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

+ RSA 99/2016, CM APPL. 12820/2016

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Madhu Tewatia and Mr. Adhirath
Singh, Advocates.

versus

MUKHTIAR SINGH & ORS Respondents

Through: Mr. B. S. Maan and Mr. Vishal Maan,
Advocates for R-1 to R-3.
Mr. Shlok Chandra and Mr. Ritesh
Kumar Sharma, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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14.05.2018

This appeal impugns an order of the First Appellate Court which upheld the decree dated 10.09.2015 that *inter alia*, permanently restrained the appellant South Delhi Municipal Corporation from constructing a boundary wall in the disputed “passage/raasta” measuring 2 ghatas i.e. 17 feet falling on the eastern side of the respondent’s land in Khasra No. 294/1, in Village Mehrauli, Delhi.

It is the appellant’s case that both the decree and the impugned order erred in not appreciating the fact that the respondents/plaintiffs were in occupation of the land which was not duly reflected in their own plaint. Therefore, the decree could not have been passed unless the identity of the land in possession of the plaintiffs was determined; that since the

demarcation was not done as per Total Station Method, the exercise did not reflect the true position.

In the circumstances, the following questions of law will arise for adjudication:

- (i) Whether the Demarcation Report could be said to be at variance with the description of the land given by the Tehsildar or by the plaintiff?
- (ii) Whether the Demarcation Report can be accepted as evidence of identity of the land in possession of the respondents/plaintiffs?
- (iii) Whether a Demarcation Report which is not prepared under the Total Station Method to demarcate agricultural land can be considered as an authentic and genuine demarcation and a conclusive piece of evidence?
- (iv) Whether the suit could have been decreed in the absence of Report by any method other than the Total Station Method?

The facts and the evidence that led to the aforesaid decree is a dispute primarily between the Delhi Development Authority ('DDA') and the plaintiff. The DDA, being the owner of the plaintiff's adjoining land, had accepted that the disputed raasta admeasuring 2 gathas, i.e. 17 feet falling on the eastern side of the respondent's house in Khasra no. 294/1 was admitted. The DDA had accepted and admitted in its Written Statement that the demarcation was carried by the Revenue Authorities, GNCTD had indeed found the 'passage/raasta' was a part of Khasra no. 294/1. In other words, the DDA accepted that its lands were secure and had not been encroached upon by the respondents. It is these lands of the DDA, which were

subsequently handed over to the appellant SDMC for maintenance of the Community Centre constructed thereon. The DDA landowner accepted the position of their and the plaintiffs lands as true and correct reflection of the records. No lie existed between them. Therefore, the caretaker of the property the Municipal Corporation cannot have any better claim or title to the property than DDA handed over to it.

The appellant's contentions that the Trial Court and the First Appellate Court have erred in their conclusions because they both are contrary to the oral as well as documentary evidence. However, the Court would note that each contention raised by the appellant has been specifically dealt with. Question no. 3 framed hereinabove, stands duly addressed by the First Appellate Court as under:-

*“13. **Seventhly** while on the one hand the case of the MCD is that the demarcation report Ex.PW1/3 and the field book of the department relating to Khasra No. 294/1 showing that the property is measuring 14 gathas on east; 14 gathas on West; 43½ gathas on South and 46 gathas on North, is not correct, whereas on the other hand according to the respondent the said measurement has been specifically incorporated in the Map attached along with the plaint. I have gone through the demarcation report, the field book and also the site plans and I may observe that as per the demarcation report the measurement of built up house of respondent no. 1 to 3 in the land bearing Khasra No.294/1 as East -13 Gathas, West - 14 Gathas, North - 46 Gathas, South - 43 ½ Gathas and the said measurements are shown in blue colour in the Map attached herewith. The argument of the appellant that the Map prepared by the Tehsildar with this report showing the boundaries of the house and disputed Rastha does not tally either with Ex. PW-1/2 and Ex.PW-1/4 does not appear to be sound. In fact the demarcation report Ex.PW-1/3 and the Site Map attached herewith clearly depict the picture of the land*

bearing Khasra No. 294/1 and the house built on the said Khasra number. Towards the north side which is towards the Old M.B. Road, the measurement of the land bearing Khasra No. 294/1 is 48 Gathas (shown in red line) and the built up house of the respondent no.1 to 3 is only 46 Gathas (shown in blue line), towards the east side 2 Gathas land of Khasra No. 294/1 is left out which is the Rasta in dispute. In the Site plan filed by the respondent no.1 to 3 the measurement of the said Rasta is clearly shown as 2 Gathas in width and 105 feet in length and the Tehsildar of the DDA who appeared as DW-1 also admitted the said fact in his cross examination. The claim of the appellant/ SMCD that the Map drawn on the demarcation report does not tally with the Site Plans or that Ex.PW-1/3 does not give the complete area of Khasra No. 294/1 after including the area of the Rasta is incorrect. The appellant has wrongly alleged that the land of the plaintiff on eastern side is only 13 Gathas rather as mentioned in the demarcation report Ex.PW 1/3 it is 14 Gathas and towards the eastern side the built-up house of the plaintiff is 13 Gathas.

14. Lastly I may observe that the appellant SDMC not having disputed the title of the plaintiff qua the land Khasra No. 294/1 and has admitted that the house of the plaintiff is situated at Khasra No. 294/1 and also not having challenged the demarcation report Ex.PW1/3, no declaration is required and the suit for injunction is perfectly maintainable” .

The reasoning is clear and cogent and does not call for any interference. Therefore, Question No.3 is answered in the negative.

Apropos the other issue, whether the Total Station Method can be the only form of demarcation or for the determination of the identity of agricultural land, the answer cannot be anything but a negative, because the Total Station Method is used to measure the land through a laser beam, which is a technological advancement that brings an element of exactitude but it does not render the traditional statutorily defined, manual method of

measuring land illegal, futile or ineffective.

The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, as applicable to the NCT of Delhi does not prescribe the demarcation of agricultural lands through the Total Station Method only. The manual method still exists as a prescribed valid mode of measurement and demarcation. The Revenue Authorities and the DDA, both have accepted that the DDA's lands are secure and have not been encroached upon by the respondents. The MCD, who is only the care taker of the DDA's land, cannot have a case for fresh demarcation or a right to either oust or disturb the settled possession of the respondents/plaintiffs from the lands in their possession, including the passage/raasta measuring 2 gathas i.e. 17 ft. falling on the eastern side of the respondent's land/house in Khasra No. 299/1, in Village, Mehrauli, Delhi.

In the circumstances, the questions of law are answered in the negative.

The impugned order does not warrant any interference. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

MAY 14, 2018

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