

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

% **Date of Order: 07.08.2013**

+ **W.P.(C) 4989/2013**

MUKESH MOHAN GOEL & ANR Petitioners

Through: Mr. Vivek Sharma and Ms.
Mamta, Advs.

Versus

ARCHAEOLOGICAL SURVEY OF INDIA & ORS.

..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J (ORAL).

1. The issue involved in this petition is as to whether a writ petition is an appropriate remedy when the reliefs sought in the petitioner have already been granted by virtue of a decree of the Civil Court.
2. The petitioners before this Court claim to be the owners, in possession of certain lands near *Arab Ki Sarai*, Mathura Road, New Delhi. Their case is that the aforesaid property was initially owned by four persons namely M/s Mukhram, Gugan Mal, Panna Mal and Gauri

Shankar from whom it was purchased by a partnership firm namely M/s I.S. Goel. The Estate Officer initiated proceedings against M/s I.S. Goel and Company which, according to the petitioners, was occupying a part of the aforesaid land at that time and passed an order dated 8.3.1978 directing payment of damages for the alleged unauthorized use and occupation of the said property. Two appeals bearing numbers PPA 54/78 and 55/78 were filed against the order dated 8.3.1978 passed by the Estate Officer. Vide order dated 22.2.1979, Shri O.P. Singla, the then Additional District Judge, Delhi set aside the order passed by the Estate Officer holding the land in question to be a private land owned by M/s Mukh Ram and others. He also found that M/s I.S. Goel and Company and R.K. Mehra, the appellants in the aforesaid appeals were the lessees of Mukh Ram and others. According to the petitioners, two writ petitions being W.P(C) Nos.2610/1986 and 687/1987 were filed against the aforesaid judgment dated 22.2.1979 which came to be dismissed by this Court on 9.5.1991 and the said order became final having not been challenged before a higher forum. It is also the case of the petitioners that the Monitoring Committee appointed by the Hon'ble Supreme Court sealed the entire property excepting a very small portion which was in the residential use of the petitioner no.8. In reply to a query under Right to Information Act, the petitioner no.8 was also informed by the respondent no.1-Archeological Survey of India (ASI) that the possession of the aforesaid property along with adjoining land had been handed over to it on 14.1.2003, by the government, for maintenance and upkeep.

3. M/s I.S. Goel and Company filed a suit being Suit No.60/2008 before the learned Senior Civil Judge, Delhi against Union of India and

ASI, claiming to be the owner and in possession of the property bearing number 16-A/2 forming part of property number 16, Bagh Chandiwalla, Nizamuddin East, Main Mathura Road seeking a decree for permanent injunction restraining the defendants in that suit from dispossessing the plaintiffs from the property number 16-A/2, except by due process of law. They also sought a decree for permanent injunction restraining them from acting in pursuance of the letter dated 10.1.2003 issued by the Government of India to ASI purporting to handover possession of the property in question to ASI for upkeep and maintenance. It was alleged in the said suit that the suit property had been purchased by Mr. Inder Sen Goel vide sale deed dated 27.12.1974 and after death of Mr. Inder Sen Goel, all his legal heirs had become partners of the partnership firm namely M/s I.S. Goel and Company. The aforesaid suit number 60/2008 came to be decreed vide judgment dated 24.9.2012 and the following decree was passed in the said suit:

“...Plaintiff is entitled to permanent injunction against the defendants restraining them from dispossessing him from the suit property bearing number 160-A/2, forming part of property no.16, Bagh Chandiwalla, Nizamuddin East, Main Mathura Road, New Delhi. He is further entitled to permanent injunction against the defendants who are restrained from giving effect to letter dated 10.01.2003 issued by defendant no.1 for the care and maintenance etc of the suit property and also to letter dated 14.1.2003 regarding subsequent handing over etc...”

The appeal preferred against the said judgment is stated to be pending.

