

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

% **Date of decision: 21st May, 2019**

+ **CS(OS) 1279/2009**

VINOD KUMAR KEDIA **Plaintiff**

Through: Mr. Ashok Gurnani, Adv.

versus

MUNICIPAL CORPORATION OF DELHI AND

OTHERS

..... **Defendants**

Through: Mr. Ajay Arora and Mr. Kapil
Dutta, Advs. for D-1.

AND

+ **CS(OS) 1443/2009**

VINOD KUMAR KEDIA **Plaintiff**

Through: Mr. Ashok Gurnani, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI AND

OTHERS

..... **Defendants**

Through: Mr. Ajay Arora and Mr. Kapil
Dutta, Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted CS(OS) No.1279/2009 against the Municipal Corporation of Delhi (MCD) and its officials for recovery of Rs.18,00,000/- along with interest, pleading that (i) the plaintiff is the owner of Property No.5766, Jogiwara, Nai Sarak, Delhi having purchased the same vide Sale Deed dated 19th November, 1998; (ii) the property was an old property constructed in 1950 and was in occupation of the tenants from whom the plaintiff got the property vacated; (iii) because the property was in urgent need of repairs, the plaintiff, to avoid any mishap and to render the property usable,

submitted an application dated 2nd May, 2008 to the defendant MCD intimating his intention to carry out repairs therein and called upon the officials of the defendant MCD to visit and inspect the property; (iv) the plaintiff, on visiting the office of the defendant MCD was informed that he was entitled to carry out the works permitted in Clause 6.4.1 of the Unified Building Bye-Laws, 1983 as applicable to Delhi, without seeking any permission; (v) the plaintiff accordingly commenced the work of repairs; (vi) the officials of the defendant MCD visited the property on 30th May, 2018 and without serving any show-cause notice or demolition order punctured/demolished the roof of the ground, first and second floors of the property; (vii) the defendant MCD and its officials, in doing so acted illegally, in violation of the law; (viii) the plaintiff suffered a loss of Rs.12,00,000/- towards cost of re-laying of the roofs of the ground, first and second floors and ancillary repairs and suffered mental agony, torture and humiliation valued at Rs.6,00,000/-; and, (ix) the plaintiff is also entitled to interest on the said amount at 18% per annum. Hence the suit for recovery of Rs.18,00,000/- with interest at 18% per annum for the period w.e.f. 31st May, 2008 to 14th May, 2009.

2. CS(OS) No.1443/2009 has been filed by the plaintiff against the MCD and its officials for recovery of damages in the sum of Rs.6,37,50,000/- for the period w.e.f. 31st May, 2008 to 30th July, 2009 along with future damages w.e.f. 31st July, 2009 at Rs.1,50,000/- per day, till the property is restored by the defendant MCD in the position in which it was prior to 30th May, 2008. The plaintiff, in the plaint in

the said suit has additionally pleaded, that (i) though the plaintiff in the earlier suit had sought recovery of Rs.12,00,000/- towards cost of re-laying of the roofs but had not undertaken the said work as no permission therefor had been granted; (ii) however vide order dated 6th August, 2008 of this Court in W.P.(C) No.4472/2008, the plaintiff had been permitted to put a temporary fibre glass covering where the roof was punctured, to avoid seepage of water in other parts of the property; however the plaintiff did not put the said fibre glass covering also because the same was not enough to save the property from being damaged from rains, storm etc.; and, (iii) a sum of Rs.6,37,50,000 /- is due from the defendant MCD to the plaintiff as damages/compensation for depriving the plaintiff of the use and enjoyment of the property from 31st May, 2008 to 30th July, 2009, besides the amount of Rs.18,00,000/- claimed in CS(OS) 1279/2009; the plaintiff is also entitled to a sum of Rs.1,50,000/- from 31st July, 2009 till the property is restored to original position.

3. Needless to state that the defendant MCD and its officials contested both the suits. However the need to detail the defence of the defendants is not felt owing to the manner in which the hearing has taken place.

