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

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Date of Decision: 03rd May, 2017

+ W.P.(C) 3794/2017 and C.M. Appl. 16684/2017

AMBEY RANI DEVELOPER PVT. LTD. Petitioner

Through: Mr. Kirti Uppal, Senior
Advocate with Mr. Sunil
Choudhary, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION ... Respondent

Through: Mr. Ajay Digpaul, Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner is seeking stay of the demolition action and dispossession from plot bearing No.C-123A, measuring 110 square yards, Hari Nagar, Clock Tower, Delhi. The petitioner is also seeking mandamus to the respondent not to interfere in the construction on the aforesaid plot. The averments made by the petitioner in the writ petition are as under: -

- (i) The petitioner is the owner of plot bearing No.C-123A, Hari Nagar, Jail Road, New Delhi having purchased the same vide sale deed dated 06th September, 2016 from Neeraj Bhardwaj, grand son of Nathu Singh. Nathu Singh had purchased the aforesaid plot from Diwan Sarup Lal vide sale deed dated 30th September, 1969 and the subject property changed hands before being purchased by the petitioner.
- (ii) The subject property has been assessed to property tax since

1970.

- (iii) The petitioner came to know that the respondent prepared a layout plan of the locality in the year 1990 without physical verification or calling the stakeholders. The layout plan has not been prepared according to the actual possession of the locality.
- (iv) Plot No.C-123A is not situated on the government land/park and the officials of the respondent are blackmailing the petitioner though the petitioner is having registered sale deed as well as the actual physical possession.
- (v) In a litigation initiated by one Ishwar Dayal Mathur, the respondent admitted that there was no triangular park adjoining plot No.C-123. In W.P.(C) 4642/1994 titled *Indu Sobti v. MCD*, the respondent never claimed the existence of any park over the property.
- (vi) Vide complaint dated 28th September, 2016, the petitioner requested the respondent to remove illegal encroachment activity on the road as well as in front of the subject property. The petitioner thereafter applied for permission to cut a tree which was granted without any objection.
- (vii) The petitioner applied for sanction of building plan which was allowed whereupon the petitioner paid requisite charges of Rs.1,74,430/- started construction over the subject plot.
- (viii) The petitioner made a representation dated 06th April, 2017 to the respondent as well as to SHO, P.S. Hari Nagar for passing the directions to their subordinate(s) not to harass him.
- (ix) The petitioner received a letter dated 12th April, 2017 from the respondent in which the respondent, for the first time, claimed that as per their layout plan, there was a municipal park.

- (x) On 26th April, 2017, the officials of the respondent visited the subject plot and threatened to demolish the construction.
- (xi) On 28th April, 2017, the petitioner's Director visited the local police station and came to know that the demolition action has been planned for 03rd May, 2017.

2. Learned counsel for the respondent urged at the time of the hearing that there is no plot No.C-123A, Hari Nagar, New Delhi, as per the layout plan. As per the layout plan, there is a park at the location of the subject plot. On February, 2016, demolition action was taken by the respondent and no objection was raised by the person from who the petitioner claims to have purchased the subject plot. In that view of the matter, the person from whom the petitioner claims to have purchased the suit property could not have handed over the possession thereof to the petitioner. It is further submitted that the petitioner has deliberately concealed the true and relevant facts from this Court in the writ petition. It is further submitted that no notice is required for demolition on a public land.

3. Mr. Kirti Uppal, learned senior counsel on behalf of the petitioner submits that the layout plan produced by the respondent is not correct as it does not show the Ghanta Ghar. Learned senior counsel refers to the property tax documents relating to plot No.C-123A since 1975. Reliance is placed on the pleadings in a civil suit as well as the order passed in the writ petition in which the respondent has not taken a stand that there is a park at the relevant site. Learned senior counsel submits that the petitioner purchased the subject property vide registered sale deed dated 06th September, 2016 and thereafter, applied for sanction of building plans and also deposited the requisite charges. It is further submitted that the petitioner applied

for permission to cut the tree which was granted. The petitioner thereafter also applied for removal of illegal encroachment across the road.

4. Learned counsel for the respondent submits that Mr. Manjeet Singh and Mr. Surjit Singh, residents of C-122, first floor, Hari Nagar, Clock Tower filed W.P.(C) 3747/2017 seeking demolition of the unauthorised construction on the park adjoining to C-122, Hari Nagar in which vide order dated 01st May, 2017, this Court noted that the demolition action was fixed for 03rd May, 2017 and directed the SHO, P.S. Hari Nagar to ensure that adequate police force is provided for SDMC for demolition action on 03rd May, 2017.

5. After hearing the parties at length, this Court is of the view that the petitioner has not approached this Court with clean hands and has concealed the relevant and material facts from this Court. From the perusal of the record of the respondent, it is clear that the construction over plot No.C-123A was demolished by the municipal corporation in February, 2016 and the possession of the plot after demolition was with the municipal corporation. No objection was raised by Mr. Neeraj Bhardwaj from whom the petitioner has purchased the subject plot. Mr. Neeraj Bhardwaj was not even in possession of the subject plot after the demolition in February, 2016 and the said plot was being maintained by the municipal corporation as a park since then. The layout plan shows the location of the plot as a public park. In that view of the matter, the statement recorded in the sale deed dated 06th September, 2016 that the seller, Neeraj Bhardwaj handed over the possession to the petitioner is prima facie a false statement. The record of the municipal corporation also contains a photograph which shows that there was a public notice displayed at the site notifying the public

that it was corporation's property which was removed on 06th April, 2017. On 22nd April, 2017, a complaint was received by the respondent that the board of the municipal corporation has been removed and the bricks, iron *sariyas* etc. have been kept at the site. The Petitioner purchased the subject plot on 6th September, 2016 and has no personal knowledge of the position prior to the purchase.

6. Since the petitioner has not approached this Court with clean hands and has concealed the relevant facts, the writ petition is liable to be dismissed. That apart, the writ petition involves disputed questions of facts which cannot be determined in this writ.

7. The writ petition is, therefore, dismissed.

8. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court.

MAY 03, 2017
Rsk

J.R. MIDHA, J.