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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th April, 2021
+ **W.P.(C) 593/2021 & CM APPL. 14165/2021**
ANIL KUMAR SETHI & ANR. Petitioners
Through: Ms. Tejaswini, Advocate
versus
GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. Archit Kaushik, Advocate for R-1
Ms. Saroj Bidawat, Adv. for SDMC.
Mr. Ashish Mohan, Advocate for
Respondent

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner challenging the Restraintment order dated 28th December 2020, bearing no. SDM(PB)/RO/2020/25637, passed by the office of the Sub-Divisional Magistrate, Punjabi Bagh, GNCTD. On 23rd February 2021 it was submitted that the said Restraintment order was withdrawn by the SDM. Accordingly, this petition was disposed of by this court vide order dated 23rd February, 2021 in the following terms:

“2. Ms. Saroj Bidawat, Id. Counsel appearing for the SDMC submits that the restraintment order dated 28th December 2020 already stands withdrawn on 5th February 2021.

3. Accordingly, nothing further survives in the writ petition. It is made clear that the Petitioners may carry out the repair/renovation work in accordance with law. If they face any difficulty in the said work of repair/renovation, the Petitioners are permitted to approach the local SHO for assistance. The SHO of the concerned area shall then extend cooperation and

assistance to ensure that no unwarranted disturbance is caused in the Petitioner's renovation/ repair work, in accordance with law”

3. Subsequently, however, an application bearing CM APPL. No. 8681/2021, came to be filed by the Petitioners, seeking restoration of the writ petition in view of the fact that the SDM had reinstated the Restraintment order, vide an order passed by him on 22nd February, 2021, and the same was only communicated to the Petitioner *via* WhatsApp on 23rd February 2021. Hence, in the said application, it was prayed that the writ petition, which had been disposed of, be restored.
4. On 3rd March 2021, this court had restored this petition and issued notice to the concerned SDM, to explain as to the circumstances in which the three orders dated 28th December 2020, 5th February 2021 and 22nd February, 2021 (*collectively referred to as 'SDM's orders'*) were passed. The concerned SDM was also directed to file status reports in respect of construction and repairs taking place on the suit property.
5. On 13th April 2021, an application was moved under Order 1 Rule 10 CPC, by the two sisters of the Petitioner namely Ms. Neelam Anand and Ms. Niti Raheja, seeking impleadment. On the said date, this court had issued notice in the said Application.
6. Today, parties have made their respective submissions.
7. On behalf of the Petitioner, Ms. Tejaswini, ld. counsel, has submitted that the Petitioner had been merely carrying out repairs and renovation on the suit property, in view of the forthcoming wedding of his son. Thus, she submits that the complaint of the Applicants to the SDM was completely misplaced. She further submits that there is a civil dispute pending between

the parties being **CS(OS) 2572/2001**, titled **Kiran Kumar Sethi v. Manohar Lal Sethi and ors.**, in which a decree was obtained behind her clients back. She submits that the Petitioner had moved an application seeking the setting aside of the said decree, before a Id. Single Judge of this court, and vide order dated 24th July 2018, implementation of the said decree was stayed.

8. Ms. Tejaswini, Id. counsel, further relies upon the status report filed by the SDMC, to argue that there is no unauthorized construction being carried out in the suit property, and only repair/renovation work is being tendered. She thus submits that the Restraintment order ought to be quashed/set aside, and permission should be accorded to the Petitioner to carry out the renovation/repair work on the suit property.

9. On behalf of the SDMC Ms. Saroj Bidawat, Id. counsel, submits that the status report filed by the Executive Engineer, West Zone, Rajouri Garden, is clear to the effect that an inspection had taken place on the said suit property, and it was found that only internal repairs /renovation work was being carried out by the owner/occupier.

10. On behalf of the SDM, Punjabi Bagh, the affidavit filed on record is relied upon to explain the circumstances leading to the passing of all the three orders by the concerned SDM. It is submitted by Mr. Archit Kaushik, Id. counsel, that the SDM was acting *bonafide* and did not have any ill will against the Petitioner. Further the said orders are stated to have been passed without knowledge of the pendency of the present writ petition, as also the orders that were passed in the present writ petition.

11. Mr. Ashish Mohan, Id. counsel appearing for Respondent No.2/Applicants has taken the court through the various orders passed in the Civil Suit bearing **CS(OS) 2572/2001**, to submit that initially, a status-quo

order in respect of title and possession of the suit property, was passed by the High Court on 18th December 2001. Thereafter, vide order dated 22nd May 2018, a final decree of partition was passed. wherein the Applicants in the present application were held to be owners of 8.33% each, in the suit property. He then submits that the final decree also directed that there would be a sale of the property. After passing of the said decree, the Petitioner herein moved an application seeking setting aside of the said decree and in the said application, only the direction *qua* the sale the property has been kept in abeyance. He however submits that the extent of construction being carried out on the ground floor of the suit property shows that it is not merely repair/renovation, but in fact substantial changes have been carried out in the property, and thus the complaint to the SDM by the Applicants was fully justified.

