

\$~43

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

%

Date of Decision: 20th December, 2021

+ LPA 483/2021

JUJ PAL MAGGO

..... Appellant

Through: Mr. Pallav Mongia, Mr. Ankush Mangal and Mr. Tushar Srivastava, Advocates.

versus

STATE OF NCT DELHI & ORS

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD and Mr Arun Panwar, Advocate for R-1.

Mr. Tushar Sannu, Standing Counsel with Mr. Nippun Sharma, Advocate for R-2&3/SDMC.

Mr. Jai Sahai Endlaw, Advocate for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 45604/2021 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

LPA 483/2021 & CM APPL. 45603/2021(Stay)

1. Being aggrieved and feeling dissatisfied by the orders dated 16.08.2021, 21.09.2021 and 26.11.2021, passed by the learned Single Judge

LPA 483/2021

Page 1 of 5

in WP(C) 4335/2021 (Annexures A-1, A-2 and A-3 to the present appeal), original Petitioner has preferred the present Letters Patent Appeal.

2. We have heard learned counsel appearing on behalf of the Appellant (Original Petitioner) as well as learned counsels for Respondents No. 1, 2, 3 and 5 and looked into the facts and circumstances of the case.

3. Writ Petition was preferred by the Appellant, seeking the following reliefs:-

“i. The respondents No.1 to 4 may please be directed to stop the illegal and unauthorized construction on the subject property.

ii. The respondents no.1 to 4 may please be directed to take appropriate action permissible in law against the already constructed portion of the property raised illegally and unlawfully without any sanctioned site plan, that too in active connivance of their officials.

iii. The matter may please be referred to an independent agency like CBI to fairly and independently probe the illegal nexus of the officials of respondent no.2 to 4 in intentionally allowing the illegal and unauthorized construction of the subject property.

iv. The respondent no.2 and 3 may please be directed to take appropriate action against the erring officials responsible for the acts of omission and commission qua the illegal raising of illegal and unauthorized construction of the subject property.

Any other relief or further order which this Hon'ble Court deems fit and proper may also be passed in favour of the petitioner in the interest of justice.”

4. It is evident from the documents filed along with the present appeal that the Appellant has filed a civil suit being CS(OS) No.290/2020 before this Court, wherein according to the Appellant, the issue involved is

partition of certain properties, of which the Appellant allegedly claims to be an owner. An application under Order XXXIX Rules 1 and 2 CPC was also preferred by the Appellant herein, being a plaintiff in the suit. Attention of the Court is drawn to order dated 27.05.2021 passed in the said application being IA No.6681/2021. Perusal of the order shows that the subject matters of the said application were properties bearing no. A-13, A-14 and A-15, Rama Park, Uttam Nagar, New Delhi. Court has directed the parties to maintain *status quo* with respect to the title and possession of the aforesaid properties and it is evident that the property in question in the present appeal is not a part of the reliefs claimed in the application.

5. During the course of hearing, the Court had put a pointed query to the learned counsel for the Appellant, whether any application has been filed in the aforesaid suit with respect to the property which is a subject matter of the writ petition, out of which the present appeal arises. Learned counsel for the Appellant expressed his ignorance and lack of knowledge on the said aspect.

6. Learned counsels appearing on behalf of Respondents No. 1, 2, 3 and 5, on advance service of the appeal, however, pointed out that the Appellant, who is a plaintiff in suit being CS(OS) No.290/2020 had preferred an application being I.A. No. 3632/2021 in the said suit under Order XXXIX Rule 1 and 2 of CPC, seeking the same relief as sought in the writ petition and the present appeal. Court has issued notice on the application on 09.03.2021, returnable on 10.05.2021. The application is pending and the Court had declined to grant stay against the alleged illegal construction in the property in question. It is strenuously contended that not only has the Appellant approached this Court, seeking the same relief as

claimed in the application but has deliberately suppressed the fact of even filing the said application.

7. We have gone through the pleadings in the writ petition as well as in the present appeal and find merit in the contention of the Respondents that there is a suppression by the Appellant that I.A. No. 3632/2021 was preferred in CS(OS) No.290/2020, seeking the same relief, as sought in the writ petition being W.P.(C) No.4335/2021 in which the impugned orders have been passed by the learned Single Judge. Moreover, even on a pointed query by the Court, the said fact was not disclosed by the learned Counsel for the Appellant. This Court does not appreciate the conduct of the Appellant in suppressing material facts.

8. Even otherwise, once the application filed by the Appellant seeking relief of injunction against the alleged illegal construction is pending before the Competent Court in CS(OS) No.290/2020, we see no reason to entertain the present appeal. No error has been committed by the learned Single Judge and there is no infirmity in the impugned orders.

9. We may, however, take note of the fact that the writ petition is pending before the learned Single Judge and is next listed on 23.12.2021. Learned counsel appearing on behalf of Respondents No. 2 and 3 submits that there is some illegal construction in the property in question with regard to the sanctioned plans and the same shall be placed before the learned Single Judge where the legality of the construction is in question. Be that as it may, since the writ petition is pending, we do not wish to enter into the merits of the matter.

10. We see no reason to entertain the present appeal. The appeal along with the pending application is accordingly dismissed with costs of

Rs. 15,000/-, to be deposited by the Petitioner with the Delhi State Legal Service Authority, within four weeks from today. The aforesaid amount shall be utilized for the programme 'Access to Justice'.

11. A copy of this order be sent forthwith to the Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.

CHIEF JUSTICE

JYOTI SINGH, J

DECEMBER 20, 2021/sn

