applies for sanction within a period of two weeks from today, DCB shall not give effect to its notices of demolition until it communicates its decision in regard to the building plan of which sanction is sought by the petitioner.
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> 14. The above directions have been issued by this Court in exercise of the power under Article 142 of the Constitution to do complete justice, since the petitioner has in the proceedings before this Court, unconditionally accepted the jurisdiction of DCB."

6. Bearing in mind the contentions, we have carefully scanned the aforesaid extracted portions from the decision in Praveen Kumar's case. We are at a loss to understand how the appellant could raise a plea that in the light of the aforesaid order dated 25.09.2020, the subject Civil Suit filed by the respondent herein should not be entertained, rather, could not be maintained. It needs no labour to bring home the fact that it is nothing but a cavillous contention.

7. The full text of Praveen Kumar's case (supra), produced as Annexure P-3 in the instant appeals, would reveal that as a matter of fact the said Writ Petition viz., W.P. (C) No.723 of 2020 was dismissed as not pressed and that it was SLP (C) No.8866 of 2020 which was disposed of, on the afore-extracted lines as per the order dated 25.09.2020. Be that as it may, the indubitable position is that as per the said order in SLP (C) No.8866 of 2020, this Court had not entered into any finding conferring any kind of indefeasible right on the appellant. The appellant who approached this Court challenging the jurisdiction of the DCB over the land ultimately accepted jurisdiction of DCB over the same in the matter of sanctioning of building plans and thereupon, without determining the question whether the building plan should be sanctioned or not, this Court only directed the DCB to take a decision on the building plan, which was then permitted to be submitted within the period stipulated therein. That apart, it was specifically observed therein that the DCB should take decision thereon in accordance with law and the prevailing building regulations and bye laws. Evidently, such directions were given by this Court in invocation of the power under Article 142 of the Constitution of India to do complete justice as the petitioner therein/the appellant herein had unconditionally accepted the jurisdiction of DCB in the matter. At this juncture, it is relevant to refer to the appellant's own case as is obvious from page 'B' of the captioned Civil Appeal Nos. 4538- 4539 of 2023 (arising out of SLP (C) Diary No.22266 of 2023). The relevant recital therein runs as follows: -

> "Petitioner challenged the jurisdiction of DCB but ultimately accepted to it and is in the process of constructing the property after obtaining due sanction from DCB." (emphasis added)

8. The further position discernible from the pleadings in the SLP, is that there is no sanctioned building plan with the petitioner. As a matter of fact, the DCB rejected the building plan on 05.04.2021 and aggrieved by its rejection he filed W.P. (C) No.8347 of 2021 before the High Court of Delhi.

9. The tenability of the prayer of the appellant for dismissal of Civil Suit No.759 of 2018 filed by the respondent herein has to be appreciated in the aforesaid background. The position revealed from the facts narrated above and also the materials on record would go to show that the respondent herein instituted Civil Suit No.759 of 2018 much before the filing of Writ Petition (C) No.723 of 2020 and also SLP (C) No. 8866 of 2020 by the appellant herein before this Court. That apart, it is a fact that the first respondent who is the plaintiff in Civil Suit No.759 of 2018 was not made a party either in the Writ Petition (C) No.723 of 2020 or in SLP (C) No.8866 of 2020. Moreover, the order dated 25.09.2020 in Praveen Kumar's case (supra) would reveal (as noted hereinbefore) that it was without making any observation that this Court permitted the appellant/petitioner to submit building plan for sanction and consequently, directed the DCB to take a decision thereon in accordance with law and the prevailing building regulations and bye laws. Another conspicuous relevant aspect revealed from the order dated 25.09.2020 is that this Court had also taken note of the pendency of Civil Suit No. 759 of 2018 seeking injunction against the appellant herein and also the sealing of the subject property. After, taking note of the fact that appellant who initially challenged the jurisdiction of the DCB abandoned the same and accepted its jurisdiction and then sought to withdraw the SLP, but not by way of withdrawal simpliciter, disposed of SLP (C) No. 8866 of 2020 in the manner mentioned hereinbefore, i.e., only with a direction to the DCB to consider application for sanction of building plan in accordance with law and the prevailing building regulations and bye laws. Thus, it can be seen that the appellant herein did not seek for any relief as relates the pending Civil Suit No. 759 of 2018 before this Court and this Court also did not make any observation in respect of the pending suit. In short, in such circumstances, how can the appellant be heard to contend that in the light of the order dated 25.09.2020, the Civil Suit No.759 of 2018 cannot be entertained any further.

10. When this be the undisputed and indisputable position obtained from the pleadings and the materials on record, we find absolutely no infirmity or illegality in the order dated 11.11.2021 passed by the High Court in CM (M) No.998 of 2021, confirming the order of dismissal of the Trial Court on the application of the appellant for dismissal of Civil Suit No.759 of 2018, as per order dated 13.04.2021.

