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IN THE HIGH COURT OF DELHI

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RSA No.137/2001

Hari Singh & Anr. Appellants
through: Mr. Raja Venkatappa Naik, Advocate
Mr. S.K.Tandon, Advocate

VERSUS

Prabhati Lal & Ors. Respondents
through: Mr. J.M.Sabharwal, Senior Advocate with
Mr. S.K.Sabharwal, Advocate for DDA.
Mr. Gaurang Kanth, Advocate with
Mr. Naveen Bhardwaj, Adv. for R-3.
Mr. P.K.Maitra, Adv. for R-1.

DATE OF DECISION

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19.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

: **PRADEEP NANDRAJOG, J.**(Oral)

1. The appellants were the defendants and have suffered two concurrent decrees against them. The finding of the learned Trial Judge vide judgment and decree dated 19.5.2001 has been affirmed vide judgment and decree dated 18.8.2001 passed by the learned Appellate Judge.

2. The courts below have returned a finding based on

documents and in particular the inspection report Ex.P-2 and the demolition order Ex.P-3.

3. The first respondent was the plaintiff. He alleged that the appellants were raising unauthorised construction on public land at the rear of his plot bearing Municipal No.165, Gautam Nagar, New Delhi.

4. Through the medium of the land owning agency in the area which was in charge of public lands namely DDA the plaintiff successfully established that at the rear of his plot there existed a public street and that the appellants were raising unauthorized constructions thereon. Through the medium of Ex.P-2 and Ex.P-3 he successfully established unauthorized construction on the public street being booked by DDA and show-cause notice being issued to the appellants, followed by a demolition order. Needless to state, the demolition order was not challenged by the appellants and it attained finality.

5. The findings returned by both Courts below is based on an appreciation of evidence.

6. During arguments today learned counsel for the appellants has not been able to show to this Court whether any material document has been ignored or a circumstance which has been ignored by the Courts below. Only argument raised is that the

appellants were not given a fair opportunity to lead evidence. But in what manner? The counsel has no answer. A feeble attempt was made to urge that on 19.5.2000 the learned Trial Judge wrongly closed the evidence of the appellant. In response to this submission I have asked the counsel what happened on 19.5.2000. The response is that neither witnesses nor counsel was present and defence evidence was closed. When asked was any application filed to seek recall of the said order, counsel concedes none was filed.

7. I have queried learned counsel for the appellants as to what would be the effect of the demolition order passed by DDA holding that the appellants were in unauthorized encroachment on a public street and were raising an unauthorized construction, requiring the same to be demolished; particularly the order having attained finality.

8. No answer is forthcoming.

9. No substantial question of law arises for consideration in the instant appeal.

10. The appeal is dismissed.

11. Cost to follow.

March 19, 2008
d.k.bainsla

PRADEEP NANDRAJOG, J.