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

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Judgment delivered on: 05.10.2020

+ CONT.CAS(C) 550/2020 & CM APPL.23141/2020

MOHD. SHER NABI CHAMAN

..... Petitioner

versus

UDIT PRAKASH RAI & ANR.

.....Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. A. Maitri with Ms. Radhika Chandrasekhar,
Advocates.

For the Respondent:

Mr. Gautam Narayan, ASC, GNCTD with Ms.
Dacchita Shahi and Mr. Adithya Nair, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Petitioner seeks initiation of proceedings against the respondent for alleged breach of order dated 07.11.2014 passed in CM(M) 304/2014.
3. Learned counsel appearing for the respondents on advance notice submits that subject order dated 07.11.2014 was passed on an application under Order 39 Rule 1 & 2 CPC in the Suit filed by the petitioner. He submits that by a subsequent order dated 19.03.2018 the Suit has been dismissed and as such the interim order dated 07.11.2014 has merged with the final order and accordingly no petition seeking initiation of contempt

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to HMJ Sanjeev Sachdeva.

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would lie.

4. Learned counsel for the respondent further submits that this is a third contempt petition filed by the petitioner alleging the same facts and on each occasion the contempt petition has been withdrawn.

5. Petitioner had filed a Suit contending that the petitioner was occupying land which is located in khasra no. 22/3, 22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi and Petitioner had sought a restraint on respondents from dispossessing the plaintiff from the subject land.

6. The defendant in the suit, Directorate of Education had contended that the land occupied by the Petitioner was situated in Khasra No.976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi. The Directorate of Education had contended that they did not claim any right in Khasra Nos. 22/3, 22/4, 22/8, 22/9 and 25/20/2 which land was not acquired.

7. Subject petition under Article 227 of the Constitution of India was filed by the DDA in which the subject order dated 07.11.2014 was passed by this Court. For the purposes of resolving the controversy, as to whether the subject land in possession of the petitioner fell in khasra No. 22/3, 22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi or in khasra No. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi, this Court directed that a demarcation shall be carried out by the revenue authorities in the presence of the parties to ascertain as to the location of the subject land. Parties consented that they would not challenge the demarcation report

prepared by Total Station Method.

8. It was directed that the parties shall maintain status quo with regard to title, possession and construction till the preparation of the demarcation report and the Suit would be disposed of in terms of the demarcation report.

9. Demarcation was carried out and demarcation report dated 13.03.2018 was filed. The conclusions in the demarcation report are as under:-

“ Conclusion :-

A) In regards to Concerned property/Land in question is Part of which Khasra Number

i) **As per record of 1979-80** – The concerned property/land in question is part of khasra Nos.49/2 & 54 (Drg.-1)

ii) **As per record of 1895-96** – The concerned property/land in question is part of Khasra No.996, 997, 998, 999, 988, 987, 1020 & two more adjoining Khasra numbers in the North (marked as XXX in drawing) which are not clearly visible as the record is too old (details of these numbers is not even available in the Record room as the numbers are faded in the Revenue Record (masavi) (Drg.-2)

B) In regards to Whereabouts of Khasra No.22/3, 22/4, 22/8, 22/9 and 25/20/2 according to Sazra Map of 1979-80 and Khasra Nos.976, 977, 978 & 979 of Sazra of 1895-1896 (Drg.-3)

i) As per record of 1979-80

a) The Khasra numbers 22/3, 22/4, 22/8 & 22/9 are falling in North-East direction, about 1.1 km away from the concerned property/land in question.

b) Khasra No.25/20/2 is falling in North-West direction, about 1.1 km away from the concerned property/land in question.

ii) **As per record of 1895-96**

c) Khasra Nos.976, 977, 978 & 979 are falling on Eastern side, more than 100 metres away from the concerned property/land in question.”

10. Subsequently, the suit of the petitioner was listed before the Trial Court on 19.03.2018, when the Trial Court noticed that the import of the directions of the High Court by the subject order dated 07.11.2014 was that if the demarcation proceedings reflected that the Suit property fell in Khasra No. 22/3 (4-4), 22/4 (4-4), 22/8 (4-16), 22/9 (4-10), 25/20 (1-8), Village Mandoli, Illaqa Shahdara, Delhi, the Suit is to be decreed else the suit is to be dismissed.

11. Following the conclusion in the demarcation report that the subject property in possession of the petitioner was not located in Khasra No. 22/3 (4-4), 22/4 (4-4), 22/8 (4-16), 22/9 (4-10), 25/20 (1-8), Village Mandoli, Illaqa Shahdara, Delhi, and said Khasara Numbers fell about 1.1 km away in the North East direction, the Suit was dismissed on 19.03.2018.

12. Learned counsel appearing for the respondent submits that till date no notice of any appeal having been filed against the dismissal of the Suit has been received.

13. Since the subject order dated 07.11.2014 was an order passed on an application under Order 39 Rule 1 & 2 CPC, the same would merge with the final decree. By the final order dated 19.03.2018 the Suit has been dismissed.

14. Learned counsel appearing for the petitioner submits that he is not aware as to whether any appeal has been filed or not. However, he states that the demarcation report has not been challenged.

15. Since the suit filed by the petitioner stands dismissed, the interim order dated 07.11.2014 having merged with the final order also stands vacated; particularly in view of the demarcation report stating the property in possession of the petitioner did not lie in khasra No. 22/3 (4-4), 22/4 (4-4), 22/8 (4-16), 22/9 (4-10), 25/20 (1-8), Village Mandoli, Illaqa Shahdara, Delhi. No ground is made out for initiating any proceedings against the respondent for alleged breach of order dated 07.11.2014.

16. I find no merit in the petition.

17. The petition is accordingly dismissed.

18. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

OCTOBER 05, 2020

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SANJEEV SACHDEVA, J.