

IN THE HIGH COURT OF DELHI

FAO No.169/2004

M/s.Mittal Hardware Store Appellant
! through: Mr.A.K.Sen, Advocate and
Mr.S.Khan, Advocate.

VERSUS

\$ Govt. of NCT of Delhi & Ors. Respondents
^ through: Ms.Geeta Luthra for respondent No.1.

FAO No.276/2004

Gyanendra Singh & Ors. Appellants
! through: Mr.A.K.Sen, Advocate and
Mr.S.Khan, Advocate.

VERSUS

\$ Govt. of NCT of Delhi & Ors. Respondents
^ through: Ms.Geeta Luthra for respondent No.1.

% DATE OF DECISION: 03.03.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. The above captioned appeals raise similar issues and lay a challenge to 2 identically worded orders dated 22.5.2004 passed in Suit No.397/2003 and 371/2003.

2. M/s.Mittal Hardware Store is the plaintiff in Suit No.371/2003. Gyanendra Singh & Ors. are the plaintiffs in Suit No.397/2003.

3. The plaintiffs of the suit are aggrieved by the fact that their applications under Order 39 Rule 1 and 2 CPC praying for an interim injunction pending disposal of the suit have been dismissed.

4. M/s.Mittal Hardware Store claims to have taken a shop on rent from late Chaudhary Hari Ram, father of Gyanender Singh.

5. Said plaintiff as also Gyanender Singh & Ors. allege that the shop on rent with M/s.Mittal Hardware Stores and an adjoining shop in possession of Gyanender Singh & Ors. is constructed on Khasra No.637/350 (Min.) Village Kotla Mubarak Pur. That the land was inherited through their ancestors. That a house and shops were built on the land over 60 years back. It was alleged that there was a threat of demolition. Suits sought injunction against the defendants restraining the defendants from demolishing the shops and interfering with the possession of the plaintiff.

6. In the written statement filed by the defendants it is pleaded that the shops are comprised in Khasra No.636/350. That as per revenue record said land comprised in Khasra

No.636/350 was entered in the name of Deputy Commissioner, Delhi and was shown as Patwar-Ghar.

7. With reference to the revenue record the learned Trial Judge held that land comprised in Khasra No.636/350 Village Kotla Mubarak Pur, Delhi did not belong to the ancestors of Gyanender Singh & Ors. Thus, injunction was declined.

8. In the instant appeals taking note of the fact that the real issue between the parties was whether at site, the 2 shops were constructed on land comprised in Khasra No.637/350 (Min.) as alleged by the plaintiffs or the shops were on land comprising Khasra No.636/350 (Min.) and that said issue was not decided by the learned Trial Judge, notice was issued in the appeals and interim stay was granted.

9. On 28.5.2004 an interim order was passed in CM No.7215/2004 in FAO No.276/2004. The interim order reads as under:-

“CM No.7215/2004 (Stay)

Notice for the date fixed.

Until further orders, the shop bearing No.D-8/1(1539) Gurudwara Road, Kotla Mubarak Pur, New Delhi situated in Khasra No.637/350 (Min.) Village Kotla Mubarak Pur, New Delhi be not demolished. However, the respondents are free to take action in respect of the shop to the extent it encroaches upon

Khasra No.636/350 (Min.) Village Kotla Mubarak Pur, New Delhi.

Needless to say that the demolition in Khasra No.636/350 (Min.) Village Kotla Mubarak Pur, New Delh be carried out only on proper demarcation.

The matter is said to be listed before the learned Trial Judge on 12th July, 2004. The learned Trial Judge will give a date for demarcation on that date so that the entire controversy is sorted out.

Dasti.”

10. Needless to state, the interim order clearly protected the interest of the appellants as also the respondents. Indeed, if the shops were constructed on land comprised in Khasra No.637/350 (Min.) Village Kotla Mubarak Pur the same could not be demolished, but, if the shops were an encroachment on Khasra No.636/350 (Min.) Village Kotla Mubarak Pur, appellants would have no prima facie case.

11. I am informed that pursuant to the order dated 28.5.2004 necessary directions were issued by the learned Trial Judge requiring demarcation to be effected and that on 25.9.2004 demarcation has been effected.

12. As per demarcation report it has been found that there is an encroachment measuring 8' 9" x 33' 0"on Khasra No.636/350.

13. Whether the encroachment spans one shop or both

shops has not been brought out in the demarcation report.

14. It was urged by learned counsel for the appellant that they have filed objections to the demarcation report.

15. I am a little surprised that the objections filed to the demarcation report have not been decided for nearly 3 years.

16. In my opinion, considering the controversy between the parties as also the interim order dated 28.5.2004 (noted herein above) the appeals are liable to be disposed of directing that the learned Trial Judge would decide the objections to the demarcation report within 2 months from the date of the receipt of the present order.

17. Further, only if the 2 shops are prima facie found to be existing on land comprised in Khasra No.637/350 would an injunction operate in favour of the appellants and against the respondents restraining the respondents from demolishing the shops till the decision of the suit. If, however, it is prima facie found that the shop(s) or part thereof is an encroachment to the extent of encroachment no injunction shall operate.

18. Before concluding I may note that in effect the 2 suits can be disposed of on the demarcation report for the reason this would be the only evidence on which final decision has to be based.

19. The learned Trial Judge would consider disposing of

the 2 suits in light of the decision on the application raising an objection to the demarcation report dated 25.9.2004.

20. No costs.

21. Copy of this order be supplied dasti to learned counsel for the parties on payment of usual charges.

March 03, 2008
d.k.bainsla

(PRADEEP NANDRAJOG)
JUDGE