4. Suffice it is to state that on the pleadings of the parties in CS(OS) No.1279/2009, on 11th August, 2010 the following issues were framed:

“i) Whether the suit is barred under Section 477/478 of DMC Act, 1957? OPD

ii) Whether the suit is liable to be rejected under Order VII Rule 11(a) CPC? OPD

- iii) *Whether the present suit is barred under Order II Rule 2 in view of the writ petition bearing WP(C) No.4472/2008 filed by the plaintiff? OPD*
- iv) *Whether the proceedings of the present suit are liable to be stayed under Section 10 of the CPC as the appeal of the plaintiff against the order of demolition is pending before the Lt. Governor? OPD*
- v) *Whether the plaintiff is entitled to a decree of damages and compensation of Rs.18.00 lakh as prayed for? OPP*
- vi) *If the answer of issue No.(v) is in affirmative, whether the plaintiff is entitled to interest at the rate of 18% and if so, on what amount and for what period ?*
- vii) *Relief.”*

and on the pleadings of the parties in CS(OS) No.1443/2009, on 11th August, 2010 itself the following issues were framed:-

- “ i) *Whether the suit is barred under Section 477/478 of DMC Act, 1957 ? OPD*
- ii) *Whether the suit is liable to be rejected under Order VII Rule 11(a) CPC? OPD*
- iii) *Whether the present suit is barred under Order II Rule 2 in view of the writ petition bearing WP(C) No.4472/2008 filed by the plaintiff? OPD*
- iv) *Whether the proceedings of the present suit are liable to be stayed under Section 10 of the CPC as the appeal of the plaintiff against the order of demolition is pending before the Lt. Governor? OPD*
- v) *Whether the plaintiff is entitled to a decree of damages and compensation of Rs.6,37,50,000/- @ of Rs.1,50,000/- per day w.e.f. 31.05.2008 to*

30.07.2009 and till the time the property is restored to its original position? OPP

vi) If the answer of issue No.(v) is in affirmative, whether the plaintiff is entitled to interest at the rate of 18% and if so, on what amount and for what period?

vii) Relief.”

and the parties relegated to evidence.

5. On enquiry, the counsels inform that separate evidence was recorded in the two suits.

6. The recording of evidence stood completed on 20th March, 2013 and the suits listed for final hearing on 25th April, 2013. Vide order dated 23rd October, 2013 in both the suits, finding that (i) consequent upon the demolition action, the plaintiff had filed W.P.(C) No.4472/2008, which was disposed of on 16th September, 2008; (ii) the plaintiff had preferred LPA No.763/2008 against the order dated 16th September, 2008 and which was disposed of vide order dated 15th December, 2008 and that in pursuance to the said order the Deputy Commissioner of the MCD has passed the order dated 9th March, 2009 holding that the construction which was demolished was unauthorised and that the said order was challenged by the plaintiff before the Appellate Tribunal, MCD which passed the order dated 21st April, 2009 upholding the sealing order dated 9th March, 2009 and the order of the Appellate Tribunal, MCD was under appeal before the District Judge, and reasoning that the correctness of the order dated 9th March, 2009 holding the construction raised by the plaintiff to be unauthorised, thereby justifying the demolition action, will have a

bearing on the issue as had arisen for determination in the present suits, the proceedings in the present suits were adjourned *sine die* awaiting the outcome of the proceedings pending before the District Judge.

7. The plaintiff preferred FAO(OS) No.574/2013 against the said order dated 23rd October, 2013 which was disposed of vide order dated 13th December, 2013 by directing the District Judge to dispose of the appeal pending before it at the earliest.

8. The counsel for the defendant MCD states that the District Judge dismissed the appeal and the plaintiff filed W.P.(C) No.26/2019 thereagainst and which writ petition has also been dismissed on 12th March, 2019.

9. The counsel for the plaintiff, on enquiry states that no appeal has been preferred against the order dated 12th March, 2019 and the said order has attained finality.

10. The counsel for the defendant MCD, in the light of above contends that since the finding, of the construction which was demolished being unauthorised has attained finality, the present suits claiming damages for demolition of the construction are liable to be dismissed.

11. Per contra, the counsel for the plaintiff has contended that, (i) the demolition action was taken without any notice and without passing any order of demolition and in neither of the proceedings have the defendant MCD produced notice if any issued to the plaintiff to show-cause or any order of demolition having been passed; (ii) it is thus not in dispute that the action of demolition, for which damages

are claimed, was illegal and not in accordance with the procedure prescribed in the Delhi Municipal Corporation Act, 1957 and in violation of the same; and, (iii) once it is so, the plaintiff is entitled to claim damages therefor.

12. I have however enquired from the counsel for the plaintiff, that even if there was any violation of procedure on the part of the defendant MCD and its officials in carrying out the demolition action, how is the claim for damages therefor maintainable once the finding that the construction which was demolished was illegal and contrary to law, has attained finality by the Court of competent jurisdiction and which adjudication cannot be done in this civil suit and which adjudication is barred by Section 347E of the DMC Act. It has further been enquired, what prejudice has been suffered by the plaintiff from the violation of the procedure prescribed for taking action against an illegal act of the plaintiff himself.

