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

+ **CM(M) 39/2017**

DELHI DEVELOPMENT AUTHORITY..... Petitioner

Through Mr. Rajiv Bansal, Mr. Anupam
Sharma, Ms. Arpita and Mr. Anurag Tripathi,
Advocates.

Versus

MONIKA GARG

..... Respondent

Through Mr. Dilip Singh and Mr. Rohit
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

09.02.2017

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1. By the present petition, the petitioner DDA seeks to impugn the order dated 07.09.2016 by which the appellate court upheld the order of the trial court passing an injunction against the petitioner on the application under Order 39 Rule 1 & 2 CPC. As per the injunction order the petitioner has been enjoined from carrying out demolition of the property of the respondent.

2. The respondent has filed a suit for permanent and mandatory injunction stating that she is the owner of the property No.3/C, Kailash Park, Block-WZ situated in Khasra No. 4032/2753/738 Village Basai Darapur, Delhi. It was claimed by the respondent that the demarcation of the land was carried out in 1992 on the basis of which it is clear that she is not occupying

any part of Government land acquired vide Award No. 1784/1964-65 of the same khasras. It is claimed that the total area of the khasra is 15 Bighas 5 Biswas, out of which only an area of 10 Bighas has been acquired and that the property of the respondent lies in the unacquired portion of the said khasra.

3. The trial court relying upon the demarcation report of 1992 has passed the said injunction order. The same has been confirmed by the appellate court.

4. Learned counsel for the petitioner submits that the impugned order suffers from material irregularity inasmuch as he submits that the property which the respondent claims to be her is not located in that area but possibly in some other area. He submits that there is another litigation filed by one Sh.Suraj Bhan Goel who has also succeeded in getting an injunction to restrain DDA from demolishing his suit property. It is stated that the location given by Sh. Suraj Bhan Goel of his land is exactly identical to the location where the property of the respondent is situated. He submits that the entire dispute would be clarified in case a fresh demarcation is ordered to be carried out.

5. Learned counsel for the respondent has opposed the request of the petitioner. He has pointed out that the demarcation that was carried out on 05.08.1992 was done in the presence of the officials of DDA. He submits that they at no stage objected to the demarcation report and cannot now try to wriggle out of the said report.

6. In my opinion, if law permits DDA for getting the demarcation done, they should be allowed to have the demarcation done. Liberty is granted to DDA to apply to the concerned authorities for carrying out a fresh

demarcation by using the Total Station Method. In case such an application is filed by the petitioner before the concerned authorities, the concerned authority may take steps as per law expeditiously preferably within six months. The respondent shall cooperate with the petitioner in case a fresh demarcation is carried out and an appropriate notice would be given to the respondent in this regard. The impugned order is varied to that extent

7. I may clarify that in case there is a variation in the demarcation report which is carried out pursuant to the fresh demarcation exercise, the parties shall be free to raise objections against the said report. The issues about the variation would be adjudicated upon at the time of final adjudication of the dispute.

8. With the above observations, the present petition stands disposed of. All pending applications also stand disposed of.

JAYANT NATH, J

FEBRUARY 09, 2017

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