

\$~12

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

Decided on: 22nd March, 2018

+ CM(M) 147/2017 and CM 4808/2017

MADAN LAL WADHWA Petitioner

Through: Mr. P.K. Wadhwa, son of the
petitioner

versus

GURPREET KAUR & ORS Respondents

Through: Respondent no.1 in person
Mr. Jitesh Vikram Srivastava, Adv. for R-2
Ms. Aishwarya Rao for Ms. Mansi Gupta,
Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand seeks to assail the order dated 29.09.2016 passed by the Civil Judge on the file of the civil suit (CS No.234/16) which was instituted by the first respondent (hereinafter referred to as, “the plaintiff”) against the petitioner (hereinafter referred to as “the defendant”) on 19.01.2015, seeking reliefs in the nature of permanent injunction. It may be mentioned here that the defendant (i.e. the petitioner herein), while contesting the said suit, had also submitted a counter-claim seeking, in turn, certain reliefs against the plaintiff (i.e. the respondent) also in the nature of injunction. While prosecuting the said counter-claim, he had moved an application under Order XI Rule

14 of the Code of Civil Procedure, 1908 (CPC) seeking certain facts to be discovered, *inter alia*, by serving interrogatories on the plaintiff and other parties, who are impleaded as defendants in the counter claim, they being Land and Development Office of the Government of India (L&DO) and Municipal Corporation of Delhi (MCD). The said application, however, was resisted both by the L&DO and the MCD and was dismissed by the Civil Judge by order dated 29.09.2016, the correctness, legality and propriety of which is questioned here.

2. The plaintiff and defendant have not engaged any counsel for these proceedings. While the plaintiff appears through his son, P.K. Wadhwa on the basis of power of attorney, the defendant (first respondent) chooses to represent herself in person.

3. The copies of the plaint, written statement and counter-claim have been perused with the assistance of both the above mentioned parties, and the learned counsel representing the L&DO and the MCD. It is noted that the dispute between the private parties relates to the use of a portion described as “common lavatory”, statedly consisting of two latrines and two bathrooms which are located at the first floor abutting the quarter / tenement no.3/47, Double Storey Quarters, Jangpura Extension, New Delhi-110 014. As per the case of the plaintiff, her father Saranjit Singh was the original allottee of quarter / tenement no.3/47 which is known as “corner quarter”. She relies on conveyance deed dated 18.05.1993 executed in favour of her father by the L&DO, it having been duly registered on 03.06.1993. She claims

to be the present sole owner of the said property on the strength of gift deed executed and registered on 03.08.2012.

4. The defendant, on the other hand, concededly is the owner / allottee, in occupation and use, of quarter / tenement no.3/45. It is an admitted case of the plaintiff that the common lavatory surrounding which the dispute has arisen was meant to be used by the allottees / occupants of four quarters/ tenements, they bearing nos.3/47, 3/45, 3/43 and 3/41, the latter three described as “non-corner quarters”. It is the case of the plaintiff that since the facilities in the nature of common lavatory complex had resulted in extreme insanitation causing hardship to the local residents, under a scheme introduced by the Ministry of Rehabilitation of the Government of India for these double storey quarters, portion of land behind the common lavatory complex was allotted to each of the three common corner quarters / tenements, they having been given the right to raise construction of separate independent facilities in the nature of latrine, bathroom and kitchen thereupon and, for such purposes, a period of two years was granted at the end of which the non-corner quarter allottees were to lose their rights in the existing common lavatory block which was go to the corner quarters / tenements. The area where such facilities were to be developed by the non-corner allottees was earmarked / carved out from the common courtyard.

5. The grievance on the basis of which the plaintiff has filed the suit is refusal of the defendant to raise any such development of his own independent facilities and his insistence to continue using the

common lavatory block which, as per the case of the plaintiff, now falls to her exclusive use and enjoyment.

6. *Per contra*, it is submitted by the petitioner / defendant that he was unable to develop his own independent facilities in the nature of latrine, bathroom and kitchen in the portion carved out in the courtyard because the plaintiff had encroached upon the said area by raising some unauthorised structure. It is in that context that he seeks the restraint orders and other reliefs as claimed in the counter-claim.

