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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on 27th February 2020

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RFA 109/2016

GOVT OF NCT OF DELHI & ANR

..... Appellants

Through : Mr.Sanjay Dewan and Ms.Shivani
Pruthi, Advocates.

versus

SATPAL & ANR

..... Respondents

Through : Mr.Anuroop P.S., Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellant against the judgment and decree dated 15.10.2015 passed by learned Additional District Judge-2, Central District, Tis Hazari Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in Civil Suit No.353/2015 whereby the suit filed by respondents for recovery of Rs.4.00 lacs was decreed to the extent of Rs.3.00 lacs in favour of respondents. The appellant is aggrieved of the decree for Rs.3.00 lacs and also of the directions given to the department to hold an enquiry relating the act and conduct of officers including appellant No.2/defendant No.2 and also initiate appropriate legal action by filing of FIR etc.

2. The facts of the case in brief are the respondents had an agricultural land viz. Khasra Nos.30/21 (1-12), 30/19/1 (0-16), 30/20/2 (0-8), 30/22 (3-19), 30/23/1 (2-6) and 31/16/2 (0-4) situated in the revenue estate of village Jharoda, Majra Burari, Delhi. They got a

permission to enclose/fence their land from the then SDM vide order dated 31.12.1993 passed in *SDM (KWC)/93/2404* and to construct a boundary wall upto the height of 4 feet, which they constructed in the month of May, 1994. The construction of boundary wall allegedly was not against any provision of law nor any objection was ever raised by revenue department or anyone else within the meaning of building byelaws.

3. However, on 24.07.2010, the defendant No.2/appellant No.2 without giving any show cause notice or demolition notice, demolished the boundary wall towards the Northern and Eastern side which action of defendants was illegal as the wall was in existence since last more than 16 years and while demolishing the appellants had also demolished a cattle shed and an iron gate which had caused substantial financial loss, mental disturbance and agony and hence the respondents served upon the appellants a notice under Section 80 Civil Procedure Code on 03.08.2010; duly replied by defendant No.2/appellant No.2 vide reply dated 15.10.2010 but the appellants failed to make payment of any compensation.

4. It was the case of the appellants the respondents were carrying on an industrial activity in their premises and had constructed a factory in 6 biswa of land i.e. about 300 sq.yards to do welding work etc which is an industrial activity and not permissible on an agricultural land. It was also alleged the boundary wall was constructed to the height of 7 feet 6 inches in the northern side and eastern side and about 5 feet in height in the

southern side of land and iron gates were also affixed in the northern side and boundary wall in the eastern side; while the eastern side is connected with the factory.

5. However, during the course of evidence, *admittedly*, the appellant did not prove its contentions *viz* the industrial work was being carried in the land in question, hence the learned trial court vide its impugned order had granted compensation to the tune of Rs.2 lacs on account of financial loss and Rs.1 lac for mental agony caused to the respondents for they had to visit various officials of the department to put forth their case.

6. The reasoning of the learned trial court is contained in the following paragraphs :

“(29) I may observe that in so far as the construction of boundary wall is concerned, in the case of Raj Singh Vs. Financial Commissioner & Ors. in CWP No. 1768/1997 decided on 29.3.2006 where under similar circumstances the Hon'ble Delhi High Court has held that the construction of boundary wall cannot be treated a non agricultural use of the property. Further, in so far as the question with regard to the misuser of the land by running a factory is concerned, the said allegations are vague and there is nothing on record to show either in the form of photographs or in the report of the officer concerned that the land in question was being put to any non agricultural use as a factory. I am sure if that would have been so, a notice under Section 81 of the Delhi Land Reform Act would have been issued. However, the demolition action has been undertaken without issuing any notice to the plaintiffs and without affording any opportunity to the plaintiffs. No material has been placed before this court to justify the said action and to confirm that the land was being put to use as a factory. Rather on the contrary, the Khasra Girdwari of the year 2008-09 which is Ex.PW1/3 and Khatoni of the year 1995-96 which is Ex.PW3/2 duly proved by Halka Patwari Yogesh Kumar (PW3), confirm that the land was solely put for agricultural purposes and there is documentary record to show that any machinery was lying at the spot or any industrial activities in the form of welding and fabricating the parts of weighing scale was being done. The plaintiffs have admitted the construction of the boundary wall and installation of iron gate but not the work of welding and fabricating the parts of weighing scale. In fact, the Khasra Girdwari for the year 2008-09 which is Ex.PW1/3 confirms that the plaintiffs Yashpal and Satpal are the tenure-holders/ bhumidars. It also shows the irrigation of Vegetables and Pearl Millet (Jawar). The

manner in which the defendants have withheld vital information relating to the status of the suit land in the year 2010 and the material upon which the defendant 110.2 had based his satisfaction as regards misuse of land for industrial purposes and consequently directed demolition without any prior notice, smacks of malafide. Public documents and official files do not get misplaced in the manner in which this has happened. There is no evidence of any departmental action against the concerned officials including the custodians of the said file. The question which now arises is Why? In case if the official file being not traceable for almost five years, as a result of which there is a non compliance of the directions of the CIC and also its non production in the Court, I am sure some action both departmental as well as legal was warranted. Why the matter has not been reported to the senior officers and why no FIR in respect of the missing report has been got registered till date? No answers are forthcoming to the same and I draw an adverse inference for non production and withholding of this material.