12. This Court has heard all Id. counsels appearing for the parties and perused the record.

13. The background to this petition appears to be a dispute between the brother, i.e., the Petitioner in the present petition, and his two sisters who are Applicants before this court. A suit for partition was filed in respect of the subject property i.e., 48/42, Punjabi Bagh (west), Delhi-110041. In the said suit, the predecessors in interest were also parties and shares were determined by a Id. single judge of this court, in the preliminary/final decree of the partition.

14. The present petition does not relate to the partition/civil dispute which is pending in suit. The only relevant fact would be that the said decree is no longer being enforced and is presently kept in abeyance, in view of the

application moved by the Petitioner herein in the said suit, wherein, vide order dated 24th July 2018, it was directed as under:

“Learned counsel for the applicant alleges the plaintiff without giving the applicant (legal heirs of defendant No.2) a notice, moved an application for sale of the property bearing No.42/48, Punjabi Bagh, New Delhi. It is submitted earlier in this case an application IA No.2442/2004 under Order XXIII CPC was moved wherein the plaintiff has gave up his right in favour of defendants No.2 & 3; the defendant No.2 being the father of the applicant. It is also submitted despite giving up his share in property No.42/48, Punjabi Bagh, New Delhi the plaintiff yet again moved an application for sale of subject property without any notice to the applicant.

In these circumstances, let notice of above IAs be issued through all modes to the plaintiff returnable for 03.10.2018. Additionally, dasti notice through counsel for said date. In the meanwhile, further steps be not taken by the plaintiff qua the sale of the property in question. Order dasti.”

15. Thus, insofar as the preliminary/final decree of partition is concerned, it is clear that the same is not being executed as the final decree had clearly opined that partition by metes and bounds was not possible. The property would in fact have to be put to sale to give effect to the partition. Thus, with the above restraining the sale of the property, the decree is currently not capable of being executed.

16. It is not in dispute that the Petitioner and his family are in possession of the ground floor and the substantive portion of the first floor of the property. The case of the Petitioner in the suit, seeking setting aside of the decree, is that the Petitioner is in fact the owner of at least 2/3rd of the property, in view of a Will executed by his father as also due to the fact that

he had settled the dispute with the Plaintiff in the suit i.e. Sh. Kiran Kumar Sethi, and the 1/3rd share was purchased from Gulshan Lal Sethi.

17. Considering the competing stands, the question as to whether the preliminary/final decree by the suit Court, in the suit, is to be sustained or not would be beyond the scope of the present writ petition. The only question in this petition is as to whether any unauthorized construction is taking place currently in the suit property, and whether the SDM's order was justified. The SDMC's status report is clear on the fact that there is no unauthorized construction, and only repairs/renovation work that is taking place at the subject property. The said relevant portion of the SDMC's status report is set out herein below:

*"3. That an inspection was carried out by the Jr. Engineer, in respect of the property bearing No. 48/42, Punjabi Bagh, West, New Delhi on 19.02.2021, **where it was found that internal repair/renovation work was carried out by the owner/occupier** as permitted by circular No. Addl. Cmr. (Engg.)/ 2018/D/242/SE(B)-HQ/SDMC dated 31.10.2018 (Copy of the said circular No. Addl. Cmr. (Engg.)/ 2018/D/242/SE(B)-HQ/SDMC dated 31.10.2018 is annexed herewith as **Annexure- 'A'**.*

*4. That further on the day of inspection it was also seen that no repair/renovation work was in progress nor any labour was found at the above-mentioned site. Photographs taken at the time of inspection is annexed herewith as **Annexure- 'B'**."*

18. In view of the clear and categorical report of the SDMC, to the effect that only internal repair/renovation is being carried out, the Restraintment order, as also the subsequent orders which have been passed by the SDM, cannot be sustained. Moreover, a perusal of the affidavit filed by the SDM shows that despite being served with a copy of the present writ petition, no

efforts were made by the SDM to check up as to what were the orders passed by this Court in the present writ petition. Despite the fact that the SDMC and the GNCTD were represented before this Court, the SDM did not bother to find out the orders that were being passed by this court, and he kept passing orders, independently and parallelly to the orders passed by this Court. Such conduct on the part of the SDM is not appreciated by this Court.

19. However, in view of the fact that there were various orders which had been passed in the suit, the benefit of doubt is given to the SDM, for passing the Restraintment order and subsequent orders thereto.

20. Considering the fact that since only internal repairs/renovation work is being carried out at the subject property, as stated in the report of SDMC, the present writ petition is allowed. The Restraintment order, as also all the subsequent orders passed by the SDM concerned in this matter, are set aside.

21. The Petitioner is free to carry out the repairs/renovation work in the subject property, however he shall not, in any manner, make any unauthorized construction which is contrary to law.

22. In so far as the decree itself is concerned, the same would be adjudicated in the suit for partition, and in the application therein, which has been filed by the Petitioner. The order passed today shall not be construed as a reflection on the merits of the disputes between the contesting parties in the suit for partition.

23. With these observations, the writ petition and all pending applications are disposed of. This order would not prevent the parties in the suit to approach the appropriate Court for relief, in the pending proceedings.

PRATHIBA M. SINGH, J.

APRIL 28, 2021/mw/Ak