11. Now, the question is whether the order dated 10.04.2023 in CM (M) No.1089 of 2022 invites interference. As noticed hereinbefore, as per the order impugned before the High Court, the Trial Court allowed the application by the plaintiff/the first respondent herein under Order XIV, Rule 5, CPC, for deletion of issue Nos.1 and 2 framed in Civil Suit No.759 of 2018 and deleted the said issues. The deleted first issue was whether the suit property falls within the jurisdiction of DCB. Obviously, the prayer for its deletion was considered and allowed in view of order dated 25.09.2020 passed by this Court in SLP (C) No.8866 of 2020. We have already found that as per order dated 25.09.2020, annexed in the Appeals as Annexure P-3, the appellant herein who was disputing the jurisdiction of DCB has accepted the jurisdiction of DCB over the subject land. When the said factum of acceptance of the jurisdiction of DCB by the appellant was recorded by this Court in the order dated 25.09.2020, the petitioner cannot, legally, have any grievance or objection regarding the deletion of the aforesaid issue relating the jurisdiction of DCB. When that be the position itself, deletion is not available to be challenged.

12. Issue No.2 that was deleted was whether the provisions of Section 250 of the Cantonments Act, 2006 (hereinafter referred to as, 'the Act') would bar the suit filed by the first respondent/the plaintiff. Obviously, after analysing the said provision, the Trial Court negatived the objection of the appellant herein that it would bar the suit. Section 250 of the Cantonments Act reads thus: -

"Section 250 Cantonments Act, 2006 250. Courts not to entertain proceedings in certain cases.

(1) After the commencement of this Act. no court shall entertain any suit, application or other proceedings in respect of any order or notice unless an appeal under section 340 is preferred and the same is disposed of by the appellate authority under sub- section (3) of section 343 of this Act.

(2) Notwithstanding anything contained in sub- section (1), every suit, application or other proceedings pending in any court immediately before the commencement of this Act shall continue to be dealt with and disposed of by that court as if the said section has not been brought into force.

13. Going by the aforesaid provision the bar would apply in respect of any order or notice unless an appeal under Section 340 of the said Act is preferred and the same is disposed of by the Appellate Authority under sub-section 3 of Section 343 of the Act. The factual finding of the Trial Court is that no notice or order was issued against the first respondent herein/the plaintiff so as to attract the bar under Section 250 of the Act. This factual finding based on the provisions under Section 250 has been confirmed by the High Court as per the impugned judgment dated 10.04.2023. There is absolutely no material on record which would go to show that the said factual finding viz., there is no notice or order issued against the first respondent/the plaintiff by the Cantonment Board under the said Act, is factually incorrect. In view of the provisions under the said Section and the aforesaid factual finding, we find no reason to interfere with the deletion of issue No.2, in the factual background obtained. In short, we do not find any illegality or infirmity warranting interference with the order dated 10.04.2023 of the High Court that confirmed the order dated 13.04.2021 passed by the Trial Court in allowing the deletion of the aforementioned issues. Resultantly, the captioned Civil Appeals stand dismissed. The pending application(s) stands disposed of.

Writ Petition (Civil) No. 692 of 2023

14. The captioned Writ Petition has been filed seeking issuance of writ of mandamus or appropriate writ or direction in the nature of mandamus directing the DCB to de seal the subject property i.e., CB-97, Naraina Village, Delhi Cantt, as noted earlier. In the context of the said prayer, it is relevant to refer to paragraph 7 of Annexure P-3 order dated 25.09.2020, marked as such in the captioned Writ Petition as well, viz. the common order in Writ Petition (C) No.723 of 2020 and SLP (C) No.8866 of 2020. It would reveal that during the course of the said proceedings Interlocutory Application No.93630 of 2020 was filed therein on behalf of the writ petitioner, who is also the appellant in Civil Appeal Nos. 4538-4539 of 2023. The prayers made in the said IA have been extracted in Annexure P-3 order dated 25.09.2020. Prayer No. 'd' therein reads thus: -

"d) Direct the DCB de-seal the property of the Petitioner, on the approval of the Petitioners' building plan"

15. The afore extracted prayer No.(d) under Annexure P-3 itself would reveal that the writ petitioner had sought for de-sealing the property only on the approval of its building plan. We have already noted that the writ petitioner himself got no case that the building plan submitted by him was sanctioned. When it was not sanctioned and the direction to the DCB under Annexure P-3 order dated 25.09.2020 was only to consider the application for sanction of the building plan in accordance with the prevailing building regulations and bye laws, the writ petitioner cannot be allowed, now, to contend that the DCB got an obligation to de-seal the property of the writ petitioner. In the light of the position obtained from Annexure P-3 order dated 25.09.2020 that SLP (C) No.8866 of 2020 was disposed of only with a direction for consideration of his application for sanction of building plan, even after noting the fact that the property has been sealed and the Writ Petition (C) No.723 of 2020 heard along with the SLP was

dismissed as not pressed under the said order, the prayer of the petitioner to issue a writ of mandamus in the absence of any legal right at this stage, cannot be granted. There cannot be any doubt with respect to the fact that the question of de-sealing is also a matter which is intertwined with the issues arising for consideration in the pending Civil Suit, in view of the attendant circumstances. At any rate, in the light of Annexure P-3 order dated 25.09.2020, the writ petitioner is not legally entitled to seek such a prayer at this stage. In the said circumstances, the Writ Petition has to fail as the prayer sought for therein is not grantable at this stage.

16. Consequently, the Writ Petition stand dismissed. The pending application(s) shall stand disposed of.