(30) This certainly confirms that the demolition carried out on the directions of defendant no.2 was arbitrary, without any basis and without following the due procedure established by law. The malafides of the defendant no.2 is apparent from the fact that much after the demolition was undertaken and also after a notice under Section 80 CPC was given to the defendants by the plaintiffs, that a notice under Section 81 of Delhi Land Reforms Act was issued to the plaintiffs for purposes of personal appearance and thereafter when the plaintiffs sought the information from the defendants regarding the alleged misuser and the material with the SDM/RA to show the existence of a factory of fabricating weighing scales, the said material was never supplied on the pretext that the said file had been misplaced. The same is the position in the Court and the said record has not been produced till date nor any witness examined by the defendants to justify their action.

(34) In the present case the plaintiffs are seeking a compensation to the tune of Rs.4,00,000/- on account of financial loss and mental agony suffered by them. However, they have not placed on record any material to confirm the extent of loss but a boundary wall, which according to the defendants was upto a height of 7 feet, had been demolished and the approximate loss with regard to the same, as per the market rate, would not have been less than Rs.2,00,000/- (Rupees Two Lacs only). In addition to the mental agony the plaintiffs have suffered financial burden in fighting their legal battle in the court and also before the competent forum of Revenue Assistant and CIC and therefore, in my considered view the interest of justice would suffice that a sum of Rs.1,00,000/- (Rupees One Lacs only) be awarded to the plaintiffs for the same.

(37) In the present case having held that the acts of the officers of the defendants/ GNCT of Delhi in demolishing the boundary wall of the suit land on the directions of the defendant no.2 SDM Civil Lines and thereafter their refusal to provide the necessary information to the plaintiff despite directions of the CIC and subsequent non placing on relevant record and evidence before this Court to justify the above act, confirms the allegations of malafides, arbitrariness and nepotism so attributed to the defendants. There is no evidence has been placed on

record to show that any action, departmental or legal (under the provisions of Indian Penal Code), has been initiated by the GNCT of Delhi against the erring officers in accordance with law. There is no reason why the common man i.e. tax payer should be the sufferer and bear the expenses for the inaction, mala fide and arbitrary action of the above public servants who have been entrusted to discharge their duties in accordance with law and hence I direct that the amount of Rs.3,00,000/- (Rupees Three Lacs only) so plaintiff as aforesaid be paid out of the public funds but thereafter be recovered from the erring officers in accordance with procedure established by law by dividing it proportionately amongst them. It shall also be open to the Government of NCT of Delhi to hold a proper inquiry in this regard, relating to the acts and conduct of its officers including that of defendant no.2 as highlighted above and shall also initiate appropriate legal action in respect of this missing file after registration of the FIR in accordance with law, which file was containing the relevant record relating to demolition action, the information of which was never provided to the plaintiffs despite directions of the CIC and also deliberately withheld from this Court during trial.

*41. In view of my above discussion, I hereby hold that the plaintiffs are entitled to the compensation/damages to the tune of Rs.3,00,000/- (Rupees Three Lacs Only) from the defendants to be paid from the public funds but thereafter be recovered from the erring officers in accordance with procedure established by law by dividing it proportionately amongst them. **It shall also be open to the government of NCT of Delhi** to hold a proper inquiry in this regard, relating to the acts and conduct of its officers including that of defendant No.2 as highlighted above and shall also initiate appropriate legal action in respect of this missing file after registration of the FIR in accordance with law, which file was containing the relevant record relating to demolition action, the information of which was never provided to the plaintiffs despite directions of the CIC and also deliberately withheld from this Court during trial."*

7. Though it was argued no evidence was filed by the respondents in the form of receipts of construction material, labour charges, hence an amount of Rs.2.00 lacs ought not to have been granted, but in his evidence as PW1, the respondent had filed an affidavit Ex.PW1/1 wherein he had deposed that after passing of an order dated 31.12.1993 by the SDM they had constructed a boundary wall up to 4 feet in the month of May, 1994 and it was in existence for last more than 16 years. PW1 also deposed the demolition had caused not only a substantial financial loss but also agony and mental disturbance to both the

respondents and the action of the appellants was wholly illegal, hence the appellants are liable to pay damages suffered which is an estimate of minimum Rs.4.00 lacs. Even in his cross-examination PW1 reiterated the height of wall was 4 feet and it had an iron gate. However, no question was asked in his cross examination qua the entitlement of the sum of Rs.4.00 lacs, either on financial loss or on mental agony, hence the appellants have no ground to dispute the compensation so awarded by the learned trial court which in fact is lesser than the amount claimed by the respondents. Thus, there is no merit in the appeal.

8. Now comes the second issue qua action to be taken as contained in relief para of the impugned judgment. It is submitted by learned counsel for the appellant efforts have been made to trace the original files and to find out as to who was responsible for its missing but no action taken report, admittedly, has been filed as yet. Let it be filed by 12.03.2020 before the learned Trial Court/Successor Court under intimation to this Court in the form of an affidavit as the direction to lodge FIR or hold an inquiry was purely a prerogative of appellant No.1 as the impugned judgment itself notes *it shall be open to the Government of NCT to hold a proper inquiry..... etc*; hence it does not require any interference from this Court. If the enquiry is held and defendant No.2 is exonerated, the amount may not be recovered from him.

9. The appeal stands disposed of in terms of above. The pending application, if any, also stands disposed of. LCR be also remitted forthwith. No order as to costs.

10. Copy of this order be sent to the learned Trial Court/Successor Court for information and compliance.

YOGESH KHANNA, J.

FEBRUARY 27, 2020

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