4. The Municipal Corporation of Delhi issued a notice under Section 348 of Delhi Municipal Corporation Act in respect of property bearing

number 16-A, Bagh Chandiwalan claiming therein that the said property was in a dangerous condition and requiring its demolition. Suit No.14/2001 was then filed by the petitioners before this Court against Municipal Corporation of Delhi seeking mandatory and permanent injunction against taking coercive steps pursuant to the said notice. Initially, the aforesaid suit was dismissed, but later the order dismissing the suit as well as the order of the First Appellate Court which had upheld the order of dismissal of that suit was set aside by this court in RSA 100/2011 and the matter as remanded back to the trial court where it is still pending.

Another notice dated 3.10.2012 was issued to the petitioners by South Delhi Municipal Corporation in respect of the property bearing number 16-A, Bagh Chandiwalan claiming the said property to be the land belonging to Government of India allotted to ASI. The said notice was quashed by this Court vide order dated 15.10.2010 passed in W.P(C) No.6504/2012. This is also the allegation of the petitioners that on 30.11.2012 South Delhi Municipal Corporation without any notice demolished and raised to the ground the structure/ property belonging to them.

5. The grievance of the petitioners in the present writ petition is to a work awarded by respondent no.1-ASI to respondent no.3- M/s Rangoli Decorators for construction of a boundary wall and fencing of the land subject matter of this petition. According to the petitioners, the labourers of respondent no.3 encroached upon the said land on 26.7.2013 and started digging trenches for constructing a boundary wall along with periphery of their property. Aggrieved from the said act on the part of the

respondents, the petitioners is before this Court seeking the following reliefs:

- (a) issue writ/ order/ direction in the nature of writ of mandamus to direct the respondent no.1 to refrain from giving effect to work order dated 18.7.2013 bearing number 13/7/2013-W-02 pursuant to tender awarded to the respondent no.3 for fencing of the area by constructing a dwarf wall and M.S. Railing near ITI, Arab Ki Sarai, Mathura Road, New Delhi.
- (b) issue writ/ order/ direction in the nature of writ of mandamus thereby restraining the respondents, their officers, agents, servants from interfering with the possession of the petitioners with regard to the subject property being Plot No.16A, Bagh Chandiwala, Nizamuddin East, Main Mathura Road, New Delhi-110 014 without following the due process of law.

6. This is petitioners' own case that the property, subject matter of present writ petition, was also the subject matter of the Civil Suit No.60/2008 which already stands decreed on 24.9.2012. Both, Union of India and ASI are parties to the said suit and, therefore, bound by the judgment rendered in that suit. Though, an appeal preferred by the defendants in the said suit is stated to be pending, the learned counsel for the petitioners stated during the course of arguments that there is no stay of execution of the judgment dated 26.9.2012 passed by the learned Civil Judge, Delhi. Thus, as on today, the decree in favour of M/s I.S. Goel & Company, a partnership firm of the petitioners subsists and is capable of being executed under Order 21 Rule 32 of the Code of Civil Procedure. In view of the said judgment and decree dated 24.9.2012, neither Union of India nor ASI can dispossess the petitioners before this Court from the property, subject matter of the decree. Though the construction on the said property stands demolished, this is the petitioners' own case that they

continue to be in possession of the land. Therefore, any attempt to dispossess the petitioners from the above-referred property would amount to disobedience of the decree passed by the Civil Court.

7. Order 21 Rule 32 of the Code of Civil Procedure, to the extent it is relevant for the purpose of deciding this writ petition, reads as under:

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it he decree may be enforced the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed in a corporation the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) xxxx

(4) xxxx

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

[Explanation.—For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunction.]

8. So long as the decree passed by a civil court subsists, the defendants/judgment debtors in the civil suit who are bound by the said decree are duty bound to respect it and they cannot dispossess the plaintiffs/ decree holders in the civil suit from the property subject matter of the decree, unless there is a stay of execution of the said decree. Any attempt to construct a boundary wall on the property subject matter of the aforesaid decree would be a clear disobedience of the judgment of the civil court, since building a boundary wall on the property amounts to dispossessing or at least attempting to dispossess a person in possession of the property around which the boundary wall is constructed. If any such act is committed by the defendants/ judgment debtors in the civil suit i.e. Union of India and/or ASI, their property can be attached in execution of the decree by which they are bound and the court can not only require them to demolish such a boundary wall, it can, on their failure to do so, get the boundary wall demolished through some person appointed by the Court for this purpose and the costs of doing so would be borne by the judgment debtors in the civil suit.

