

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

Judgment reserved on: 02.05.2012

% **Judgment delivered on: 04.05.2012**

+ **CONT.CAS(C) 831/2010 and Crl.M.A. No. 3153/2011**

VED NAYAR Petitioner
Through: Petitioner in person.

versus

MOHIT CHAUDHARY Respondent
Through: Mr. Sunil Kumar Mittal and Mr.
Dheeraj Gupta, Advocates, along
with respondent in person.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The present contempt petition has been preferred by the petitioner alleging willful disobedience of the order dated 07.09.2010 passed by the learned Single Judge in W.P.(C.) No.2223/2010. The said writ petition had been preferred by the respondent herein, and the petitioner herein was respondent no.3 in those proceedings.

2. The writ petitioner, i.e. the respondent herein claimed to be

the owner of third floor of House No.B-180, East of Kailash, New Delhi-110065. He also claimed terrace rights above the third floor.

3. At this stage itself, I may note that according to the petitioner herein, the respondent herein does not have the entire terrace rights. However, this factual controversy is of no relevance for the present purpose and cannot be gone into in these proceedings.

4. The petitioner herein claims to be the owner of the basement and the ground floor of the aforesaid premises. The writ petition had been preferred, as disputes arose between the parties herein in relation to the servant quarters/toilet located on the terrace above the third floor.

5. This Court while disposing of the writ petition dealt with the submission of the petitioner herein (respondent no.3 in the writ petition) that, even though the construction on the terrace above the third floor was illegal, the same be preserved as it was case property in respect to a complaint preferred by the petitioner herein before the Metropolitan Magistrate against the respondent herein. Consequently, the Court directed that the said issue, i.e. whether the construction above the third floor should be preserved or not, should be considered by the Metropolitan Magistrate, and if it is not required to be preserved the same should be demolished. Keeping in view the competing rights

claimed by the parties, the Court devised an arrangement between the parties for accessing the terrace floor in paragraph 16 of its order dated 07.09.2010.

6. The learned Metropolitan Magistrate vide order dated 01.12.2011 rejected the submission of the complainant/petitioner herein that the construction above the third floor should be preserved. The petitioner herein preferred a revision petition before the learned Additional Sessions Judge-04, which too came to be dismissed vide order dated 31.01.2012. It appears that these orders have attained finality.

7. Learned counsel for the respondent has pointed out that the direction issued by the learned Single Judge in paragraph 16 of the order dated 07.09.2010 was deleted by the Division Bench in LPA No.762/2010 vide order dated 12.09.2011. A copy of the said order has been tendered in Court, and the same is taken on record. The operative part of the order of the Division Bench reads as follows:

"On a perusal of the order passed by the learned Single Judge, we are of the considered opinion that the direction given in paragraph 16 by the learned Single Judge was not justified. Paragraph 16 reads as under:-

"16. The door in the stair hall leading to the said portion of the terrace shall be maintained separately. The said door shall be kept locked both by the petitioner as well as by the

respondent No.3 and neither parties shall use the said portion of the terrace until title/right thereof is adjudicated and/or till any interim order are made in the proceedings, if any initiated with respect to the said terrace”.

In view of the aforesaid, paragraph 16 of the order dated 7th September, 2010 passed by the learned Single Judge in Writ Petition No.2223/2010 stands deleted”.

8. When the matter was taken up on 18.01.2012, looking to the handicap of the petitioner in not being able to put across his case properly before the Court, Mr. Sudhir Kalra, Advocate, who was present in Court, had volunteered to come to the aid of the petitioner to properly present his case. The petitioner had also shown his willingness to accept his assistance.

9. However, once again, when the matter was taken up for hearing, the petitioner appeared in person, and it appears that he has not taken the assistance of Mr. Sudhir Kalra, Advocate, and has not engaged any other counsel to represent his case.

10. The submission of the petitioner is that the order dated 07.09.2010 had been passed by the Court by wrongly accepting the version of the respondent/writ petitioner. According to him, the order dated 07.09.2010 is erroneous.

11. This submission of the petitioner cannot be entertained in the

present contempt proceedings. This Court has neither the competence nor the jurisdiction to deal with this submission of the petitioner. If the petitioner was aggrieved by the order dated 07.09.2010, it was for him to have taken appropriate steps to assail the said order.

12. The petitioner then submits that the respondent, of his own, started demolishing the structures on the terrace above the third floor. He submits that only a part of the said structures were demolished by the respondent, and the servant room/toilet used by the servant of the respondent has not been demolished.

13. This submission of the petitioner, though made in paragraph 3 of the contempt petition, has not been elaborated by the petitioner. In any event, the demolition, even if partially carried out by the respondent cannot be said to be contemptuous, inasmuch, as, the said demolition was directed by the Court in the order dated 07.09.2010 passed in W.P.(C.) No.222/2010.

14. If the petitioner is aggrieved that the entire structures above the third floor have not been demolished, it is for him to take action in this regard by approaching the municipal authorities. Pertinently, the municipal authorities have not been impleaded as party respondent(s) in the present contempt petition, and no grievance has been made that the petitioner has approached the said authorities for demolition

of the remaining structures above the third floor, and despite the same, the remaining structures have not been demolished.

15. The present contempt petition is primarily founded upon paragraph 16 of the order passed by the learned Single Judge. The primary grievance of the petitioner is that the respondent has put his own lock on the door leading to the terrace above the third floor and that he has kept the keys with himself. This is evident from paragraphs 5 to 9 of the contempt petition.

16. I may also refer to the order dated 13.12.2010 passed in these proceedings, whereby the Court issued notice to the respondents. Even on the said date, the grievance of the petitioner was that the respondent had locked the terrace and that the petitioner was not allowed access thereto.

17. As aforesaid, the Division Bench has already deleted the direction issued by the learned Single Judge in paragraph 16 of the order dated 07.09.2010. Consequently, the foundation and basis on which this petition has been preferred itself stands demolished, and on this account, the present petition cannot survive.

18. I may observe that the petitioner has tendered in Court a compilation of documents. However, the same appears to be wholly

irrelevant, as the petitioner is seeking to raise issues with regard to the alleged forgery of sale deed allegedly committed by the respondent, and is also claiming that the construction above the third floor had been raised by the builder, and not by the petitioner. Certain other issues have also been sought to be raised by the petitioner, which are extraneous and wholly irrelevant for the present purpose. They are, therefore, not being gone into.

19. In view of the aforesaid, the present petition is dismissed leaving the parties to bear their respective costs.

MAY 04, 2012

sr

VIPIN SANGHI, J