7. From the submissions made by the L&DO and the MCD before the trial court at the stage of consideration of the application of the petitioner under Order XI Rule 14 CPC and also before this court at the hearing on the petition at hand, it appears that both the said agencies seek to wash their hands off the controversy, it being their argument, as noted in the impugned order, that the precious time of the government authorities is being unnecessarily wasted, no relief having been claimed against them.

8. In the opinion of this Court, the controversy can be resolved very easily with the assistance of the L&DO and the MCD. A local inspection, in their presence, or by officials of such agencies should bring to light all the relevant facts including the encroachment, if any, by the plaintiff over the area which was earmarked for the benefit of the defendant (and other concerned non-corner allottees) under the scheme of the Government as mentioned above and further reasons, or justifications, if any, for the defendant not to have developed his own independent facilities in the nature of bathroom, latrine and kitchen,

this, of course, provided that the contentions of the plaintiff of the case with regard to the scheme introduced by the Government of India are correct.

9. In above light, the petitioner who alleges encroachment, was asked to clarify if, he was ready to bear the costs of the local inspection. The matter was passed over as the attorney of the defendant / petitioner wanted to seek instructions. In the post-lunch hearing, when the matter is taken up again, the attorney of the defendant / petitioner submits that he is not in a position to bear the costs unless the plaintiff of the case is ready to share the burden. The plaintiff, who is present in person, however, also declines to bear the costs of any such inspection. It was made clear to both the parties during the hearing in the pre-lunch session that should they be disinclined to have the local inspection carried out, the court would be constrained to direct an inspection, though in their presence, of the site by the officials of the L&DO, and the MCD, and a report to be submitted thereupon and further that in such event such report would bind both the parties.

10. Since both the plaintiff and the first defendant in the suit are disinclined to have a local inspection, in order to resolve the dispute, it is deemed proper that the L&DO be directed to carry out an inspection, through its responsible officer(s), of the locality in question and make a report of the necessary facts in above light. Needless to add, such report of the L&DO will clarify the terms of allotment of aforesaid quarters to the parties to the case; the particulars

of the premises allotted; the rights to the common facilities, particularly in the nature of the lavatory block and courtyard; scheme, if any, floated for independent facilities in above nature to be developed; the conditions attached thereto; compliance, if any, by the first defendant (petitioner) of the suit; difficulties, if any, faced by the first defendant in developing his own independent facilities in above nature; encroachment, if any, over the area allocated to the first defendant (petitioner) of the suit by the plaintiff of the case; and such other further facts as may be relevant to facilitate complete and effectual adjudication of the dispute brought through the suit and the counter-claim.

11. The L&DO shall carry out the inspection through its responsible officer(s) on above lines within four weeks hereof, after serving a notice on the plaintiff and all defendants of the suit. The report shall be supported by all requisite documents including drawings, photographs, etc. as may make its import easily ascertainable and facilitate for it to be acted upon. If any unauthorized encroachment is noticed, the concerned authorities will also be notified by the inspecting official(s) and such action as is necessary for removal of encroachment shall be taken in accordance with law. In carrying out the said inspection, the official(s) deputed by the L&DO for the task shall also ascertain, from the representative of the MCD, if there is any unauthorised construction in existence at the site which obviously should lead to appropriate action being taken in such respect under the law by the competent authorities in the MCD. Given the observations

recorded earlier in this order, the report of the inspection by the L&DO shall bind all parties and no objections there-against shall be entertained.

12. The report of inspection and actions, if any, undertaken will be submitted before the Civil Judge presiding over the trial of the case within two weeks of the inspection having been carried out. The Civil Judge will have the power, jurisdiction and liberty to ensure due compliance and to pass all further necessary orders to carry out the above directions to their logical end.

13. The petition and the application filed therewith stand disposed of in above terms.

14. *Dasti* to all sides.

MARCH 22, 2018

yg

R.K.GAUBA, J.

न्यायमेव जयते