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

+ FAO(OS) 496/2015 and CM No.17860/2015

Date of decision : 29th March, 2016

RAVINDER KUMAR & ORS Appellants
Through : Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Parvinder Chauhan and
Mr. Abhilash Vashisht, Advs.

versus

DELHI DEVELOPMENT AUTHORITY ... Respondent
Through : Mr. Pawan Mathur, Standing
Counsel for DDA.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. By this order, we propose to decide the challenge to an order dated 26th of August 2015 passed on I.A.No.2456/2014 in a suit bearing CS(OS)No.2187/2014 for injunction filed by the appellants against the Delhi Development Authority ('DDA' for brevity).
2. In its plaint the appellants are complaining in respect of a demolition carried out by the DDA on 15th July, 2014 with regard to the construction on land ad measuring 2 bighas out of Khasra No.1161/1 (min) situated in revenue estate of Village Mehrauli

(Delhi). For brevity, we may note the appellants case in the plaint seeking decrees for permanent injunction and damages, inter alia averring as follows :

“10. That the again on 04.05.2007 the Deputy Director (Horticulture) of the defendant had written a letter dated 04.05.2007 to the Deputy Director (LN) SWJ DDA thereby informing that there are 10 numbers of Kachcha Juggies existing and it was also stated that some encroachment had been removed but not completed.

11. That thereafter a demolition programme for removing the remaining construction/encroachment was fixed on 13.06.2007 the demolition was carried out and the encroachment from the land of the defendant was removed. As per the knowledge of the plaintiff no. 1, before carrying out the aforesaid encroachment removal drive in the year 2007, the defendant had carried out a proper inspection and demarcation to determine/ascertain the extent and limits of its land. It is pertinent to mention here that, in the year 2007, no portion of the suit land was even touched in as much as even the officials of the defendant were certain about the fact that no portion of the suit land fell within the boundaries of the land under the ownership of the defendant.

12. That all of sudden and without any kind of notice or warning, on 15.07.2014, by taking advantage of prevalent situation, Sh. Suresh Kumar, Deputy Director (SWZ) and H.K. Tomar (Tehsildar) alongwith other official along with local police officials reached on the Suit Land of the plaintiff no.1.

13. That the aforesaid team came armed with a JCB Machine and started demolishing the rooms as constructed by the plaintiff no. 1 over the “Suit Land”.

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17. That the *plaintiff no.1 has spent around Rs.8 lakhs on the construction of the rooms which was illegally and arbitrarily demolished by the defendant.*

As such, the defendant is liable to pay to the plaintiff no. 1 the aforesaid sum of Rs.8,00,000/- as damages.

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19. *That the cause of action has arisen in favour of the plaintiffs and against the defendant on 15.07.2014 when the defendant and its official illegally and arbitrarily carried out demolition over the suit land belonging to the plaintiffs. The cause of action further arose when the officials of the defendants threatened to construct the boundary wall thereby enclosing the suit land. The cause of action is still subsisting in as much as the threat of the defendant has not ceased."*

(Emphasis supplied)

3. Amongst the prayers, the following prayer is made as prayer 'B' :

"B. Restrain, by way of decree of permanent injunction, thereby restraining the defendant, its official(s), servant(s), representative(s), agent(s) servant(s), assignee(ies) and/or anybody, claiming through or under it, from raising/constructing boundary wall over the Suit land."

4. Along with the plaint, the appellant had sought interim injunction by way of I.A.No.13495/2014 which was listed before the court on 25th July, 2014 where it was stated on the appellants behalf that the "*plaintiffs' possession has been disturbed and the construction made on the plaintiffs' land is sought to be demolished*".

5. Mr. Pawan Mathur, learned standing counsel for DDA-respondent points out that this representation was contrary to the plaint which admits demolition and seeks damages. On this

submission of the plaintiff, the learned Single Judge had directed that “*till the next date of hearing, the defendant shall maintain status quo with regard to possession and construction on the suit land*”. Aggrieved by the order of absolute status quo, the DDA had filed I.A.No.24565/2014 under Order XXXIX Rule 4 CPC seeking variation/vacation of the earlier order. Mr. Mathur contends that the order on 25th July, 2014 was really an ex parte order as DDA counsel was appearing on advance notice only without any instructions in the case.

6. For the reasons of expediency, we extract hereunder the relevant paras of I.A.No.24565/2014 (**page 47**):

“3. That the admitted position in the matter is that the ***plaintiffs are not in possession of the suit land which land has been reclaimed by the Delhi Development Authority after removal of the unauthorised encroachment on 15.07.2014.*** It is also the admitted position in the matter that the ***plaintiffs are not the owners of the suit land, which suit land is Government land. The Gaon Sabha land of Village Mehrauli has been transferred to DDA vide notification no. SO 2190 dated 20.08.1974.***

4. That with the removal of the unauthorised encroachment on 15.07.2014, the defendant-DDA has reclaimed 2000 sq. yards of ***land which forms part of the Smiriti Van.***

5. That the entire Smiriti Van has bounded by the boundary wall except that portion wherein unauthorised encroachment was there and which unauthorised encroachment was removed on 15.07.2014.

