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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 88/2016 & C.M. no.2879/2016

PREM KUMAR BHARDWAJ & ORS

..... Petitioners

Through Mr.Rajesh Kumar and Mr.Mukesh
Kumar, Advocates.

versus

DELHI JAL BOARD AND ANR

..... Respondents

Through Mr.Sumeet Pushkarana, Standing
counsel for the DJB along with Mr.
Siddhartha Nagpal, Advocate and
Mr.Yash Prakash (E.E.) and Mr.
O.P.Yadav (A.E.) and Mr. A.K.
Bhardwaj (A.E.)
Mr.Sanjeev Sabharwal, Standing
Counsel for North Delhi Municipal
Corporation.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **17.03.2016**

Learned counsel for the respondent has placed on record the site plan of Kewal Park, BPS Majhleesh Park. The petitioners are aggrieved by the order dated 19.01.2016 vide which their application under Order XXXIX Rules 1 & 2 of the CPC had been declined; this was a second fact finding which had been returned against them. The first fact finding was returned against them on 03.06.2015.

Record discloses that the present suit has been filed by the plaintiffs/petitioners for permanent and mandatory injunction against the defendants who are Government Departments. The contention of

the petitioners is that they are residing with their families on Gaushala Road, Gali No. 5, 6 & 7, Majlish park in the locality of Adarsh Nagar, Delhi. Earlier their houses had access from both sides from 30 feet wide road but the municipal authorities including the Delhi Jal Board is trying to encroach upon this 30 feet road without any rhyme and reason. They do not require it for any other purpose but to harass the petitioner, a boundary wall is stated to be constructed. Written statement/reply/rejoinder to the pending applications were a part of the record. The Civil Judge had returned a finding that no prima-facie case is made out in favour of the plaintiffs entitling them to grant the interim relief. This was endorsed by the impugned order. The petitioners being aggrieved by the aforementioned finding have approached this Court. Efforts were made to reconcile the matter and the Department had accordingly been directed to file photographs of the site. Admittedly the land upon which the Department has made the barbed wire and fencing is of the defendant. A detailed site plan of Kewal Park, Majhlee's Park has been placed on record. The properties in dispute are 2 to 6 (as numbered in the site plan). They show that each of these properties have access on both sides. Even presuming that properties No. 2 to 5 have been sub-divided, it is not as if that these properties do not have access from either side. Each of them have access on both sides and it has been explained by the learned counsel appearing for the Delhi Jal Board in detail (under instructions from the Executive Engineer present in Court) that property No. 5 has a side gate which opens out into 5.25 feet wide gali which widens thereafter to 10 feet; the owners of property No. 5 have access from

this portion. Qua property No. 4, 3 & 2, they also have an independent access. In fact there is no dispute qua these properties. Properties No.6 also has a main gate access on its right side which is on a 20 feet wide road and then goes up to the 30 feet wide road.

This exercise had been undertaken by the Court in view of the continuous stand adopted by the petitioners/plaintiffs that their right of passage which was available to them since the last several years has now been blocked. These averments which have now been noted brought to the notice of the parties by the counsel for the Delhi Jal Board (under instructions) clearly shows that the passage/access of the said parties has not been blocked by the barbed wire fencing by the Department which they were even otherwise fully authorized to do in view of the fact that this land is Government land.

No further orders are called for in this petition. It is disposed of.

INDERMEET KAUR, J

MARCH 17, 2016

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