

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th November, 2010.

+ W.P.(C) 11218/2009

JOGINDER KAUR

..... Petitioner

Through: Mr. Anil Kumar Gupta & Mr. N.A. Alvi, Advocates

Versus

M.C.D. & ORS.

..... Respondents

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

AND

+ W.P.(C) 13343/2009

AMARJEET KAUR & ANR

..... Petitioners

Through: Mr. Anil Kumar Gupta & Mr. N.A. Alvi, Advocates

Versus

MCD & ORS

..... Respondents

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

AND

+ W.P.(C) 10/2010

GULSHAN RAI KHOSLA AND ANR

..... Petitioners

Through: Mr. Anil Kumar Gupta & Mr. N.A. Alvi, Advocates

Versus

MCD AND ORS

..... Respondents

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

AND

+ W.P.(C) 255/2010

R.P.SINGH & ORS.

..... Petitioners

Through: Mr. Anil Kumar Gupta & Mr. N.A. Alvi, Advocates

Versus

LT.GOVERNOR OF DELHI & ORS.

..... Respondent

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

AND

+ W.P.(C) 2763/2010

THE PUNJABI MARKET SHOPKEEPERS
WELFARE ASSOCIATION (REGD.)

..... Petitioner

Through: Mr. M. Tarique Siddiqui & Ms. Rakhshan Ahmed, Advocate

Versus

GOVT.OF NCT OF DELHI

..... Respondent

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

AND

+ CONT.CAS(C) 143/2010

AMARJEET KAUR & ANR

..... Petitioners

Through: Mr. Anil Kumar Gupta & Mr. N.A. Alvi, Advocates

Versus

S.K. MITTAL, EXE. ENGINEER, MCD & ORS

..... Respondents

Through: Mr. Ashok Bhasin, Sr. Advocate with Mr. Mukesh Gupta, Mr. Shuchismit, Mr. Sunklan & Mr. Sumit, Advocates for MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner(s) in each of the writ petitions claim to be having their properties abutting the Chand Nagar Punjabi Market Road. The petitioner in WP(C) No.2763/2010 is an Association of Shopkeepers who claim to be having their shops abutting the said road. In each of the petitions, the relief claimed is of declaration that the action by the respondent MCD of demolition of properties / part properties of the petitioners while widening the said road is illegal, in violation of due process of law and in defiance of the constitutional and other rights of the petitioners to their properties. The petitioners have also sought compensation and to restrain the respondent MCD from carrying out further demolition of their properties in the garb of road widening.

2. Notice of the petitions was issued and the matters adjourned from time to time for the respondent MCD to file counter affidavits. No counter affidavit has been filed by the respondent MCD till now. When the matters came up before this Court yesterday, there was again a request by the respondent MCD for time for filing counter affidavits. However, the matters being at the show cause notice stage and this Court being of the *prima facie* opinion that the petitions were not maintainable, the counsels were heard yesterday and two questions were posed to the counsels for the petitioners i.e. firstly, as to how in the writ jurisdiction it can be decided as to whether the demolition by the respondent MCD of the portions of the

properties of the petitioners was illegal i.e. whether the properties demolition whereof has been carried out are on private land as contended by the petitioners or on public land as appeared to be the case of the respondent MCD; secondly, since it appeared from the record that the respondent MCD was carrying out the works aforesaid of road widening, and in removal of encroachments thereupon resulting into demolition of the properties of the petitioners, in pursuance to orders of the Division Bench of this Court in WP(C) No.23136/2005, filed in Public Interest and in Contempt Case No.649/2009 arising from orders in the said Public Interest Litigation, it was enquired how these writ petitions, the relief wherein was to stop the respondent MCD from carrying out the said works were maintainable.

3. The counsels for the petitioners had contended yesterday that there were admissions of the respondent MCD and otherwise borne out from the record that the properties demolished for road widening were over private land of the petitioners and were not over public land. The counsels had yesterday sought time to demonstrate the same to this Court.

4. Though the counsels for the petitioners have been heard for long today but in my opinion neither of the writ petitioners has been able to make out a case of it being borne out from the record and being undisputed that the land which has been taken over for road widening by removal of encroachment and demolition, is the private land of the petitioners.

