

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

Date of Reserve: 8th October, 2010
Date of Order: 11th November, 2010

+ Crl.M.C.No. 1893/2009

%

11.11.2010

Joginder Singh & Anr.

... Petitioners

Through: Mr. Digvijay Rai, Advocate

Versus

Ramanand & Ors.

... Respondents

Through: Mr. Vijay Aggarwal, Advocate

+ Crl.M.C.No. 1894/2009

%

11.11.2010

K.K.Dahiya & Ors.

... Petitioners

Through: Mr. Sanjay Poddar, Advocate

Versus

Ramanand & Ors.

... Respondents

Through: Mr. Vijay Aggarwal, Advocate

+ Crl.M.C.No. 2889/2009

%

11.11.2010

DDA & Ors.

... Petitioners

Through: Mr. Rajesh Manchanda, Advocate

Versus

Ramanand & Ors.

... Respondents

Through: Mr. Vijay Aggarwal, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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?

JUDGMENT

By these petitions, the petitioners have assailed an order dated 30th May, 2009 passed by learned Additional Chief Metropolitan Magistrate (ACMM) – III, New Delhi under Section 156(3) Cr.P.C. directing SHO to register an FIR on the complaint of the respondent no.1/complainant.

2. A perusal of order of learned MM would show that the learned ACMM deemed it fit that investigation into the serious nature of allegations be made by the police. The allegations leveled by the complainant against the petitioners and others were regarding manipulation and fabrication done in the official record resulting into demolition of house of complainant illegally.

3. I have perused the complaint filed by complainant/respondent no.1. A perusal of complaint would show that on 4th August, 2006 house of respondent no.1 was demolished. The respondent alleged that this house was illegally demolished on a wrong identification made by officials of Land Acquisition Collector, officials of SDM Vasant Vihar about his land as acquired land and demolition work was carried under directions of ADM. He alleged that all this was done to benefit land mafia and successors of late Shri Raja Ram. He therefore made 14 persons as the accused/respondents in his complaint. In the complaint, the allegations were made about tampering with the record of Aks-cizra and it was alleged that the field book of khasra no.218 was tampered and manipulated. Copy of the award was also manipulated as figure "218/1" was changed to figure "218/2". After entertaining complaint filed by respondent no.1, the learned MM had called a report from police and the police filed a status report stating that the matter was of civil nature however, the allegations of manipulation in the official record would need investigation.

4. The complaint filed by respondent no.1 runs into 24 paragraphs and the complainant had mentioned about his applications made in RTI and the result received etc. However, surprisingly, the complainant in the complaint has deliberately not mentioned about the long drawn litigation which complainant was carrying against DDA and others agencies in respect of the

same very land and the matter was being adjudicated by the Civil Court. The documents filed by the petitioners show that a Suit No. 121/86 was filed by the predecessor of complainant in respect of the same khasra number and property. In that suit, an application under Order 39 Rule 1 & 2 CPC for interim injunction was filed wherein it was alleged that the officials were preventing the plaintiff to raise construction over the land in question. The learned Civil Judge after considering the documents filed by both the parties and considering the contention raised by the parties came to the conclusion that the claim of plaintiff (predecessor of complainant/respondent no.1) that the land formed part of khasra number 218/1 was untenable. There was material to show that the land formed part of khasra number 218/2, acquired vide award no. 2040, the actual physical possession of which was handed over to the DDA on 8.1.1969. The Civil Judge had considered the report and all documents placed before him by both the parties and came to the conclusion that prima facie the suit land formed part of khasra no. 218/2. He dismissed the application under Order 39 Rule 1&2 CPC observing that no prima facie case was made out in favour of the plaintiff. Another suit being suit no. 259/1990 was filed in respect of the same land in the Court of Civil Judge, Delhi and in that also the complainant/plaintiff was not granted a relief of interim injunction. The complainant preferred a revision petition before the High Court being CR No. 251/03. This petition was dismissed by this Court on 13th March, 2003 observing that there was no ground to interfere with the order of the Court below. A revision/review against the order dated 13th March, 2003 filed by the complainant was also dismissed. Thereafter, the complainant Ramanand and Indira Wati widow of Om Prakash along with other LRs of Om Prakash and Chhellu Ram filed a Writ Petition before this

Court being WP(C) No. 3767-88/04. This Writ petition was dismissed vide order dated 7th July, 2005 with costs of Rs.10,000/-. While dismissing the Writ, Division Bench of this Court observed that this was not brought on the record of the Court below (Sub Judge's court) that the disputed land formed part of khasra no. 218/1. It was specifically observed that plaintiff had not rebutted the documentation of respondent and the Sub Judge rightly came to the conclusion that the land was part of khasra no. 218/2. It was also observed that MCA no. 115/89 filed against the order of the learned Sub Judge was dismissed by ADJ on 7th February, 2003 in appeal and revision against that had been dismissed by this Court. The record shows that a second suit No. 259/90 was also filed by the plaintiffs/complainants side and in that suit the Civil Judge on 1st August, 1991 had passed an order for demolition of structure over the land. However, the demolition of structure over land did not take place and trial Court dismissed application for interim injunction in the second suit also. This Bench observed that there was serious concealment of relevant facts by the petitioner in the Writ Petition and Writ petition deserved to be dismissed being wholly misconceived. The Writ Petition was thus dismissed with cost of Rs.10,000/- and directions were given to place the order of DB on the files of both the cases. The complainant/respondent no.1 however concealed the orders of both the lower courts and order of DB passed in Writ Petition and succeeded in obtaining an order on the complaint by gross concealment of the facts from the court below.

5. It is settled law that an order which is obtained by playing fraud upon the Court is a non-est and an illegal order. It is the complainant who

filed complaint concealing the litigation which was pending between the parties and did not inform the court below about the orders passed by other competent Courts about the same land and fraud played upon the court below. I therefore set aside the order dated 30th May, 2009 passed by the learned ACMM directing registration of FIR as the order was obtained by the complainant by practicing fraud. The petitions are allowed.

November 11, 2010
vn

SHIV NARAYAN DHINGRA, J.