

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ LPA 339/2017 & CM APPL. 17170/2017 (For ad-interim ex-parte directions)

..... Appellant

versus

Through: Mr. Ajay Digpaul, Advocate along
with Ms. Mohita, Advocate for
R-1/SDMC.

HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

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16.05.2017

The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 03.05.2017 passed by the learned Single Judge in W.P.(C) No. 3794/2017. The said writ petition had been preferred by the petitioner seeking stay of the demolition action and dispossession from plot bearing No. C-123A measuring 110 square yards, Hari Nagar, Clock Tower, Delhi. The appellant also sought a mandamus to the respondent not to interfere in the activity of construction that the petitioner may undertake on the aforesaid plot. The learned Single Judge dismissed the aforesaid writ petition after hearing the submissions of the parties.

When the present Letter Patent Appeal was preferred, it was informed by the appellant that after passing of the impugned order dated 03.05.2017, the respondent-South Delhi Municipal Corporation had effected demolition on the land in question. At that time, upon the matter being mentioned on the same day, the respondent-South Delhi Municipal Corporation was directed to maintain status quo with regard to the construction and possession on the land in question.

The respondent-South Delhi Municipal Corporation has placed on record the three documents vide list of documents dated 08.05.2017 which contains an order dated 19.03.1981 passed by the learned Sub-Judge, III Class, Delhi in suit no. 242/80 titled as ***Shri. Ishwar Dayal Mathur vs. Shri. Jagdish Parshad Sharma alias Jagdish & Ors.*** We may observe that the appellant claims title to the suit property through Shri Jagdish Parshad Sharma *alias* Jagdish (defendant no.1) in the aforesaid suit) inasmuch, as, the appellant claims to have purchased the suit property from the son of Jagdish Parshad Sharma.

The South Delhi Municipal Corporation has also placed on record the order passed by the learned Single Judge of this Court in W.P.(C) No. 3747/2017 preferred by one Mr. Manjit Singh and Mr. Surjit Singh seeking demolition of the construction being raised by the appellant herein in plot in question. The Court had disposed of the said writ petition vide order dated 01.05.2017 direction the SHO, P.S. Hari Nagar to ensure that adequate police force is provided for SDMC for carrying out the demolition of the construction on the plot in question on 03.05.2017.

A perusal of the judgment passed in suit no. 242/1980 shows that

the plaintiff in the said suit had claimed that the suit property was shown as an open park by the developer of the colony (Defendant No.3 in the said suit) which, eventually, the appellant claims to have purchased. In the course of the said judgment, the learned Sub-Judge held in favour of the plaintiff that the plot in question was shown as a park in layout plan. He also observed that defendant nos. 1 and 2 in the suit, namely, Sh. Jagdish Parshad Sharma alias Jagdish s/o Shri. Nathu Singh and Smt. Sushila Devi w/o Shri. Jagdish could not be said to be *bona fide* purchasers without notice from defendant no. 3 i.e. Sh. Dewan Sarup Lal, the developer of the Colony.

The colony itself when developed, apparently, was an illegal colony privately developed by Dewan Sarup Lal, which was subsequently taken over by the MCD. In these circumstances, in our view, the issues raised by the appellant in the writ petition could not have been adjudicated in those proceedings, as disputed questions of fact were involved relating to not only the title of the appellant, but also with regard to the right of the appellant to raise construction thereon. In our view, the appellant should have raised all issues and disputes in civil proceedings, if the appellant was so minded.

The learned Single Judge while dismissing the writ petition has observed that the appellant had not approached the Court with clean hands inasmuch, as, there was concealment of relevant and material facts from the Court. Construction on the plot in question had been demolished by the MCD in February 2016 and possession of the plot after demolition had been taken over by the MCD.

Mr. Ravi Gupta, learned counsel for the appellant submits that

the said fact itself was under dispute. This further fortifies our view that such disputed question of fact could not have been adjudicated in writ proceedings.

In view of the aforesaid, we are not inclined to interfere with the impugned order.

The appeal is accordingly dismissed.

Dasti.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 16, 2017

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