6. That the defendant-DDA has to urgently bound the said Smiriti Van and has to raise the entire boundary wall so as to protect the said land from encroachment.

7. That *the plaintiffs who have no right, title or interest over the suit land have sought an injunction* which has been granted by this Hon'ble Court on **25.07.2014. The order dated 25.07.2014 was passed on hearing the plaintiffs alone while the detailed comments could not be provided to the counsel appearing on behalf of the DDA on advance notice.**

8. That on going through the orders passed by this Hon'ble Court on 25.07.2014 it is quite apparent that the submissions/defence of the DDA could not be placed before this Hon'ble Court while passing the said orders. The DDA has now filed the written statement before this Hon'ble Court.

9. That the defendant-DDA in any case which has taken the reclaimed possession of the suit land after removal of the unauthorised encroachment has to protect the said land from further encroachment by raising the boundary wall.

10. That if the defendant-DDA is not allowed to raise the boundary wall, the valuable land of the DDA would be subject to further encroachment as it is the encroachment who had re-encroached the land after their removal in the year 2007.

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12. That the entry into the Smiriti Van has regulated and in case the said opening into the Smiriti Van is not ploughed by raising the boundary wall, there would be unauthorised access into the Smiriti Van at any point of time.

13. That the defendant-DDA wants to protect its land therefore needs permission from this Hon'ble Court to

raise the entire boundary till such time the present suit is finally adjudicated so as to prevent the same from encroachment.”

(Emphasis supplied)

7. Both the applications i.e. I.A.Nos.13495/2014 and 24565/2014, came to be listed before the court on 26th of August 2015. Noting the above submissions of learned counsel for the DDA with regard to the ownership of the land and that there was urgency in the matter as failure to raise a boundary wall on the subject land was likely to result in fresh encroachment construction; as well as the repudiation of the DDA's case by the plaintiffs and the offer made by the plaintiffs to construct the boundary wall on the subject land. However, the court was of the view that instead of burdening the plaintiffs with the expense of raising a boundary wall on the subject land, it was deemed appropriate to partially modify the order dated 25th July, 2014 and to permit the DDA to raise a boundary wall on the subject land *“in continuation to the boundary wall already raised in the area so that the same is protected from encroachment from other quarters”*.

We may note that the injunction application IA No. 13495/2014 kept intact for further consideration.

8. We are informed that the suit had since been transferred to the District Court on account of amendment of the pecuniary jurisdiction of the Delhi High Court by statutory amendment. The application and suit are therefore pending consideration before the

District Court at Saket.

9. The assertions of the parties, as noted above, would show that the parties have raised rival claims with regard to the title and possession of the suit property. It is an admitted position that the DDA has effected demolition of construction which the plaintiffs claimed to have raised thereon. The above assertions establish that as on date, there is no construction standing on the plot which is the subject matter of the *lis*.

10. The plaintiff has to establish title of the property which would have to abide by the adjudication in the suit in accordance with law. Before us, in support of their claim of title, Mr. Sudhir Nandrajog, learned senior counsel makes a reference to only some Khasra Girdawaris. DDA disputes the averments and reliance.

11. The appellants have yet to prove and establish possession as well as construction on the subject land.

12. It cannot be disputed therefore, that it is imperative that status quo is maintained on the subject land in order to preserve the same which has to enure to the benefit of the real owner of the property.

13. By the order dated 25th July, 2014, the DDA was only directed to maintain status quo with regard to the possession and construction on the suit land. The order dated 26th of August 2015 directs the DDA to raise a construction of a wall on the property while maintaining the order of status quo with regard to the possession and construction on the suit land. The raising of the wall would undoubtedly preserve the property from third party

encroachment as has been apprehended by both the parties. It also ensures that even the plaintiffs are not able to misuse the land in any manner as apprehended by the DDA.

14. The equities of the case and interests of justice demands that both parties maintain status quo qua possession and construction on the suit land. Therefore, we hereby direct so.

15. We have noted above that the learned Single Judge has noted that the boundary wall which shall be constructed is in continuation of the existing boundary wall. In order to ensure clarity before the court, the DDA shall file a site plan of the proposed boundary wall in the Registry of this court within one week. DDA shall raise the construction after filing the plan in the Registry.

16. In case any objection is raised with regard to the placement of the boundary wall, the same shall be considered by the trial court in accordance with law and considering the rival contentions.

17. The learned trial judge shall adjudicate upon the injunction application and the objections uninfluenced by any observations made in the present order.

18. We are informed by the learned counsel for the appellants that the matter is now listed on 8th of July 2016 before the District Judge (South), Saket who will mark it for consideration to another court. On request of both the parties, the date for marking of the case by the District Judge (South) is preponed to 10th May, 2016.

19. The Registry shall ensure that the entire record of CS(OS)No.2187/2014 along with copy of this order is sent to the District Judge concerned.

20. In our view, modification effected by the order dated 26th August, 2015 cannot be assailed on any legally justifiable grounds and is completely devoid of legal merits.

21. This appeal and applications are hereby dismissed with the above directions and observations.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

MARCH 29, 2016

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