

\$~1

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

+ W.P.(C) No. 909/2019 & CM APPL. Nos. 4093-4095/2019,
4532/2019

V M SINGH

..... Petitioner

Through: Mr. Arjun Harkauli & Ms. Arunima
Bishnoi, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Mr. Ajayy Aroraa & Mr. Kapil Dutta,
Advs. for R1/SDMC.
Mr. Y. P. Narula, Sr. Adv. with Mr.
Maanav Kumar, Adv. for R3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

04.02.2019

Inspection as directed by order dated 27.01.2019 has been conducted by a structural engineer/expert nominated by Director IIT, Delhi and his report dated 29.01.019 has been filed on record.

While the report records the precarious state of the neighbouring buildings, it confirms that a properly designed and executed retaining wall needs to be urgently built on plot No.W-129, to prevent collapse of the adjoining buildings ; and further states that the design of the partially completed retaining wall appears to be insufficient to take the load.

The expert has also recommended that a detailed analysis of the building and the soil would be required to decide the rectification measures necessary to ensure the safety of the structures, for which a further inspection would be necessary.

It appears that the petitioner's conduct during inspection was offensive so much so that the expert has been constrained to record it in his report. The expert has for this reason expressed his inability to provide any further advice in the matter.

Mr. Arjun Harkauli, learned counsel appearing for the petitioner and Mr. Y. P. Narula, learned senior counsel appearing for respondent No. 3 state that the parties are willing to undertake the further exercise advised by the expert; and that respondent No. 3 is also willing to bear the expense for the second phase of inspection.

Learned senior counsel appearing for respondent No. 3 further submits that construction of retaining walls and pillars as permitted by last order dated 30.01.2019 is not yet complete *inter-alia* for the reason that some amount of excavation is required to complete construction of the retaining wall, which excavation was prohibited by the last order.

Mr. Narula further submits that respondent No. 3 is ready and willing to undertake and implement the recommendations that may be made by the expert to ensure the soundness of the retaining wall and the safety of the adjoining buildings, at respondent No. 3's cost and expense. Mr. Narula, states that respondent No. 3 is also willing to repair the damage caused to the petitioner's premises by reason of excavation/construction undertaken by respondent by 3 and to restore the petitioner's premises to the original position as it existed prior to the said excavation/construction.

Accordingly, the Director, IIT Delhi is requested to depute some other structural engineer/expert to undertake the second phase of inspection of the subject property as aforesaid, for which the structural engineer/ expert will be paid a fee of Rs. 50,000/- by respondent No. 3.

In the meantime, it is directed that construction of the retaining wall along the boundary of both the adjoining properties be completed, including by excavating in the areas where it is necessary to do so for the purpose of completing construction of the retaining wall, with extreme care and caution, to ensure that no further damage whatsoever occurs to the buildings on either side.

Counsel for the parties further state that the parties are agreeable to be referred for settlement to the Delhi High Court Mediation and Conciliation Centre to work out details of the repair and restoration work required; and resolve any remaining issues and differences amicably, in a spirit of good neighbourliness. For the record, the owners/occupiers of the neighbouring building on plot No. W-131 are stated to have already entered into a settlement with respondent No. 3 with regard to the damage caused to their building.

Accordingly, let parties appear before the Delhi High Court Mediation and Conciliation Centre on 5th February, 2019 at 3 pm to iron-out any remaining issues and to settle the matter, fully and finally. The Secretary, Delhi High Court Mediation and Conciliation Centre is requested to assign a Senior Mediator for the purpose.

Mr. Harkauli, learned counsel appearing for the petitioner states that in order to obviate any difficulties, he will personally be present during the next inspection by the expert and ensure that it is carried-out smoothly; and

that he will, by mutual discussion with counsel for respondent No. 3, work-out all differences to the mutual satisfaction of the parties.

Needless to add that after construction of the retaining walls and taking other measures to secure the adjoining buildings, the remaining construction of the new property on plot No. W-129 shall be undertaken strictly in accordance with the sanctioned plan and in compliance of all building bye laws, rules and regulations.

The petition stands disposed of in the above terms, leaving the parties to take any further remedy, if the need so arises, in accordance with law. In the unlikely event of the matter not being closed by settlement in mediation, parties shall be at liberty to revive this petition.

Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 04, 2019/uj