

Civil Revision**Present: The Hon'ble Justice Jyotirmay Bhattacharya****Judgment On : 18-05-2010.***C.O. No. 424 of 2010***Executive Officer, Kakdwip Panchayat Samity & Anr.****-Vs-****Surya Kanta Giri****Point:**

INJUNCTION, LICENSE : Ad-interim order of injunction refused by Trial Court-In appeal whether Appellate Court can grant injunction till disposal of the suit-The Licensee is staying after the expiry of the license period- There are some delay in handing over possession of the said property by the licensor- The stay in the licensed premises after completion of the license period whether permissible-Code of Civil Procedure, 1908 O39 R 1&2

Facts:

The Kakdwip Panchayat Samiti engaged the petitioner as lessee of Sulav Sauchagar and car parking space at Lot No.8 at Kakdwip for the year 2008-2009 excepting the period from 9th January, 2009 to 17th January, 2009 when Gangasagar Mela of 2009 was scheduled to be held. The possession of the said Sauchagar and the car parking space could not be delivered to the petitioner by the said Panchayat Samiti till 24th November, 2008. Thus, possession of the said Sauchagar and car parking space was delivered to the petitioner on 25th November, 2008 after eight months from the date of commencement of the licence. Since the plaintiff could not utilize the full term of such licence, the plaintiff requested the said Panchayat Samiti to extend the period of such lease for a further period of eight months from the expiration of the lease. The defendant received a sum of

Rs.67,670/- for extension of lease for eight months but, in fact, lease period was extended only for two months. Under such circumstances, the plaintiff filed the said suit for declaration of his leasehold right in the said Sauchagar and car parking space and for injunction for restraining the defendants from dispossessing the plaintiffs forcefully without due process of law. In such a suit a temporary injunction was sought for by the plaintiff so that his possession in the said property is not disturbed without due process of law. The learned Trial Judge rejected the petitioner's prayer for ad-interim injunction. Against that the miscellaneous appeal was filed against the said order of the learned Trial Judge. The learned Appeal Court was pleased to admit the said appeal under Order 41 Rule 11 of the Code of Civil Procedure and thereafter the appeal was ultimately allowed on contest.

Held:

The learned Appeal Court was not justified in passing the said interim order of injunction till the disposal of the suit in an appeal which was directed against an order of refusal to grant ad-interim injunction by the Trial Judge.

Para-6

Admittedly possession of the said Sauchagar and the car parking space was delivered to the plaintiff after eight months from the date of commencement of the said licence. Though the plaintiff, as of right, cannot overstay in the said premises after the expiry of the licence period even though there was some delay in handing over possession of the said property to the plaintiff but, still then, the possession of the plaintiff for a period of two months after the expiry of the licence period cannot be held to be illegal as the licence period was admittedly extended by the defendant for a period of two months after the expiry of the licence. The possession of the plaintiff in the said property become illegal after expiry of the extended period of licence and as such, such illegal

possession of the plaintiff in the suit property after the expiry of the extended period, cannot be protected by any Court of law. **Para-12**

Be that as it may, even the period of eight months which was claimed by the plaintiff by way of extension of the licence has also expired by this time and as such, the plaintiff cannot now retain the possession of the said premises lawfully. Possessory right is no doubt a valid and recognized right in law but if such right is exercised illegally and/or unlawfully, no Court should pass any injunction order to protect such illegal possession of a party against the lawful owner thereof. As such, the learned Appeal Court ought to have dismissed the said appeal. **Para-13**

If such an injunction is maintained, then an illegal occupier of a Government property will be allowed to enjoy such right to the deprivation of the other competitors who are aspirant for taking licence of the said property on payment of settled licence fees for the subsequent period. Thus, not only the government exchequer will suffer but also the right of the other aspirant competitors for grant of licence for the subsequent period will also be affected. In fact, the entire system of settlement of Government land on short term licence basis by public auction will collapse if the Court comes to the aid of the plaintiff to protect his illegal possession in the said property by granting of such interim order of injunction. **Para-14**

Cases Followed:

Mrs. M.N. Clubwala & Anr. –Vs- Fida Hussain Saheb & Ors. -----AIR 1965 SC page 610

Cases Cited:

Prataprai K. Kothari –Vs- John Bragznza -----AIR 1999 SC page 1666

For the Petitioner : **Mr. S.P. Roy Chowdhury,**
 Mr. Aniruddha Chatterjee,
 Mr. Kamal Mishra,
 Mr. Tanmoy Chowdhury.

For the Opposite : **Mr. Asish Bagchi,**
Party. **Mr. Jiban Ratan Chatterjee,**
 Mr. Satyajit Mondal,
 Mr. Suranjan Mondal.

The Court :

This application under Article 227 of the Constitution of India is directed against an order dated 23rd December, 2009 passed by the learned Additional district Judge, Diamond Harbour in Misc. Appeal No.10 of 2009, reversing the order being No.3 dated 3rd June, 2009 passed by the learned Civil Judge (Junior Division) at Kakdwip in T.S. No.99 of 2009.

2. The learned Trial Judge refused to pass an ad-interim order of injunction in favour of the plaintiff/opposite party. The plaintiff was directed to put in the requisites for service of notice to show cause upon the defendants. Instead of complying with the said direction of the learned Trial Judge, a miscellaneous appeal was preferred by the plaintiff before the learned Appeal Court against the order of refusal to grant ad-interim injunction passed by the learned Trial Judge as aforesaid. The learned Appeal Court was pleased to admit the said appeal under Order 41 Rule 11 of the Code of Civil Procedure and thereafter the appeal was ultimately allowed on contest. Both the parties were directed to maintain status quo as regard possession of the plaintiffs/appellant till disposal of the said suit.

