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

+ LPA 148/2016, CM Nos. 8325-8326/2016

ANIL KUMAR & ANR

..... Appellants

Through: Mr. Brijesh Kumar Gupta, Advocate
alongwith Mr. Firasat Ali Siddiqui,
Advocate.

versus

ARUN KUMAR GUPTA & ORS

..... Respondents

Through: Mr. Kumar Rajesh Singh, Standing
Counsel, EDMC for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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04.03.2016

This appeal is directed against an order of the learned Single Judge dated 24.02.2016. According to the order placed on record, the respondent corporation was directed to file the compliance report for removal of unauthorised construction on public land bearing No. B-42 (139 sq yds), East Jyoti Nagar, Delhi- 110093, within seven days. However, during the hearing, the respondents points out that the actual order made by the learned Single Judge is as follows:-

“Status report has been filed by respondent no.1 on 21st December, 2015 stating therein that triangular piece of land measuring 139 Sq. Yards adjoining to plot No. B-42, East Jyoti Nagar, Delhi is a public land and Executive Engineer of the concerned zone has been requested to remove the encroachment.

Renotify on 26th April, 2016. Latest status report be filed before the next date.”

The appellant's grievance is that they are bona fide purchasers of the property being plot No. B-42, East Jyoti Nagar, Delhi which was sold after measuring them in two parts through two Sale Deeds dated 02.07.2010 and 10.02.2011 to the extent of 102.48 Sq. mts and 13.38 Sq. mts respectively. These were part of Khasra No. 869 of Village Gokalpur; both are registered sale deeds and were acquired from the previous owners. It is contended that at the time when the sale transactions were entered into, relevant No Objection Certificate was obtained. The writ petitioner/respondent had apparently approached the Court under Article 226 of the Constitution claiming that the said land was public land, which was encroached upon and unauthorisedly occupied. During the pendency of the proceedings apparently, the appellants had sought queries through RTI; replied by the East Delhi Municipal Corporation. The respondents in this case, in May 2012, relied upon it to say that the character of lands in question was never public and that they were never acquired for, or on behalf of the EDMC. The appellant also relied upon the inspection report of 21.05.2002- which states that they are under occupation and that they have certain documents in their favour. It is stated that in these circumstances, the learned Single Judge should not have made the order directing the corporation to file status report after taking appropriate action towards removal of encroachment in accordance with law.

Learned counsel besides placing reliance upon the documents

and averments in the proceedings, submitted that the impugned order is erroneous for two important reasons -firstly-that it seeks through interim proceedings, issuance of directions which would be in fact a final order without full and final adjudication of the disputes. Reliance is placed upon ***TCIL BellSourth Ltd. vs. Union Bank of India & Ors.*** 130(2006) DLT 299. It is also submitted that the questions sought to be urged by the petitioner/respondent and the reliefs claimed by him are such that these proceedings are inappropriate and that the matters pertained to title and legality of possession which are to be decided after consideration of concerned authorities. In support of this contention, learned counsel relies upon ***Sohan Pal Mittal vs. UOI & Ors.*** 139 (2007) DLT 698. Respondents point out that the acquisition of the alleged suit property by the appellant was during the pendency of the writ—it is stated that the writ petition was filed early in 2010. It is also argued that during the pendency of proceedings, various status reports and affidavits were sought as evidences. Reliance is placed upon the status report of 21.12.2015 by the EDMC, whereby status of the land has been clearly outlined. Furthermore, the respondent also relies upon an additional affidavit filed in the course of the writ petition to say that the suit lands were not only acquired speculatively during the proceedings, but have a public character. Pointed reference is made to the status report which is to the effect that the lands are situated as part of the layout plan approved by the erstwhile MCD in 1962 and handed over for development for private colonizer. Since the said colonizer did not complete its responsibilities, services were taken over by EDMC

subject to certain conditions and that the layout plan as approved clearly indicated that the piece of land measuring 135 square yards, which is in dispute is public land earmarked and reserved for these purposes. In support of the contention that such earmarking fixes the use of the land and which cannot be altered subsequently, respondents rely upon the decision of the Supreme Court in ***Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi*** 1995 (1) SCC 47. It is evident from the discussion that the writ petition was pending in 2010. There cannot be any dispute that the sale deeds upon which the present appellant premise their claim, but purchased during the course of the proceedings—indeed were registered in July, 2010 and February, 2011 respectively. It cannot, therefore, be said that the appellants were completely innocent or that they were unaware; in fact, the predecessors are holders of “Agreement to Sell” dated 05.08.1994 in respect of 139 square yards plot. The respondents point out to some discrepancy in this regard. However, we are of the opinion that this issue does not detain us for the purpose of this appeal. The Status Report of the MCD dated 21.12.2015—apparently the last in the series of reports filed before the Court states as follows:-

“3. That the minutes of the meeting were sent to the Commissioner EDMC for getting the matter examined by the Chief Town Planner and Chief Law Officer of EDMC. The Chief Town Planner EDMC opined that East Jyoti Nagar was privately planned and developed by a private developer and the layout plan of this colony was approved by the erstwhile MCD in the year 1962. The private developer/colonizer did not complete its responsibilities and finally in the year 2010-11 and on the request of the Secretary of RWA of East Jyoti Nagar,

the services of this colony were taken over by the MCD subject to certain conditions vide office order No. TP/G/1242/11 dated 21.04.2011. A copy of the office order dated 21.04.2011 is annexed as Annexure "A". In the layout plan this triangular piece of land measuring 139 sq. Yards is open land and never a residential plot. The open lands are public land. When a parcel of land is marked as an open land, whether handed over or not, it can't be sold or bought by anybody as a residential plot and nobody has the right to construct there upon. To hand over the land meant for community facilities in its virgin state was the responsibility of the colonizer in the first instance and thereafter of the RWA of East Jyoti Nagar colony, which took over this responsibility as admitted by them and recorded in the office order dated 21.04.2011 and thus there is no place for any encroacher or buyer of land to claim any right upon such land meant for public purpose in the colony as being part of open land in the approved layout plan. Thus the triangular piece of land measuring 139 sq. Yards adjoining to plot no. B-42, East Jyoti Nagar, Delhi -110093 is a public land.

4. *That the Executive Engineer (M)-III/Shahdara (N) Zone has been requested to remove the encroachment from the triangular piece of land measuring 139 sq. Yards adjoining to plot no. B-42, East Jyoti Nagar, Delhi-110093 vide letter no. EE (B)-II/Sh.N/2015/D-1226 dated 16.12.2015. A copy of the letter dated 16.12.2015 is annexed as Annexure "B".*

The layout plan relied upon was apparently shown to the learned Single Judge who after considering these facts made the impugned order. Furthermore on a comparison of the two sale deeds-original whereof were produced, it appears *prima facie* that the two plots are irregularly sized and there is some basis for the view that it is a part of a

larger triangular shaped plot. There is no doubt that the disputed question of facts should be ordinarily not gone into by the writ court. Likewise, a matter which should be decided only after full adjudication should not be decided at an interim stage. However, we notice that the petition was pending for the last six years and various directions were issued from time to time. During the course of these directions, the Status Reports were made and inspections were conducted. Having regard to these, it cannot be said that the directions which the appellant urge are as weighty in the present case as to hold that the impugned order is erroneous. The appeal is without merit and the same is accordingly dismissed.

Order *Dasti* under the signatures of Court Master.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 04, 2016

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