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* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.70/2013 & RSA No.71/2013**

Decided on : 18th February, 2015

+ RSA 70/2013
GOVERNMENT OF NCT DELHI Appellant
Through: Mr.V.K.Tandon, Advocate.

versus

LATE VIRENDER KUMAR SHARMA THR LRS & ORS.
..... Respondent
Through: Mr.Rakesh Saini, Adv.
Mr.Sanjeev Sabharwal, Adv. for
DDA.

AND

+ RSA 71/2013
PUBLIC WORKS DEPARTMENT Appellant
Through: Mr.V.K.Tandon, Advocate.

versus

LATE VIRENDER KUMAR SHARMA THR LRS & ORS.
..... Respondent
Through: Mr.Rakesh Saini, Adv.
Mr.Sanjeev Sabharwal, Adv. for
DDA.

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

V.K. SHALI, J. (ORAL)

1. These two appeals have been filed by the Govt. of NCT of Delhi and Public Works Department against the judgment dated 19.10.2012 passed by the learned ADJ upholding the judgment and decree dated 18.08.2009 passed by the learned Civil Judge in Suit No.463/2007 titled Virender Kumar Sharma and Ors. v. Delhi Administration and Ors. granting an injunction in the favour of the respondents/plaintiffs.

2. The learned counsel for the appellants has stated that the following substantial questions of law arise for consideration in the present appeals.

- i) Whether right of easement i.e. to open doors, windows, gates and ventilators towards school, can be claimed in respect of unauthorized properties already having doors, windows, gates and ventilators on the other side?
- ii) If yes, whether such right won't amount to superseding the right of safety, security of students, females staff?

- iii) Whether situation, mention of 10' wide gali on one side in property documents in inauthorized, unplanned colony, can prevail over sanctioned plan, acquisition for a Government School?
- iv) Whether order/decreed to demolish boundary wall and to restore Gali could be issued, when the wall was constructed on acquired land, Gali formed a part of acquired land, especially when said acquisition has nowhere been challenged, set aside?

3. Before dealing with the aforesaid questions, which are essentially questions of fact, it may be pertinent here to give a brief background of the case.

4. The respondents filed a suit for declaration and mandatory injunction against the Government of NCT of Delhi, Director of Education & PWD. The case which was set up by them in plaint was that they are the owners of various houses in Brahampuri Road, Gali Jain Sthanak, Gautampuri, Seelampur, Delhi. It was alleged by them that they are regularly paying up the house tax to the Municipal Corporation of Delhi, Shahdara Zone, Delhi in respect of the plots in question which were purchased by them in 1971, built up by them

and occupied by them for residential purposes. On the northern side of the plots, there was a 15 inch wide road and on the southern side, there was a 10 inch wide gali. It is on the southern as well as northern side that the respondents/plaintiffs had opened their doors, windows, gates, ventilators etc. and the appellants (including original defendant Nos. 2 & 3) were trying to raise a boundary wall because of which not only the free access to their houses from the southern side was being obstructed, but also, they were being deprived of free flow of air. This was allegedly being done by them in gross violation of the revised sanctioned lay out plan prepared by the DDA according to which an area of 3 meter was to be left around the houses. The appellants contested the suit and raised a plea that the respondents/plaintiffs do not have the right, title or interest in the suit property and no easementary rights accrued to them. It was also alleged by them that the land in question is acquired and thereafter it was handed over to the Directorate of Education which in turn was using the same for construction of a senior secondary school. On the basis of the aforesaid pleadings of the parties, the following issues were framed:

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- i) Whether the suit is not maintainable for want of statutory notice under Section 80 CPC? OPD.
- ii) Whether the suit is bad for misjoinder and non joinder of necessary parties? OPD.
- iii) Whether the plaintiff has no right, title or interest over the suit land? OPD.
- iv) Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP.
- v) Whether the plaintiff is entitled for a decree of mandatory injunction as prayed for? OPP.
- vi) Relief.

5. The respondents/plaintiffs as well as the appellants/defendants examined witnesses in support of their respective cases. The trial court after hearing the arguments, recorded a finding that the respondents/plaintiffs were entitled to injunction against the appellants from raising any unauthorized wall so as to stop the access as well as availability of air, sunshine, etc. from the southern side as provided in the revised lay out plan. It was stated by the trial court that the boundary wall of the school was being raised in derogation of

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the revised lay out plan and was thus wastage of public money and was being done illegally.

