

\$~24

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

% *Judgement delivered on: 24th April, 2018*

+ **RSA 50/2014**

AGRICULTURAL PRODUCE MARKETING COMMITTEE

AZADPUR

..... Appellant

Through: Ms. Avnish Ahlawat, Mr. N. K. Singh
and Ms. Palak Rohmetra, Advocates.

Versus

JASWANT SINGH & ANR.

..... Respondents

Through: Mr. Nitish Chaudhary for Mr. Chetan
Lokur, Advocate for Respondent
No.2/DDA.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This second appeal has impugned an order dated 10.12.2012 which had decreed the respondents/plaintiffs suit, whereby the appellant has been permanently restrained from building a boundary wall from point 'B' to point 'C', as shown in the site plan, opposite the shop of the plaintiff at New Subzi Mandi, Azadpur, Delhi. The facts are that the respondent-plaintiff had been allotted a commercial shop ad-measuring 198 sq. ft, numbered as: 1507, New Subzi Mandi, Azadpur, Delhi. It is one of 16 shops in a row, in the larger area known as New Subzi Mandi. The appellant's area is called 'Fruit & Vegetable Market' at Azadpur. It forms a part of the Scheme of

Development of New Subzi Mandi at Azadpur. The land allotted to the appellant is sought to be secured by building a boundary wall to protect its interests. The larger scheme of New Subzi Mandi Area at Azadpur, as framed by the Delhi Development Authority (DDA), includes not just the Fruit & Vegetable Market but also a Transport Nagar, which is adjacent to the said market.

2. On 07.10.2015, the following questions of law were framed:-

“1. Whether the impugned judgment and decree suffers from any perversity?

2. Whether the first appellate court was right in rejecting the application under Order 41 Rule 27 CPC filed by the appellant?

3. Whether the respondent-plaintiff could claim easementary right in view of Section 15 of the Indian Easement Act, 1882?

4. Whether the evidence led by the power of attorney on behalf of the plaintiff was admissible?”

3. In view of the aforesaid, the following corollary question also needs to be adjudicated:-

“Whether in the absence of lapse of 20 years, the right of ingress or egress, as required under section 15 of the Indian Easement Act, 1882, the respondent would have a vested right into their shops from the area owned by the appellant for which they wish to secure the area by way of a boundary wall?”

4. The appellant relies upon a Sanctioned Lay Out Plan, which clearly shows that the area between the stalls/shops allotted to the appellant is separated by a 23 feet wide public road. Three sides of the appellant's

property have already been secured by the boundary walls. The remaining portion is sought to be secured and gates have to be installed to monitor the ingress and egress of the people into the demarcated area allotted to the appellant. Seeking to do so would be an exercise of the appellant's right and also in the interest of the users of the Fruit & Vegetable Market. The DDA's allotment of the shops to the respondent does not necessarily make it a part of the Fruit & Vegetable Market. Although, their shops may be a part of the Development of New Subzi Mandi Scheme at Azadpur. Since, the respondents are across a public road from the appellants land their shops are not included in the land allotted to the appellant. There can be no legal impediment for the appellants to secure their lands and the market constructed thereon, by erecting a boundary wall around it. The impugned order evidently has erred in concluding that the respondents/plaintiffs were a part of the Fruit & Vegetable Market. The DDA supports the case of the appellant; it states that the land allotted to the appellant is clearly specified and demarcated in the Sanctioned Lay Out Plan; the respondents' shops are not a part of the appellants' land where the Fruit & Vegetable Market exists; the appellants can secure their land by a boundary wall.

5. The respondent was allotted the land on 20.06.1975. The appellants' started constructing the wall on 18.06.1993. The mere fact that the respondents have possibly been using the earlier unsecured/unfenced area, for easier access to their shops, would not necessarily give them an easement right. Besides, the prescribed period under section 15 of the Indian Easement Act, 1882, to infer right of easement, had not been completed. The acquisition by prescription, of right of way through the appellants' land as an easement, could be claimed only after establishment of such

uninterrupted peaceful and unhindered enjoyment by the claimants/respondents for a period of twenty years. The prescribed period had not been completed because the respondents were allotted the shop on 20.06.1975, they would have got its possession either on that date or some time thereafter. The appellants started constructing the boundary wall on 18.06.1983. The respondents can, at best, be presumed to be in possession of their allotted shops for eight years and the consequent user of the route for the same period. This period is far short of the requisite twenty years, to establish uninterrupted peaceful enjoyment of a precise route of easement, as a right of way.

6. In view of the above, the impugned order as well as the decree have erred and would not be sustainable. Consequently, the questions of law framed are answered as under:-

- i). Yes.
- ii). No.
- iii). This question as well as additional question of law are answered in the negative.
- iv). This question would be irrelevant.

7. In view of the above discussion, the judgment and decree in the suit as well as the order of the First Appellate Court are set aside. The appeal is allowed. The appellant shall be free to construct the boundary wall to secure their land allotted by the DDA as per the Sanctioned Lay Out Plan for Fruit & Vegetable Market at Azadpur, Delhi.

NAJMI WAZIRI, J.

APRIL 24, 2018/sb