

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

Date of decision: 15th July, 2014.

+ **LPA 450/2014 & CM No.10377/2014 (for stay)**

PRAVEEN KUMAR

..... Appellant

Through: Mr. Rakesh Khanna, Sr. Adv. with
Ms. Sarvesh Bisaria, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. V.K. Tandon, with Mr. Yogesh
Saini, Advocates for R-1&2.
Mr. Rajesh Sabharwal, Advocate for
R-3 MCD (North).

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 8th May, 2014 of the learned Single Judge, of dismissal of W.P.(C) No.285/2012 preferred by the appellant, for the reason of the same containing allegations of fraud, forgery and theft and which the learned Single Judge held, could not be adjudicated upon in writ proceedings; the appellant was however given opportunity to raise all the grievances as raised in the writ petition with regard to the demarcation report/map dated 28th December, 2011 before the concerned Deputy Commissioner. A direction was also issued to the Deputy

Commissioner to decide the matter in accordance with law without being influenced by any observation made by the Court; the rights and contentions of all the parties were left open.

2. This appeal came up first for consideration on 4th July, 2014, when we, after some hearing, drew the attention of the counsel for the appellant to the judgment of the Division Bench of this Court in *Indraprastha Medical Corporation Vs. National Highways Authority of India* MANU/DE/1714/2009 *inter alia* holding that Section 28(1) of the Delhi Land Revenue Act, 1954 states that “all disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps” and Section 64 thereof confers a right of appeal to the Chief Commissioner from the orders of the Deputy Commissioner and consequently an efficacious remedy is available to challenge the demarcation report and dismissing the writ petition in that case for the said reason. It was thus enquired from the counsel then appearing for the appellant as to how, the writ petition seeking the relief of quashing of a demarcation report, was maintainable. On request of the counsel for the appellant, the matter was adjourned to 8th July, 2014. On 8th July, 2014, we heard the senior counsel for the appellant as well as the counsel for the respondent

Govt. of NCT of Delhi (GNCTD).

3. The appellant claims to be a resident of Khasra No.315 of Village Burari, Delhi for the last 30 years. It is the case of the appellant, (i) that a 99 ft. road starting from outer Ring Road near Nirankari Colony (Kingsway Camp) to GT Karnal Road near Alipur passes through the Village Burari; (ii) that several people have encroached upon the land earmarked for the said 99 ft. road; (iii) that for the purposes of removing the encroachments over the land meant for the said road, the revenue officials, in or about November, 2002 or January, 2003 conducted a survey/demarcation; (iv) that though as per the said demarcation, the property in possession of the appellant did not form part of the said 99 ft. road but the actual encroachers over the road land, in collusion with the revenue officials, changed the demarcations made, to instead show the property in possession of the appellant to be part of the said 99 ft. road; (v) that though the appellant protested but no heed was paid thereto; (vi) that owing to such change, when the officials of Municipal Corporation of Delhi (MCD) came to construct the road, they started digging around the property of the appellant; (vii) that the appellant filed CW(P) No.852/2002 in this regard, which was disposed of vide order dated 24th March, 2003 directing that the road shall

be constructed in accordance with the demarcation done by the Revenue Authorities; (viii) that in pursuance thereto, the revenue officials again prepared a report in which they again showed part of the property of the appellant as an encroachment on land meant for road; (ix) that the appellant again protested and also filed Contempt Case (Civil) No.656/2004 in which vide judgment dated 12th May, 2005, fresh demarcation was ordered; (x) that however demarcation was again carried out without notice to the appellant; (xi) that the appellant again filed W.P.(C) No.10613/2005 which was disposed of vide order dated 23rd September, 2010.

4. A perusal of the said order dated 23rd September, 2010 disposing of W.P.(C) No.10613/2005 earlier filed by appellant shows that all parties thereto including the actual encroachers as per the appellant had agreed to fresh demarcation; they were however unable to agree upon the modalities thereof. Accordingly, the said writ petition was disposed of directing fresh demarcation and laying down the modalities thereof.

5. It is the case of the appellant that though in the fresh demarcation, the appellant was not found to be the encroacher over the land meant for road but the report prepared on the basis thereof, is to the contrary. On the said pleas, the writ petition from which this appeal arises was filed.

6. Notice of the said writ petition was issued and it appears that the respondents have made allegations of theft, forgery and fraud against the appellant as has been noted by the learned Single Judge.

7. The senior counsel for the appellant has taken us through the documents concerning the demarcation done pursuant to the order dated 23rd September, 2010 supra in the earlier writ petition and the report prepared in pursuance thereto, to contend that the report prepared is contrary to the demarcation done. He has also argued that this writ petition would be maintainable because this Court had on an earlier occasion, vide order dated 23rd September, 2010 ordered the demarcation. He has also contended that the demarcation having been done by the Deputy Commissioner himself as ordered by this Court, no further remedy before the Revenue Authorities is available.

8. Neither of the aforesaid arguments deals with the reasoning given by the learned Single Judge for holding the writ petition to be not maintainable. The fact of the matter remains that the adjudication of the allegations and counter-allegations made, require a factual adjudication and for which, in the facts and circumstances, the writ is not the appropriate remedy. We cannot also lose sight of the fact that the writ remedy has proved to be

ineffective. This appeal arises out of the third writ petition filed by the appellant besides the contempt proceedings aforesaid arising out of order in the first writ petition. The same alone, in our opinion, bears testimony to the disputes as pleaded, being not capable of adjudication in writ proceedings.

9. We do not find any merit, as is obvious, also in the argument of the senior counsel for the appellant, of the appellant having no alternative remedy. The senior counsel has also not able to show as to why a different view than from the view already taken by the Division Bench in *Indraprastha Medical Corporation* supra should be taken.

10. There is thus no merit in the appeal; dismissed with costs of Rs.20,000/- payable to the counsel for the respondent GNCTD.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JULY 15, 2014

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