3. The propriety of the said order is under challenge in this revisional application at the instance of the defendant/petitioner herein.

4. Heard Mr. Roy Chowdhury, learned Senior Counsel appearing for the petitioner and Mr. Bagchi, learned Advocate appearing for the opposite party. Considered the materials on record including the order impugned.

5. Let me now consider as to how far the learned Appeal Court was justified in passing the impugned order in the facts of the instant case.

6. At the very outset I must mention that the learned Appeal Court was not justified in passing the said interim order of injunction till the disposal of the suit in an appeal which was directed against an order of refusal to grant ad-interim injunction by the Trial Judge.

7. Let me now consider as to whether the Appeal Court was justified in passing the impugned order in the facts of the instant case.

8. Here is the case where Kakdwip Panchayat Samiti engaged the petitioner as lessee of Sulav Sauchagar and car parking space at Lot No.8 at Kakdwip for the year 2008-2009 excepting the period from 9th January, 2009 to 17th January, 2009 when Gangasagar Mela of 2009 was scheduled to be held. Though the document under which the petitioner was permitted to utilize the said Sauchagar and the car parking space was described as lease, but if the terms and conditions

contained in the said document are considered in the light of the decision of the Hon'ble Supreme Court in the case of Mrs. M.N. Clubwala & Anr. –Vs- Fida Hussain Saheb & Ors. reported in AIR 1965 SC page 610 then it will be clear that, in fact, a licence was granted in favour of the petitioner by the said Panchayat Samiti for utilizing the said Sauchagar and car parking space during the said period, without creating interest therein in favour of the petitioner.

9. Admittedly the possession of the said Sauchagar and the car parking space could not be delivered to the petitioner by the said Panchayat Samiti till 24th November, 2008. Thus, possession of the said Sauchagar and car parking space was delivered to the petitioner on 25th November, 2008 after eight months from the date of commencement of the licence. Since the plaintiff could not utilize the full term of such licence, the plaintiff requested the said Panchayat Samiti to extend the period of such lease for a further period of eight months from the expiration of the lease. It was alleged by the plaintiff that though the defendant received a sum of Rs.67,670/- for extension of lease for eight months but, in fact, lease period was extended only for two months. Under such circumstances, the plaintiff filed the said suit for declaration of his leasehold right in the said Sauchagar and car parking space and for injunction for restraining the defendants from dispossessing the plaintiffs forcefully without due process of law. In such a suit a temporary injunction was sought for by the plaintiff so that his possession in the said property is not disturbed without due process of law.

10. The learned Trial Judge rejected the petitioner's prayer for ad-interim injunction by holding inter alia that such relief by way of ad-interim injunction cannot be granted against the statutory

authorities without giving them an opportunity of hearing. The aforesaid miscellaneous appeal was filed against the said order of the learned Trial Judge.

11. I have already indicated above that though the document under which the petitioner is claiming his possession in the said Sauchagar and car parking space was described as a lease deed but, in fact, a mere licence was created by the Panchayat Samiti in favour of the plaintiff for the period as mentioned therein.

12. Admittedly possession of the said Sauchagar and the car parking space was delivered to the plaintiff after eight months from the date of commencement of the said licence. Though the plaintiff, as of right, cannot overstay in the said premises after the expiry of the licence period even though there was some delay in handing over possession of the said property to the plaintiff but, still then, the possession of the plaintiff for a period of two months after the expiry of the licence period cannot be held to be illegal as the licence period was admittedly extended by the defendant for a period of two months after the expiry of the licence. Thus, this Court is of prima facie view that the possession of the plaintiff in the said property become illegal after expiry of the extended period of licence and as such, such illegal possession of the plaintiff in the suit property after the expiry of the extended period, cannot be protected by any Court of law.

13. Be that as it may, even the period of eight months which was claimed by the plaintiff by way of extension of the licence has also expired by this time and as such, the plaintiff cannot now retain the possession of the said premises lawfully. Possessory right is no doubt a valid and recognized right in law but if such right is exercised illegally and/or unlawfully, no Court should pass any

injunction order to protect such illegal possession of a party against the lawful owner thereof. As such, the learned Appeal Court ought to have dismissed the said appeal.

14. That apart, if such an injunction is maintained, then an illegal occupier of a Government property will be allowed to enjoy such right to the deprivation of the other competitors who are aspirant for taking licence of the said property on payment of settled licence fees for the subsequent period. Thus, not only the government exchequer will suffer but also the right of the other aspirant competitors for grant of licence for the subsequent period will also be affected. In fact, the entire system of settlement of Government land on short term licence basis by public auction will collapse if the Court comes to the aid of the plaintiff to protect his illegal possession in the said property by granting of such interim order of injunction.

15. Under such circumstances, this Court holds that the learned Appeal Court was not justified in passing the said interim order of injunction without considering the present problem from the angle of public interest. The decision of the Hon'ble Supreme Court which was cited by Mr. Bagchi, learned Advocate for the opposite party in the case of Prataprai K. Kothari –Vs- John Bragznza reported in AIR 1999 SC page 1666 has no application in the instant case as this is a case where there is a conflict between public interest versus private interest and the petitioner's claim is based on title while the plaintiff's claim is based on possession only, unlike in the said case where two private individuals were fighting for their cause and none of them claimed title in the suit property.

16. The impugned order, thus, stands set aside.

17. Leave is granted to the petitioner to file objection against the plaintiff's application for temporary injunction within three weeks from date. Reply, if any, be given by the plaintiff within a week thereafter. The learned Trial Judge is requested to dispose of the plaintiff's application for temporary injunction as early as possible without being influenced by any of the observations made herein above.

18. The revisional application is, thus, disposed of.

Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

(Jyotirmay Bhattacharya,J.)