13. It is not in dispute that under Section 345A of the DMC Act, the demolition action can be either before or after the order of sealing.

14. The counsel for the plaintiff has contended that if the defendants had issued a show-cause notice granting hearing to the plaintiff and passed an order of demolition, the plaintiff would have had a right to appeal thereagainst and the plaintiff has been deprived of the said right by the defendant MCD not following the said process and straightaway sealing the premises.

15. On enquiry it is admitted that the sealing of the premises on 9th March, 2009 was after following the procedure prescribed in law therefor.

16. In my view, a mere violation of procedure would not *ipso facto* entitle the plaintiff to damages. To be entitled to claim damages, it is essential for a plaintiff to show a loss. There can be no loss on account of disappearance of what the plaintiff was not entitled to have or what the plaintiff had acquired illegally. To hold, that though the construction raised by the plaintiff was unauthorised and contrary to law, the plaintiff can recover damages for demolition thereof would amount to giving premium to dishonesty and violations of law and create lawlessness in society, with every thief when caught claiming damages for what was stolen being taken away from him.

17. I may in this context refer to (i) Page 34 of Part-III A file in CS(OS) No.1279/2009, being the order dated 16th September, 2008 of this Court in W.P.(C) No.4472/2008 preferred by the plaintiff seeking permission to restore the property which had been demolished and restraining further demolition action, recording (a) that it was not in dispute that prior to demolition action dated 30th May, 2008, no notice was served on the plaintiff; subsequently however a show-cause notice dated 18th June, 2008 was issued; (b) no relief as sought by the plaintiff to reconstruct the property which had been demolished owing to the demolition action being void *ab initio* and illegal could be granted for the reason of the conduct of the plaintiff of suppressing material facts with regard to inspection carried out by the defendant MCD on 9th May, 2008, a Work Stop Notice dated 27th May, 2008 under Section 344 of the DMC Act and a notice dated 29th May, 2008 under Section 435 of the DMC Act having been issued to the plaintiff on account of unauthorised construction underway in the premises;

and, (c) directing the plaintiff to appear before the defendant MCD to explain his case; (ii) page 45 of Part-III A file in CS(OS) No.1279/2009, being the order dated 15th December, 2008 of the Division Bench of this Court dismissing the appeal preferred by the plaintiff against the order dated 16th September, 2008; (iii) page 48 of Part-III A file in CS(OS) No.1279/2009, being the sealing order dated 9th March, 2009 also showing the construction demolished to be unauthorised; and, (iv) page 75 of Part-III A file in CS(OS) No.1443/2009, being the order dated 21st April, 2009 of the Appellate Tribunal, MCD in appeal preferred by the plaintiff against the order of sealing and which unequivocally shows the sealing to have been on account of unauthorised construction earlier carried out by the plaintiff and for the purpose of preventing the plaintiff from again carrying out unauthorised construction.

18. As far back in ***Kedar Nath Motani Vs. Prahlad Rai*** AIR 1960 SC 213, it was reiterated that the principle of public policy is *ex dolo malo non oritur actio* i.e. no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act; if from the plaintiffs own stating or otherwise the cause of action appears to arise *ex turpi causa* or the transgression of a positive law of this country, there the court says he has no right to be assisted. Similarly, in ***Bhartiya Seva Samaj Trust Vs. Yogeshbhai Ambalal Patel*** (2012) 9 SCC 310, it was held that if a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. Reference in this regard may be made to ***Abhey Dewan Vs. Manoj Sethi*** (2013) 202 DLT 392, ***New Era Impex (India) Pvt. Ltd. Vs. Oriole Exports***

Private Ltd. (2016) 234 DLT 615, and ***Mahendar Kehar Vs. Skyland Builders Pvt. Ltd.*** 2019 SCC Online Del 7940.

19. In view of the aforesaid, the need to return issue wise findings and waste time of the Court in doing so, is not felt.

20. The subsequent events as aforesaid have rendered the suits liable to dismissal.

21. The suits are accordingly dismissed, with costs of Rs.1lac in each suit to the defendant MCD against the plaintiff.

Decree sheets be drawn up.

MAY 21, 2019
‘pp’

RAJIV SAHAI ENDLAW, J