6. The appellants feeling aggrieved by the aforesaid judgment and decree preferred an appeal before the court of ADJ. The learned court of ADJ, after hearing the arguments upheld the judgment of the learned trial court and dismissed the appeal. While doing so, it has specifically analyzed the evidence and taken note of the fact that evidence had been produced before the trial court that originally the plan was to let out 1.37 hectares of land to the Directorate of Education for the purpose of construction of a school while as later on the only 1.35 hectares of land was allotted on the basis of the revised lay out plan. The revised lay out plan was also exhibited as Ex.PW2/1 and the Directorate of Education was also informed about this change in the allotment vide order dated 06.03.1990, a copy of which was exhibited as Ex.PW2/2. The boundary wall was sought to be constructed by the appellants in derogations of this evidence having been adduced by the parties. One witness Mr.P.C.Soni, Assistant Director (Planning), DDA has been examined by the trial court as

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PW3 and his testimony has been referred to by the first appellate court in para 21 of the judgment which reads as under:

21. Whereas, Sh.P.C.Soni, Assistant Director (Planning)), DDA has been examined as PW3. He has testified that a proposal of school measuring 1.37 hectares at Brahmpuri, Shahdara was forwarded to Institutional Branch, DDA for handing over the possession to Directorate of Education and the area of site under reference for the construction of the school was reduced to 1.35 hectares and the certified copy of the plan filed by the plaintiff is correct and further testified that the area, which was reduced from 1.37 hectare was to be utilized for the provision of lanes around the houses of the plaintiffs, as depicted in the certified copy of the plan. He has further testified that final area for the construction of the lay out plan of the school was 1.35 hectare. He was subjected to cross examination by the learned counsel for the defendants, but despite of his cross examination his testimony has also gone unimpeached.

7. On the basis of the aforesaid evidence, the court came to the conclusion that there was no dispute about the fact that the land is allotted by the DDA as nazul land to the Government of NCT of Delhi which in turn allotted the said land and handed over the

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possession of the same to the Directorate of Education for the purpose of setting up a senior secondary school. The boundary wall was being raised by the PWD, another wing of the Government of NCT of Delhi. All these aspects have ignored the fact that though originally the total land which was allotted to the Government of NCT of Delhi was 1.37 hectares, but later on a revised lay out plan was prepared and only 1.35 hectares of land was allotted. This .02 hectares of land was utilized for the purpose of providing a gali at the back of the school i.e. the southern part of the plot of the respondents/plaintiffs. The aforesaid revised lay out plan having been taken note of, the action on the part of the appellants to build a boundary wall including this .02 hectares of land was illegal and therefore the trial court as well as the first appellate court rightly passed an order of permanent injunction against them.

8. The question which is sought to be raised by the appellants as a question of law with regard to the availability of easmentary rights not available to the respondents/plaintiffs, is of no consequence on account of the fact that even if the easmentary rights are not available to the respondents on account of having not complied with the

requisite proof of ease of enjoyment, still, the appellants being a government body cannot do anything contrary to the sanctioned revised lay out plan. When as per the revised lay out plan, they have been allotted 1.35 hectares, they are entitled to raise a boundary wall only to protect that much of area of land and therefore, to that extent, no question of law is involved in the matter, as it is question of fact what land has been allotted to the appellant. This question has been legally and validly and decided by the two courts below against the appellant.

9. The other three questions which are sought to be raised by the appellants and which have been mentioned hereinabove are also questions of fact and not question of law much less substantial questions of law.

10. I had an occasion to call for the original file of DDA containing the lay out plan. I have perused the said file. It fully supports the case of the respondents/plaintiffs that the appellant/Government of NCT of Delhi as a government body are taking a stand which is contrary to the revised lay out plan prepared by another government body and despite the fact that letters in 1990 and reminders in 1996 have been

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sent to the appellant/Government of NCT of Delhi to collect the revised lay out plan, till date, neither there is any acknowledgment on the part of the appellants to have received the letters nor have they deputed anyone to collect the revised lay out plan.

11. The revised lay out plan of the DDA at best would entitle the appellants to the refund of proportionate sale consideration of .02 hectares of land paid by them to the DDA to the tune of 1.37 hectares.

12. I feel that the filing of the present appeals is a gross abuse of the process of law and the appellants should have been gracious enough to accept the concurrent findings returned by the two courts below.

13. In my considered view, no question of law much less a substantial question of law is involved in the instant appeals. The appeals are accordingly dismissed.


V.K. SHALI, J.

FEBRUARY 18, 2015
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