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

Date of Decision: 29th May, 2019

+ **CONT. CAS(C) 507/2019**

JAMALLUDDIN SABRI Petitioner

Through: Mr. C.S. Rathour, Mr. S.D.
Tiwari and Mr. V.P. Singh, Advs.

versus

RAJESH CHAUDHARY Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T (O R A L)**

Contempt Case 507/2019

1. This petition seeks initiation of proceedings against the respondent/alleged contemnor for having committed contempt of this Court, by failing to comply with the directions contained in the order dated 23rd April, 2019, passed by this Court in CM No. 18723/2019 in W.P.(C) 842/2019. The said order reads thus :

“The petitioner seeks appointment of a Local Commissioner. He claims to be the owner and in lawful possession of the lands identified as Khasra No.634/402, 407 and 408, shown in pink colour in the map annexed with the main petition. It is his grievance that the DDA has forcibly entered into the said land and/or has permitted the Kendriya Vidyalaya to raise a boundary wall on the petitioner’s aforesaid land.

Whether the petitioner is the owner and/or in lawful possession of the aforesaid land would need to be ascertained by the SDM of the area concerned.

Let respondent no.2 file the affidavit in this regard within two weeks from today. The affidavit shall be supported with documentary and photographic evidence. Ms. Takiar, the learned counsel for the DDA seeks one last opportunity to comply with the directions passed on the last date of hearing.

Let it be so done before the next date of hearing.

List on 16.05.2019.”

2. The submission of learned counsel for the petitioner is that, by failing to file affidavit, supported with documentary and photographic evidence, within two weeks of 23rd April, 2019, as directed on the said date, Respondent No.2 has committed contempt of this Court.

3. It is trite, in law, that every disobedience of an order of a Court does not constitute contempt. The question of contempt would arise only where the disobedience is wilful and contumacious in nature, with a deliberate intention of disobeying the order of the Court.

4. *Prima facie*, I do not see there is anything on record, to indicate that the failure, on the part of the Respondent No.2, to file an affidavit, as directed on 23rd April, 2019, is either wilful or contumacious in nature, so as to constitute contempt of court.

5. In para 2 of the present contempt petition, it has been averred that Respondent No.2, i.e. the present alleged contemnor, deliberately

failed to comply with the direction to file affidavit “with his malafide intention to encourage the concerned erring officer of Delhi Development Authority (DDA), the Kendriya Vidhalaya Sangathan (KVS), local police and the other land grabbers to illegally encroached upon the vacant and private land of the petitioner and other co-owners/co-sharers of the said land Khasra No.634/402, 407 and 409 of Village-Uldhanpur (Shahdara) Delhi.”

6. The above extracted averment, of the petitioner, contained in para 2 of the contempt petition, is merely in the realm of conjecture. At the cost of repetition, it may be reiterated that there is nothing to support the submission, in para 2 of the contempt petition, to the effect that the failure, on the part of the alleged contemnor, to file affidavit in accordance with the direction passed on 23rd April, 2019 was with the malafide intention to permit encroachment on the petitioner’s land.

7. Para 4 of the contempt petition make certain further allegations against the alleged contemnor, which are totally immaterial insofar as the question of contempt is concerned.

8. Issuance of notice of contempt is a serious matter, especially where the contemnor is a public functionary. Indiscreet issuance of such notices exposes public functionaries to serious, and often deleterious, consequences – quite apart from the stress of having a proverbial sword of Damocles hanging over her, or his, head. Contempt proceedings are meant to be punitive, deterrent and, ultimately, reformatory in nature and are not intended to be execution

proceedings in disguise. Notices of contempt cannot be issued, at the mere asking of an unhappy litigant.

9. No case for proceeding, against the alleged contemnor, for having committed contempt, is made out. The contempt petition is, accordingly, dismissed.

MAY 29, 2019/kr

C. HARI SHANKAR, J

