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

+ CM(M) 725/2012

EAST DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Vasundhara Nayyar
and Ms. Anushruti, Advocates.

versus

DALJITSINGH BHATIA & ORS. Respondents

Through: Ms. Aastha Dhawan, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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23.05.2017

CM No.15023/2014

1. The instant application under Section 340 Cr.P.C. has been filed by the respondents in CM(M) 725/2012 which stands disposed of on 11th July, 2014.
2. The application has been filed by the respondents inter-alia on the ground that entire exercise of filing objections by the petitioner was done with a malafide intention to get more time to justify their illegal possession in the property which the petitioner had been occupying for about thirty years and failed to vacate despite passing of a decree. It was only at the stage of execution of the decree dated 9th April, 2003 that they came out with the land survey to buy more time so that land acquisition proceedings can be completed in respect of the subject matter of this litigation. It is also

averred in the application that when this petition under Article 227 of the Constitution of India was argued before this Court, this fact was brought to the notice of this Court that the petitioner/non-applicant had made a false statement on oath that the said property was on Khasra No.602/110 and not on Khasra No.778/601/110, while nowhere in the suit nor in the appeal the petitioner had disputed the identity of the said property. The petitioner has obtained an exparte stay order on wrong basis by concealing material facts and hence the officials of petitioner are guilty of perjury. At that time it was observed by this Court that the respondent can take recourse to Section 340 Cr.P.C., hence this application.

3. The reply to this application was filed by the petitioner/non-applicant wherein it was specifically pleaded that second demarcation was got done pursuant to the orders of this Court dated 2nd July, 2012. It was also pleaded that any deposition made at any point of time or any affidavit filed at the material time are filed on the basis of information as available in the official record.

4. CM(M) No.725/2012 filed by EDMC has been allowed and disposed of by this Court noting that the judgment and decree dated 9th April, 2003 will no longer be executable in favour of the respondents/decreed holders with respect to 2000 sq.yds. of land forming part of K.No.778/601/110, Subhash Mohalla, Gandhi Nagar, Village Seelampur, Delhi. It was also clarified that if for some reason land acquisition proceedings do not achieve finality, including for the reason that the same having been challenged by the decree holders, then, decree holders will always be entitled to execute the judgment and decree dated 9.4.2003.

5. During hearing of the above petition, learned counsel for the

respondents/deed holders has contended that the ex parte order dated 2nd July, 2012 was obtained by the petitioner by concealing facts as on the one hand, it was stated in the petition that the school is being run not on Khasra No.778/601/110 and on the other hand, the petitioner in a clandestine manner, initiated the land acquisition proceedings with respect to the same plot of land only with a view to legalise their illegal occupation of the property and the present Civil Misc. (Mains) was filed only with a view to buy time for culmination of the said land acquisition proceedings. It has been further submitted that the officials of petitioner have filed affidavits and made false statement on oath, hence they are guilty of committing perjury.

6. It was in above context, this Court observed that if according to the petitioner the officials are guilty of perjury then they may initiate proceedings under Section 340 Cr.P.C. There is no observation/finding by this Court that the stay order granted by this Court on 2nd July, 2012 was passed by this Court on wrong basis by concealing the facts by the petitioner.

7. In the decision reported as B.K.Gupta vs. Damodar H.Bajaj & Ors. (2001) 9 SCC 742 it was held that under Section 340 Cr.P.C. there are two conditions, on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a Court. The first condition being that a person has given a false affidavit in a proceeding before the Court and secondly, in the opinion of the Court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him.

8. In the instant case, EDMC has already filed reply to the effect that the

affidavits filed by the officials of the petitioner were based on the information available on the record.

9. There is no material to infer that the stay order dated 02nd July, 2012 has been obtained by the petitioner by concealing facts from this Court.

10. In the opinion of this Court, it is not expedient in the interest of justice to make an inquiry on the basis of contents of application under Section 340 Cr.P.C.

11. The Civil Misc.(Mains) already stands disposed of as the suit property/subject matter of this litigation has been acquired and the decree has been held to be not executable unless for some reason land acquisition proceedings did not achieve finality.

12. The application is dismissed.

PRATIBHA RANI, J.

MAY 23, 2017

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