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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 02, 2010
Date of Order: March 15, 2010

+ Cont. Cas(C) 125/2010
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15.03.2010

Rakesh Jain
Through: Ms. Neha Khera, Advocate

...Petitioner

Versus

N.D.M.C. & Anr.
Through: nemo

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act for willful disobedience of the order dated 3rd November 2009 in W.P. (C) 6403 of 2007. On 3rd November, 2009, this Court had given following directions:

“Counsel for the NDMC submits that the demolition action has already been taken and NDMC is not contemplating any further demolition. In case any further demolition is to be carried out, a show cause notice shall be issued to the petitioner in accordance with law. Accordingly, writ petition is dismissed as withdrawn with liberty as prayed for. All applications also stand disposed of.”

2. The petitioner has filed this contempt petition alleging that on 23rd

February 2010 further action was taken by NDMC without any show cause notice.

3. It is true that where an unauthorized construction is carried out by a party within its own premises without a sanctioned plan, in order to take action against such unauthorized construction, the municipal authority has to serve a show cause notice. However, where unauthorized construction is carried out on public ways or open areas left for public use, no notice is required to be given by the municipal authorities to remove such encroachment.

4. The petitioner in this case has relied upon title deeds to assert his ownership over the area where W.Cs. were existing and were demolished by NDMC. The title deed relied upon by the petitioner would show that the premises was sold by the previous owner to petitioner along with thoroughfare. In order to scrutinize the title of the petitioner, the Court had asked the petitioner to place on record the original documents of title of the property. The original documents of title of the property would show that originally Rai Bahadur Basakha Singh, a contractor was given 45,729.34 sq ft of an open area of land in Connaught Place, Block-C of D Circle. With the passage of time a building seems to have been constructed over this open area which was gifted by Rai Bahadur Basakha Singh by way of a gift deed to his three sons and later on these three sons partitioned this property into their respective portions.

5. It is thus obvious that it was a huge area and the structures had been built over this area after approval of sanctioned plan from NDMC. This huge complex contained roads, road passages, various entries and exits. The open land had been developed into a complex where there were open places left

for use of commuters/occupiers and as public ways etc. It is settled law that where open lands are developed into a building complexes after getting plans sanctioned from the municipal authorities, the open areas left for public ways, gardens, roads, pavements are meant for public utility and become part of public property and no other construction can be allowed on open area and public ways. It is one of the prime conditions of developing a colony or building complex that the builder shall leave certain public ways and public utility areas and no construction can be done later on on these areas by virtue of right of ownership. Even the ownership of the builder over such areas stands lost and surrendered to public authorities, once the buildings come up in accordance with the approved and sanctioned plan of complex. No subsequent seller can sell the open areas, while selling built up part. Only a right to use open area as a right appurtenant to the building can be assigned. In the present case, the sale deed shows that the open area and public ways were also purchased by the petitioner. The petitioner's counsel relied upon the report of architect of NDMC to show that the land was only a private ownership of the petitioner. I consider that this report is irrelevant since this report did not take into consideration the sanctioned plan of the complex by NDMC and does not refer as to what were the areas which were to be left open as public utility, for public ways and what parts were to be used as public toilets etc. I also find from record that some efforts were made to encroach upon the open area by bringing up a religious structure.

6. I consider that no contempt can be filed against a municipal authority, where the municipal authority removes encroachment from public area, public land or space left for public utility. In all those colonies and complexes, which are approved by NDMC or a Municipal Authority, the Municipal Authority has a right to remove encroachment from public areas, public ways,

open areas meant for public use and utility without a show cause notice. I find no force in this petition.

The petition is hereby dismissed. No orders as to costs.

March 15, 2010
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SHIV NARAYAN DHINGRA J.