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

% *Decided on: 16th August, 2021*

+ LPA 244/2021 & CM 26237-39/2021

IMPERIAL PROMOTERS PVT. LTD.

..... Appellant

Through: Mr. Suhail Dutt, Senior Advocate
with Mr. Azhar Alam and
Mr. Sankalp Goswami, Advocates.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Anupam Srivastava, Additional
Standing Counsel, GNCTD for R-1
and 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N.PATEL, CHIEF JUSTICE (ORAL)

Proceedings have been conducted through video conferencing.

CM Nos. 26238-26239/2021 (Exemptions)

Allowed, subject to all just exceptions.

Applications are disposed of.

LPA 244/2021 and CM No. 26237/2021 (stay)

1. Being aggrieved and feeling dissatisfied by the impugned judgment and order dated 08.07.2021 passed in W.P. (C) 6232/2021, the Appellant (original Petitioner) has preferred the present Letters Patent Appeal.

2. The case of the Appellant, as set out in the appeal, is that the Appellant purchased a farm land in Village Asola, bearing Khasra Nos.1273, 1275 and 1276, and the construction plan was duly sanctioned. The Appellant constructed a house on the farm land and is in settled possession of the property in question since 1995. It is alleged that in the year 2018, Respondents on the basis of an incorrect demarcation attempted to wrongfully dispossess the Appellant from the aforesaid land. Since the Revenue and the Forest Department were constantly threatening the Appellant of dispossession, the Appellant had filed a writ petition bearing W.P.(C) No.1743/2018 before this Court. Vide order dated 23.01.2019, the Court directed the concerned SDM to carry out a fresh demarcation so as to clearly demarcate the area that falls under the forest land. The order was challenged by the Appellant in LPA No.66/2019 and vide order dated 31.01.2019, the Division Bench of this Court affirmed the order of the learned Single Judge, however, granting liberty to the Appellant to avail the statutory remedies available, in case he was aggrieved by the demarcation and the findings recorded therein and also directing the concerned Authorities to follow the due process of law, before taking any coercive action.

3. As per the pleadings in the appeal, the officials of the SDM came to the subject land on 24.07.2019 and started forcefully demolishing portion of the back boundary wall of the Appellant, which led to the Appellant filing a contempt petition being Cont. Cas. No.668/2019, which is still pending. On 26.07.2019, the Appellant was provided with a Demarcation Report, which was challenged by the Appellant by way of an appeal before the Deputy Commissioner (South) under Section 64 read with Section 28 of the Delhi

Land Revenue Act, 1954 alongwith a stay application. The appeal is stated to be pending before the Deputy Commissioner.

4. Appellant filed a writ petition before the learned Single Judge being W.P.(C) 6232/2021 seeking directions restraining the Respondents from demolishing the private property of the Appellant comprised in Khasra Nos.1273, 1275 and 1276, Village Asola, New Delhi and/or taking forcible possession till the decision of the pending appeal. Before the learned Single Judge, the Appellant argued that a portion of the boundary wall, which lied in the property of the Petitioner, had been demolished and forcible possession of the part of the property had been taken by the Respondents. Learned counsel appearing for the Respondents, on advance copy, had, however, denied that Respondent No.2 had taken forcible possession of any part of the Appellant's property and also made a statement, on instructions, that Respondent No.2 did not propose to take any coercive action in respect of the subject property and that there would be no interference with the possession during the pendency of the appeal. Binding Respondent No.2 to the statement made, the learned Single Judge disposed of the writ petition, also granting liberty to the Appellant to raise the plea of alleged forcible take-over of possession before the Appellate Authority.

5. We have heard the learned counsels for the parties. As per the Appellant, Respondents have taken over forcible possession of part of the Appellant's property, and the reliefs sought in the writ petition were as follows :-

“(i) Pass a writ petition under article 226 of the Constitution of India for seeking a writ, order, direction in the nature of prohibition restraining the respondents from demolishing the private property of the Petitioner comprised in khasra nos.

1273, 1275 and 1276, situated in the revenue estate of village asola, New Delhi and/or taking forcible possession thereof and/or interfering in the actual physical possession of petitioner in any manner in respect thereof, till the hearing and disposal of the stay application in the appeal filed by the petitioner under Section 64 R/w Section 28 of the Delhi Land Revenue Act, bearing appeal no. 50/2019 titled as “ M/s Imperial Promoters Pvt. Ltd v/s SDM, Saket, New Delhi” pending disposal before the respondent no. 1 and

(ii) Pass a writ petition under article 226 of the Constitution of India for seeking a writ, order, direction in the nature of mandamus thereby directing the respondent no. 1 to decide and adjudicate the stay application in above captioned appeal bearing no. 50/2019, titled as “M/s Imperial Promoters Pvt. Ltd. v/s SDM, Saket, New Delhi” in an expeditious and time bound manner.”

6. Looking to the pleadings and after hearing the learned counsels, it is evident that the dispute between the parties relates to demarcation of a land between the Appellant and the Forest Department, in respect of portions of Khasra Nos. 1273, 1275 and 1276. As per the Appellant, the Forest Department is laying its claim to a portion which falls within the land of which the appellant is the owner, while according to the Forest Department, it is the Appellant who is encroaching upon a forest land.

7. It is an admitted position that a Demarcation Report has been rendered by the Competent Authority and a challenge to the same raised by the Appellant is pending consideration before the Deputy Commissioner under Sections 64 and 28 of the Delhi Land Revenue Act, 1954 since August, 2019. Perusal of the impugned order passed by the learned Single Judge shows that the Appellant is adequately protected by the statement made on behalf of Respondent No.2, as aforementioned.

8. In the light of the above, we see no reason to interfere in the impugned order and no infirmity can be found with the order passed by the learned Single Judge, relevant portion of which is extracted herein for ready reference:-

“6. Ms. Divya Joshi, who appears on advance notice on behalf of the respondents, while denying that the respondent no.2 has taken forcible possession of any part of the petitioner’s property, submits on instructions that the respondent no.2 does not propose to take any further coercive action in respect of the petitioner’s subject property. She further assures the Court, on instructions, that till the petitioner’s pending appeal is taken up for consideration by respondent no.1, the respondent no.2 will not in any manner interfere with the possession of the petitioner on the subject property.

7. In the light of the aforesaid statement made on behalf of the respondents, no further orders are called for in the present petition, which is accordingly disposed of by binding the respondent no.2 to their statement recorded hereinabove. It is further made clear that it shall be open for the petitioner to raise its plea – of the respondent having taken forcible possession of a part of its property in its pending appeal, which plea will be considered by respondent no.1 on its own merits.”

9. Much has been argued by the learned counsel for the Appellant that there is a violation of the order passed by the learned Division Bench of this Court. Appellant has already resorted to the appropriate remedy alleging violation of the said order and the Contempt Petition is pending which would be decided on its own merits and, therefore, this contention cannot be accepted.

10. There is no merit in the appeal and the same is accordingly dismissed along with the pending application.

CHIEF JUSTICE

JYOTI SINGH, J

AUGUST 16, 2021/‘yo’

