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

+ LPA 780/2019 & CM APPL. 54374-54375/2019

SANDEEP MEHRA

..... Appellant

Through Ms. Sunita Maan, Advocate.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondent

Through Mr. Rajat Mangla, proxy counsel for
Mr. S.K. Tripathi, ASC (GNCTD) for
R1 & R5.

Mr. Ajay Arora, Mr. Kapil Dutta,
Advocates for SDMC.

Mr. Dhavesh Relan, SC with Ms.
Gauri Chaturvedi, Advocates for
DDA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **19.12.2019**

1. The present appeal has been filed by the appellant being aggrieved by an order dated 25.11.2019, passed by the learned Single Judge, dismissing a writ petition (W.P.(C) 5737/2014), praying *inter alia* that the respondent No.1/GNCTD, respondent No.2/DDA and the respondent No. 3/Delhi Police be restrained from taking possession of any part of the land/built-up structure on land situated in property No. WZ 436, Pili Kothi comprised in Khasra No. 2066 & 2078/2, Hari Nagar, New Delhi, belonging to him and his family members. The appellant had also sought to restrain the respondents from constructing a road on the captioned land on the ground that the same has not been acquired by the authorities.

2. By the impugned order, the learned Single Judge has disposed of the writ petition filed by the appellant by holding that it is not inclined to go into disputed questions of facts and issue any directions for demarcation of the land, as urged by the appellant, or reach any conclusion as to whether the subject land belongs to him or was handed over to the respondent No.1/GNCTD. While disposing of the writ petition, liberty has been granted to the appellant to initiate appropriate proceedings before the Deputy Commissioner of the area, in terms of Section 28 of the Delhi Land Revenue Act, 1954.

3. Ms. Maan, learned counsel for the appellant/petitioner states that the learned Single Judge has erred in observing that there are many disputed questions of fact and refraining from entertaining the writ petition. She draws the attention of this court to the averments made by the respondent No.2/DDA in an earlier writ petition filed by Sh. Pawan Mehra, brother of the appellant (W.P.(C) 1720/2000) wherein DDA had stated in its counter affidavit as below:-

“4. That the contents of para 2 of the application are incorrect and denied it is submitted that the boundary wall raised by DDA falls on Khasra nos. 2067 min and 2078/1 min plots of village Tehar which plots have been acquired by the DDA vide Award no. 1867 and which have further been transferred to G-8 residential scheme of DDA on 8-4-1969 and the said land is under the disposal of DDA under Section 22(i) of the Delhi Development Act, 1957 vide notification no. F-8(49) 63/L & H iii dated 16-2-72....”

4. We may note that W.P.(C) 1720/2000 was disposed of on 31.03.2003, with the following order : -

“After some hearing, it is noticed that there is a dispute about exact location of the place where the wall is being constructed by the respondent No.4-DDA. The contention of petitioner is that the wall is being constructed on the land of the petitioner, while the respondent No. 4 submits that the wall is being constructed in a different Khasra No. which vest with the DDA and the land having been acquired.

Learned counsel for the petitioner has referred to the challan (Annexure P-9) deposited with the Tehsildar for demarcation of the land.

In view of the aforesaid, I am of the considered view that the only directions to be issued in the present writ petition is to direct the respondent No. 3 to carry out demarcation of the area in question. In order to avoid any further delay, it is directed that a fresh application be made by the petitioner within a period of one week to SDM of the area concerned and on such application being made, a demarcation shall be carried out at site by the competent authority after giving advance notice to the petitioner and the DDA. The needful shall be done within a maximum period of 3 months from the date of the application of the petitioner for demarcation.

Needless to say that if any of the parties are aggrieved by the final adjudication in respect of the demarcation, it is open to the parties to take steps in with law to impugn the said demarcation.”

5. It is a matter of record that pursuant to the directions issued above, the Halka Patwari of the area had carried out the demarcation of the land on 04.08.2003.

6. Learned counsel for the appellant/petitioner submits that in the counter affidavit filed by the respondent No.2/DDA in the subsequent writ petition, it has been categorically stated in para-5 that the land in question falls in village Tihar and is comprised in Khasra No. 2066 & 2078/2, which is not DDA land and the said land was not acquired by the DDA. In other words, while DDA had taken a different stand at the time of filing a counter affidavit in W.P.(C) 1720/2000, that was filed by the appellant's brother and was disposed of vide order dated 31.03.2003, stating *inter alia* that the boundary wall in question was raised by the DDA in Khasra No. 2067 Min & 2078/1 Min on plots that were acquired by it vide Award no. 1867, it has turned turtle subsequently.

7. We have enquired from the learned counsel for the appellant as to whether a copy of Award no. 1867 was placed on record before the learned Single Judge or for that matter, has been filed in the appeal; she states that neither the appellant nor the respondents have filed a copy of the said Award. The said Award would have thrown some light on the extent of the acquisition conducted and the exact khasra numbers that were a subject matter of the said Award.

8. Be that as it may, the appellant cannot take any advantage of the contradictory stands taken by the respondent No.2/DDA. The very fact that the respondent No.2/DDA has taken contradictory stands in two sets of proceedings in respect of the same land is also a reason for this court to hold that disputed questions of facts have arisen that need to be examined by the Deputy Commissioner of the area empowered under the Delhi Land Revenue Act, 1954. The provisions of Section 28 of the said enactment on

the aspect of settlement of boundary disputes clearly states that it is the Deputy Commissioner, who shall decide such like disputes on the basis of existing survey maps and if that is not possible, the boundaries shall be fixed on the basis of the actual position. An opportunity has been afforded to the appellant to approach the Deputy Commissioner under the said enactment with a grievance as raised in the writ petition.

9. We do not see any reason to interfere in the impugned judgment. The present appeal is dismissed *in limine* as meritless alongwith the pending applications.

10. At this stage, learned counsel for the appellant/petitioner states that in the impugned order, while granting her client liberty to approach the Deputy Commissioner for appropriate interim relief it has been clarified that if he does not take necessary steps within one month from the date of passing of the said judgment, i.e. 25.11.2019, then the interim order operating in his favour, would stand vacated. She submits that since the winter vacations are commencing from 25.12.2019, the appellant/petitioner may be granted extension of time upto 05.01.2020, to approach the Deputy Commissioner with an appropriate application.

11. In view of the submissions made here-in-above, the interim protection granted in favour of the appellant shall continue to operate till 05.01.2020.

HIMA KOHLI, J

ASHA MENON, J

DECEMBER 19, 2019/MK
LPA 780/2019

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