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

Judgment delivered on: 7th May, 2015

+ CONT.CAS(C) No. 286/2013 & CM. Nos. 6417/2013,
6418/2013 and 9510/2013

GULZAR AHMAD Petitioner
Represented by: Mr. M. Tarique Siddiqui
and Ms. Rakhshan Ahmed, Advs.

Versus

P K GUPTA & ORS. Respondents
Represented by: Mr. Sanjeev Sabharwal,
Standing Counsel for R1/North MCD.
Mr. S.K. Duggal, Adv. for R3 to R7.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner seeks directions thereby initiating contempt proceedings against the respondents for wilful disobedience of order dated 25.02.2008 passed in W.P.(C) 7089/2007 and order dated 09.09.2008 passed in LPA No. 129/2008.

2. Vide order dated 25.02.2008, order passed by the MCD on 29.06.2007 was set aside and the respondent / MCD was directed to seal the premises no. 6342-6343/XI, Quresh Nagar, Qusabpura, Sadar Bazar, Delhi.

3. Being aggrieved by the aforesaid order, Naseem Pathaan (now deceased) filed an LPA no. 129/2008. Same was disposed of vide order dated 09.09.2008, wherein it was recorded as under:

“4. As is clear from the order of the learned Single Judge, there is a serious dispute as to the ownership rights in respect of the suit property. There is also a dispute as to which party was in possession of the suit property on the date of the sealing. It appears that after the writ petition was heard by the learned Single Judge and matter was kept reserved for judgment, the present appellant had filed a civil suit and in that suit, he has obtained an ex-parte temporary injunction and the said suit is still pending. In view of the disputed question of fact, the learned Single Judge was right in directing re-sealing of the premises and further directing costs of Rs.25,000/-. It is, in our opinion, not possible to resolve the controversy in writ jurisdiction under Article 226 of the Constitution. The parties are free to approach the Civil Court for seeking their remedies and the MCD shall continue to keep the property under seal and strictly abide by the directions of the civil court.”

4. Ld. Counsel for the petitioner has drawn the attention of this Court to Page 70, Annexure P-9 and submits that the entire open area shown in the photograph is part of property mentioned above and the respondent / MCD has not sealed the entry gate which is at the top of the photograph. Thus, illegal activities are still going in the said open area.

5. It is not in dispute that constructed property mentioned above has been totally sealed. There is no entry to go inside the building. However, the entry of this open area has not been sealed.

6. Respondent nos. 3 to 7 have claimed, while referring Page-70, Annexure P-9, that the left side of the open area adjoining to building is part of the aforesaid property. But the right side of the open area with one room in corner belongs to property no. 6339. Thus, there is a dispute to this effect and a Civil Suit being no. CS (OS) 366/2012 is pending adjudication before this Court.

7. On perusal of the Civil Suit mentioned above, which is at Page 433 of the petition, it is revealed that petitioner / plaintiff thereby claimed that he is a co-owner of property bearing no. 6342-6343/XI, Quresh Nagar, Qusabpura, Sadar Bazar, Delhi-6 *ad-measuring* 766 Sq. Mtr. Whereas, the claim of the respondents No. 3 to 7, legal heirs of the Naseem Khan (now deceased), is that they are owner of the entire property mentioned above and the plaintiff Gulzar Ahmed (petitioner herein) has nothing to do.

8. The case is pending for disposal and vide order dated 07.01.2015, interim order dated 14.02.2012 has been made absolute.

9. It is not in dispute that order dated 25.02.2008 passed by this Court in W.P.(C) 7089/2007 is qua property no. 6342-43/XI as noted above. Whereas the claim of the respondent nos. 3 to 7 is in respect of separate property, i.e., property no. 6339. The entry of

the open space of both the above-cited properties is the same. Moreover, other properties are also there which have the same entry. Thus, MCD has rightly not sealed the entry gate.

10. The constructed property no. 6342-43/XI has been sealed from all four openings by raising brick wall which has not been disputed by the petitioner.

11. In the case of ***Bihar State Government Secondary School Teachers Association vs. Ashok Kumar Sinha & Ors. (2014) 7 SCC 416***, the Supreme Court has observed as under:-

“.....The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued.....”

12. In view of the compliance report filed by the respondents, I am not inclined to pass order against the respondents in the instant petition.

13. Accordingly, the petition is disposed of.

14. Consequently, all the pending applications stand disposed of being infructuous.

SURESH KAIT, J.

MAY 07, 2015

jg/sb