5. Before proceeding to consider the arguments of the counsel for writ petitioners in WP(C) Nos.11218/2009, 13343/2009, 10/2010, 255/2010 and the counsel for the writ petitioners in WP(C) No.2763/2010 in this respect, it is also relevant to point out that no interim relief had been granted to the petitioners in these petitions. The writ petitioner in WP(C) Nos. 11218/2009, 13343/2009, 10/2010 & 255/2010 had preferred intra-court appeals against the order dated 8th April, 2010 in these proceedings. The said appeals being

LPA Nos.339/2010, 406/2010 & 335/2010 were disposed of vide common order dated 3rd June, 2010 of the Division Bench. No interim relief was granted to the petitioners by the Division Bench also. However, the Division Bench did hold that if this Bench eventually finds that there has been unauthorized demolition, this Bench would grant appropriate equitable reliefs to the petitioners; it was also observed that in that case, the works of construction done by the respondent MCD after removal of encroachment / demolition would not create any equity in favour of the petitioners.

6. The counsels for the petitioners on the basis of the aforesaid observations of the Division Bench as well as on the basis of certain observations in the various orders filed in the Public Interest Litigation and in the contempt case arising therefrom, argued that the Division Bench has directed this Bench to determine the question as to whether the demolition was legal or illegal and whether the land taken over for road widening is of the petitioners or public land and thus this Bench cannot dispose of the writ petitions by holding the same to be entailing disputed questions of fact. I do not find any merit in the said contention of the petitioners. The observations have been made without going into the question as to whether the writ petitions are maintainable or not. In writ jurisdiction, disputed questions of fact cannot be adjudicated. Merely because the Division Bench in the intra-court appeal arising from these writ petitions or in the Public Interest Litigation observed that the petitioners shall be entitled to file a writ petition for assertion of their rights would not change the said principle and would not allow something to be done in these proceedings which is impermissible to be done in writ jurisdiction. Thus the petitions would be maintainable only upon the petitioners establishing that no investigation of facts is required. Else the remedy of the petitioners is by way of proving before the fora competent to record evidence that the land in fact is theirs.

7. During the course of hearing none of the petitioners have filed any documents of their own title to the property and from which it could be shown that the land which has been taken over for road widening is of the writ petitioners or that the writ petitioners have title thereto.

8. Mr. Anil Kumar Gupta, Advocate has drawn attention to the reply dated 18th November, 2009 received to the Right to Information (RTI) query by the petitioner Joginder Kaur in WP(C) No.11218/2009. In the said reply, it was explained to the representative of Joginder Kaur that the entire road widening is on the opposite side i.e. towards Ganga Ram Vatika etc. and that the plots in Vishnu Garden Group of Colonies are not affected under 60 feet wide road widening as per regularization plan of Vishnu Garden. It may be stated that while the petitioners in WP(C) Nos. 11218/2009, 13343/2009, 10/2010 & 255/2010 claim their properties to be on the Northern side of the road, the members of the writ petitioner in WP(C) No.2763/2010 claim their shops to be on the Southern side of the road. Mr. Anil Kumar Gupta, Advocate contends that reply to the RTI query shows that the road widening is to be on the Southern side and not on the Northern side.

9. I do not have before us the RTI query in response to which the reply aforesaid has been given. Moreover, the query is relating to widening of the road to the extent of 60 feet. The Division Bench of this Court in Public Interest Litigation aforesaid has observed that though the Lieutenant Governor had suggested widening of the road to 60 feet width but for such widening private land would have to be acquired and thus directed widening to the extent of 45 feet only. Thus, it cannot be said that the reply to the RTI query takes the position beyond any pail of controversy.

10. Mr. Anil Kumar Gupta, Advocate has next drawn attention to a Plan filed as Annexure-P3 in WP(C) No.11218/2009 which is described as a proposed Plan of regularization for the colonies. He has with reference to

the property of one Bakshish Singh on the said Plan contended that the respondent MCD had taken away a portion of the property of Bakshish Singh also and where against the said Bakshish Singh had represented to the Lieutenant Governor and in which proceedings portion of the property of the Bakshish Singh was restored. However, the property of Bakshish Singh, from the Plan aforesaid appears to be at a distance from the properties of other petitioners. The property of Bakshish Singh is at a bend in the road. Even if the argument of the petitioners were to be correct, the matter requires investigation of facts. It is nobody's case that the road or its widening is in a straight line so that it can be said that if portion of the property of Bakshish Singh is restored, it necessarily means that the properties of the petitioners along that line cannot be taken over or that part of the land is private land. Moreover, the senior counsel for the respondent MCD has handed over a copy of the order dated 22nd August, 2007 in Contempt Case No.375/2007 filed by the said Bakshish Singh and by which order the contempt petition was dismissed with costs. Thus the said factor also does not lead to the unequivocal inference of there being no disputed questions of fact.

