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

Date of Decision: 28th August, 2019

+ LPA 465/2019 & CM APPLs. 32343/2019, 32344/2019, 32345/2019
& 38470/2019

RAJ KUMAR JAIN Appellant
Through: Mr. Manoranjan Sinha, Adv.

versus

GOVT OF NCT OF DELHI & ANR Respondents
Through: Mr. Shadan Farasat, ASC, GNCTD
with Ms. Hafsa Khan &
Ms. Rudrakshi Deo, Adv. for R-1.
Ms. Vibha Mahajan Seth, Adv. for
DMRC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, CHIEF JUSTICE (Oral)

LPA No.465/2019

1. This Letters Patent Appeal has been preferred by the appellant (original petitioner) whose W.P.(C) No.2897/2019 has been disposed of by the learned Single Judge by judgment and order dated 25.03.2019 (order at Annexure 'A' to the memo of this LPA).
2. Counsel appearing for the appellant (original petitioner) has drawn our attention to several reports which are at Page Nos. 110, 129 and 143 and pertaining to November 2017, July 2018 and January 2019, respectively.

These reports have been given by the Central Building Research Institute (CBRI).

3. Counsel appearing for the appellant (original petitioner) submitted that the metro line going beneath the house of the appellant, which is narrated as property No.168, Ground Floor, First Floor and Terrace, Rameshwar Nagar, New Delhi (hereafter referred to as 'the property in question'), as mentioned in the memo of the writ petition as well as in this LPA, is causing severe damage to his property like tilting, settlement, cracks, etc. which requires total demolition of the property in question, and a new house ought to have been constructed by the respondents.

4. Counsel appearing for the respondent submitted that no error has been committed by the learned Single Judge while deciding W.P.(C) No.2897/2019 vide judgment and order dated 25.03.2019. Counsel appearing for the respondent further submitted that there is more than one report given by the competent Institute, which are on record, and which are narrated by the counsel for the appellant. As per the policy floated by the respondents, if any house is to be demolished as per the report of the Expert Committee, only then will it be demolished, and it will be re-constructed by the respondents. If the house is repairable as per the report given by the Committee of Experts, in such an eventuality, only the compensation for repair will be given by the respondents. It is further submitted by the counsel for the respondents that in the present case, as per the report given by the Expert Committee, the house in question is repairable and is not to be demolished. Hence, the respondents have already offered Rs.32,93,253/-, as stated in the aforesaid reports.

5. It is further submitted by counsel for the respondents that this amount has been finalized looking to the reports given by the Expert Committee. It is also submitted that if the appellant is disputing such reports, then this amount will not be paid, and let this appellant be relegated to the Trial Court where the evidence can be led and exact damages can be proved and paid in accordance with the decision by the Trial Court.

6. Having heard the counsel for both the sides and looking to the facts and circumstances of the case and looking to the reports of the Expert Committee at Page No.110 Annexure 'N', Page No.129 Annexure 'R' and Page No.143 Annexure 'W', which are of November 2017, July 2018 and January 2019, respectively, it appears that the house in question is a repairable property.

7. In view of the policy floated by the respondents, if the house is repairable then the money required for repairs will be paid by the respondents, which has been estimated at Rs.32,93,253/-, as stated hereinabove.

8. It appears that the appellant is disputing the payment of the aforesaid amount, mainly for the reasons that the whole house requires to be demolished and new house has to be constructed by the respondents, the manner in which the respondents have given money for re-construction and meanwhile, the respondents ought to provide either a house or the rent for a house till the new house is constructed and, in the alternative, if at all this Court is giving the direction for repairing, then also, an alternate accommodation or rent for the same till the house is repaired.

9. We do not accept this contention of the appellant, mainly for the reasons that:

- (a) As per the reports at Annexure 'N', Annexure 'R' and Annexure 'W', the house in question is a repairable property.
- (b) As per the policy floated by the respondents, if the house is repairable, only the money required for repairing shall be paid.
- (c) The respondents have already offered Rs.32,93,253/- for the repair work. If the appellant (original petitioner) accepts the same, the same shall be paid by the respondents forthwith so that the repair work can be started by the appellant.
- (d) If the appellant disputes the reports given by the Central Building Research Institute (CBRI), the appellant (original petitioner) is at liberty to file a civil suit before the competent Trial Court as per Section 15 of the Code of Civil Procedure, 1908. The amount of Rs.32,93,253/- will be given as a set-off, if more compensation is awarded by the Trial Court.
- (e) So far as interim arrangement of the stay of this appellant in another house is concerned during the repairing work is continued, it is left at the discretion of the respondents and they will follow their own rules and policy and in accordance with rules, regulations and Government policy applicable to the facts of the present case. If at all an alternative house is to be supplied or rent is to be given, the same shall be given by the respondent authority.

10. Counsel appearing for the respondent submits that the amount has to be paid by the contractor. It ought to be kept in mind "*qui facit per alium facit per se*" (he who does the work through another does it himself). Thus, if the work is being done through a contractor, the principal shall be

responsible. Therefore, if there is a contract between the respondent as a principal and with another contractor, it is a matter between them, but this appellant (original petitioner) is entitled to either the money for re-construction or for repair. In the facts of the present case, as stated hereinabove, as per the reports given by the Expert Committee, which are at Annexure 'N', Annexure 'R' and Annexure 'W', only the money for repair work is to be given and that shall be paid by the respondents.

11. The aforesaid aspects of the matter have been properly appreciated by the learned Single Judge while disposing of W.P.(C) No.2897/2019 vide judgment and order dated 25.03.2019. So far as filing of the suit by the appellant for more damages is concerned, liberty is reserved with the appellant (original petitioner) to this extent, and order passed by the learned Single Judge is thereby modified to the aforesaid extent.

12. With these observations, this Letters Patent Appeal is hereby disposed of.

CM APPLs. 32343/2019, 32344/2019, 32345/2019 & 38470/2019

In view of the order passed above, no further orders are required to be passed on these applications. The same stand disposed of accordingly.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 28, 2019

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