Before the explanation came to be inserted in sub section (5) of Rule 32 of order 21 by the Act 22 of 2002 with effect from 1.7.2002, there was a diversion of opinions as to whether acts under sub section 5 can be taken only in case of a mandatory injunction or in case of both by mandatory injunction as well as perpetual injunction. The issue came to

be considered by the Law Commission, which in its 154th Report, *inter alia*, observed as under:

“8.1.10. In a Delhi case (Sarup Singh v. Dieylim Singh, AIR 1972 Delhi 142 (FB) the comparison was between O.21 Rule 32 and O.21 r.35. The injunction issued against the licensee was to vacate the premises occupied by him as licence. It was held that steps to evict the licensee would mean, practically, dispossession of the licensee (judgment-debtor). This was not permissible under O.21. R.32.

8.1.11. The Delhi case was really one in which the decree against the licensee was to quit and vacate the premises. The decree in question was sought to be enforced under O.21 R.32(5). The Court held that R.32(5) cannot, in the very nature of things, come to the aid of a decree-holder to obtain possession. But the rulings of the other High Courts (mentioned above) do reveal a conflict of decision.”

After taking note of the conflicting decisions of various High Courts, the Law Commission recommended as under:

“8.1.12.Recommendation— Clarification is obviously needed on the point at issue. It is suggested that as a matter of legislative amendment, it is preferable to incorporate the wider view [though the majority of the High Courts have taken a contrary view) and to provide that the words “act required to be done” cover prohibitory (as well as mandatory) injunctions. This would also be in conformity with S.3(2), General Clauses Act, 1897 which provides that in all Central Acts, that words “act” includes illegal omissions. Besides this, on the merits, there is also justification why a decree-holder should be driven to a separate suit for getting relief in the nature of enforcement of a decree which he must have obtained after considerable expenditure of time, labour and money.”

After insertion of the Explanation, it can hardly be disputed that even a decree for perpetual injunction can be enforced not only by

attachment and civil imprisonment but also in terms of sub Rule 5 of Rule 32 of Order 21 of the Code of Civil Procedure.

9. Considering that a decree for perpetual injunction has already been obtained by M/s I.S. Goel and Company, the partnership firm of the petitioners, restraining the Union of India and ASI from dispossessing it from the property subject matter of the said decree and the case of the petitioners is that the property, subject matter of the writ petition, is the very same property which is subject matter of the aforesaid decree, the appropriate remedy available to the petitioners is to approach the civil court for execution of the decree passed by it on 24.9.2012, through the methods prescribed in Order 21 Rule 32 of the Code of Civil Procedure. Any order by this Court, staying the construction of a boundary wall on the subject property would be unnecessary considering that a decree for perpetual injunction has already been obtained in respect of this very property. Of course, the decree passed by the Civil Court does not come in the way of respondent constructing a boundary wall on some adjoining/adjacent property. It only protects the possession of the decree holder in respect of the property, subject matter of the decree.

That apart, since section 2(e) of the Contempt of Court Act, *inter alia*, defines civil contempt to mean willful disobedience of any judgment or decree of a Court, any disobedience of the decree of the civil court would also attract provisions of Section 10 of the Contempt of Court Act, 1971 and it would also be open to the decree holders in the civil suit, to approach this Court for initiating appropriate proceedings, under Contempt of Court Act, 1971, for such disobedience.

For the reasons stated hereinabove, I find no ground to entertain this writ petition and the same is accordingly dismissed. There shall be no orders as to costs.

V.K.JAIN, J

AUGUST 07, 2013/*rd*