11. Mr. Anil Kumar Gupta, Advocate has also drawn attention to the reply of the respondent MCD in contempt case No.649/2009 (supra) and with reference to the paragraph 4 of the Preliminary Submissions and paragraphs 4 & 5 of the Reply on Merits argued that the respondent MCD has admitted therein that the encroachments were on one side only. I do not find any clarity from the said reply also. The senior counsel for the respondent MCD has with reference to paragraph 14 of the said reply again shown that the paras 4 & 5 are with reference to the widening to the extent of 60 feet and not with reference to widening to the extent of 45 feet as has been ordered by the Division Bench.

12. Mr. M. Tarique Siddiqui, Advocate for writ petitioner in WP(C) No.2763/2010 has with reference to the status report dated 28th February, 2006 filed by the respondent MCD in the Public Interest Litigation and particularly with reference to the Annexure thereto contended that the properties of the members of the petitioner Association are not in encroachment. He has with reference to the measurements given in Column titled "Width" contended that the encroachment is on both sides of the road. However, this is found to be a complete misreading of Column 4. Column 4 gives two widths as the width at the two ends of the plots and it does not relate to the two sides of the road. It is inconceivable and not the case that the plot of each person is on both sides of the road.

13. He has next drawn attention to the plan submitted by the respondent MCD along with the reply to CM No.13862/2009 in Contempt Case No.649/2009. He states that from the said Plan, it is apparent that the encroachment was on both sides of the road; that the widening was to be on both sides of the road. The said Plan is again of no assistance in determining as to to what extent the land on the two sides of the road was to be taken.

14. He has next invited attention to the review application being CM No.123/2007 filed by certain persons claiming properties on the Northern side of the road, in the Public Interest Litigation. The said persons are not before the Court and any statement by them in the said review application cannot help this Court in determining the questions which arise for consideration in the writ petition.

15. He has lastly stated that the respondent MCD insofar as the properties of the members of the petitioner Association are concerned had already constructed the drain abutting the road and thus the alignment of the road stood determined as on 7th September, 2009 and the subsequent action of the

respondent MCD of taking yet further areas from the properties of the members of the petitioner Association is illegal. It may be mentioned that the petitioner in WP(C) No.2763/2010 was a respondent in the Public Interest Litigation aforesaid. The senior counsel for the respondent MCD has invited attention to the order dated 25th January, 2010 in contempt case No.649/2009 vide which the similar prayer on behalf of the petitioner Association was rejected and the works allowed to be proceeded.

16. The questions raised by the petitioner are disputed questions of fact. The identity of the land and the measurements thereof cannot be determined in the exercise of writ jurisdiction. The remedy of the petitioners is by way of a suit or demarcation proceedings in which alone all the said questions can be gone into. I am therefore of the opinion that the writ remedy is misconceived and no purpose will be served in keeping the present petitions pending.

As far as the second query raised is concerned, I am also of the opinion that if a person is aggrieved of an order made in a legal proceedings, his remedy is by way of applying in that legal proceedings only. The Public Interest Litigant at whose instance the order of widening of the road was made has not been impleaded as a party in neither of the petitions. That litigant having obtained the orders in the Public Interest Litigation, the said orders cannot be nullified by filing the petitions such as these. However, the said observations should not be construed as disentitling the petitioners from the relief in the alternative remedies suggested hereinabove. The Division Bench had returned a finding of public land being available for widening of the road to the extent of 45 feet width. The Division Bench had also returned a finding of there being encroachments on the said public land as well and passed order for removal thereof. It would however be for determination in the suit or demarcation proceedings, whether the properties

of the petitioners were within the said 45 feet, in which case they have been rightly demolished for widening or beyond the said 45 feet.

17. Mr. M. Tarique Siddiqui, Advocate has also stated that as per the status report of the respondent MCD the road was of 30 feet wide only. However, thereafter the Division Bench in the order dated 18th December, 2006 in the Public Interest Litigation in which the client of Mr. M. Tarique Siddiqui, Advocate (petitioner Association in WP(C) No.2763/2010) was a party, after considering the Survey Report has returned a positive finding that there is encroachment over public land on which road to the extent of 45 feet wide could be extended. Thus there is no merit in the said contention also.

18. The counsel for the petitioner in Contempt Case No.143/2010 states that the same does not survive. The same is dismissed as withdrawn.

19. If the petitioners in the alternative remedy availed make out a case, they will also have the right of restitution granted in LPAs aforesaid.

20. The petitions are therefore dismissed with no order as to costs and with liberty to the petitioners to seek appropriate remedies where the factual controversies can be resolved.

No order as to costs.

Dasti under signature of the Court Master to the counsel for the parties.

**RAJIV SAHAI ENDLAW
(JUDGE)**

12th November, 2010
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