



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

% ***Judgment reserved on: January 12, 2024***

Judgment pronounced on: March 04, 2024

+ CM(M) 2146/2023, CM APPL. 67254/2023--stay
JAGAT SINGH & ORS. Petitioners

Through: Mr. R.K. Shukla, Adv.

versus

NCT OF DELHI THROUGH SECRETARY
& ANR. Respondents

Through: Mr. Mohit Bhardwaj, Panel counsel.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, impugning the order dated 21.10.2023 passed by Senior Civil Judge-cum-Rent Controller, North East District, Karkardooma Courts, New Delhi(hereinafter "learned Trial Court")in CS No.162/2016 titled 'Jagat Singh & Ors. v. NCT of Delhi & Ors.', whereby the Learned Trial Court dismissed the application of the petitioners under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking to review and recall order dated 04.03.2023.

2. Vide the order dated 04.03.2023, the SDM was directed to carry out the demarcation as per the order dated 18.07.2023 and the petitioners herein were directed to bear the costs of the said demarcation.

Factual Matrix

3. The petitioners herein are residing in the land forming part of Khasra No. 49/22/2 and No.52/22/2 admeasuring 3 bighas and 10 biswas, situated in



the Revenue Estate of Village Karawal Nagar, New Delhi and has been in settled possession of the same for more than 40 years. It is stated that the respondents herein are trying to dispossess the petitioners from the said property by destroying the structure of the property where the petitioners are residing.

4. On 21.03.2016, the petitioners herein had moved an application seeking ex-parte ad-interim injunction preventing the respondents from taking possession of the property of the petitioners under the garb of taking possession of the land bearing Khasra No.65 min, which is the land of the Bantla drain, without proper demarcation. It is the contention of the petitioners that the land they are residing in does not fall under Khasra No.65 but under Khasra No. 49/22/2 and No.52/22/2. Vide the order dated 21.03.2016, the Learned Trial Court ordered the respondent no.1 to conduct demarcation proceedings before conducting the demolition drive.

5. Pursuant to the said order, demarcation proceedings were carried out and a demarcation report was filed along-with two site plans. The report and site plan were taken on record vide order dated 07.05.2016. Thereafter, the Learned Trial Court vide order dated 10.11.2016 dismissed the application under Order XXXIX Rule 1 & 2 filed by the petitioners. Owing to the dismissal, the petitioner challenged the said order before the Appellate Court.

6. On 18.07.2017, the Appellate Court held that the demarcation report filed by the respondents herein is vague and does not create any distinctions regarding the suit property. It was also held that the identification of the suit



property which allegedly falls under Khasra No. 49/22/2 and No.52/22/2 has not been carried out therefore a fresh demarcation be carried out in continuation of the order dated 21.03.2016 along-with the preparation of a specific and scaled site plan. The demarcation should also state which Khasra the suit property falls under. Accordingly, the order dated 10.11.2016 was set aside.

7. Vide order dated 25.08.2018, it was observed that a fresh demarcation report was filed on behalf of the respondents. Thereafter objections were filed by the petitioners and a reply to the said objections was filed by the respondents. On 24.09.2022, the concerned SDM appeared before the court and it was observed that the SDM had no objection to a fresh demarcation being carried out. The petitioners herein stated that an independent demarcating agency be appointed to carry out the same. The counsel for the petitioner also stated that they would file a list of authorized agencies within a week from the date of hearing with an advance copy to the SDM. However, on 04.03.2023 the Learned Trial Court observed that no names of authorized demarcating agencies had been supplied to the respondents, therefore the demarcation be carried out by the SDM as per order dated 18.07.2017. The cost of the said demarcation was to be borne by the petitioners. It is pertinent to note that demarcations were carried out by the respondent no.1 on 04.05.2016 and 18.04.2018.

8. Vide the impugned order, the Learned Trial Court held that the application filed by the petitioner was an abuse of the process of law and was a delay tactic. The application was disposed of with cost of Rs. 5000/-.

**Submissions on behalf of the Petitioners:**

9. It is submitted on behalf of the petitioners that the respondent no.1 & 2 are acting in connivance and collusion and have threatened to dispose of the suit property. It is the contention of the petitioners that unless the report dated 18.04.2018, which was challenged by the petitioners is set aside, a fresh demarcation as per the order dated 04.03.2023 is unwarranted. Previously, the Learned Trial Court while allowing the petitioners appeal vide order dated 18.07.2018, had set aside the demarcation report dated 04.05.2016. It is also submitted that the Learned Trial Court never heard on the objections of the petitioners pertaining to the demarcation report dated 18.04.2018 and on 26.07.2022, the Learned Trial Court proceeded to order a fresh demarcation without the parties concluding their arguments.

10. It is submitted by the petitioners that the cost of the previous demarcation was borne by the respondents and it would be unfair for the petitioners to bear the cost for a fresh demarcation. It is also stated that the concerned SDM is biased in favor of the respondents and since the interest of the government is involved, the fresh demarcation report will favor the respondents.

Submissions on behalf of the Respondents:

11. It is submitted on behalf of the respondents that application under Order XLVII Rule 1 is merely a tactic to delay the proceedings in the present case and the suit is not maintainable. Moreover, when the petitioners have been enjoying a stay order passed on 04.01.2017 by the Learned Trial Court.



12. It is submitted that the demarcation was conducted by a Total Station Machine, which is the latest and most accurate technology and the same was done by the revenue authority, which is the only competent authority in the present case. As per the demarcation report, the petitioner was encroaching on the land bearing Khasra No. 65.

Reasons and Conclusion:

13. In view of the above background, at the outset, it is necessary to mention that the power under Article 227 of the Constitution of India is intended to be used only in appropriate cases for the purpose of superintendence over the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors.

14. The Hon'ble Supreme Court in the case of *M/s Garment Craft vs. Prakash Chand Goel*, 2022 SCC OnLine SC29, has held as under:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.



16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* [*Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

15. Thus, imperatively, the jurisdiction of the Court under Article 227 of the Constitution of India is limited and to be exercised sparingly cases.

16. In view of the above, reverting back to the present case, the petitioners assail the order passed by the learned Trial Court, whereby, the review application of the petitioner was rejected. The grounds urged by the petitioners are that without setting aside the second demarcation report dated 18.04.2018, there could not be an order for fresh demarcation that too at the expense of the petitioners. Further the learned Trial Court again deputed the same SDM of the area whose earlier demarcation report dated 04.05.2016 stood set aside in appeal of the petitioners. Additionally, the learned ADJ in



MCA No. 21/2016 of the petitioners while allowing the appeal vide order dated 18.07.2017, had ordered for fresh demarcation of the suit, and having set aside the earlier demarcation report dated 04.05.2016; the review application has been wrongly dismissed while imposing cost.

17. The petitioners/plaintiffs' case is that they are in settled possession of the suit property which falls in Khasra No. 49/22/2 and 52/22/2 measuring 3 Bighas and 10 Biswas, situated at the Revenue Estate of Village Karawal Nagar, Delhi as Bhumidars. It is further the case of the petitioners/plaintiffs that the respondent/ defendants in garb of taking possession of Khasra No. 65 are illegally and without proper demarcation undertaking to take possession of the property of the petitioners/plaintiffs. Since the issue is about the actual identification of the suit property as to whether the suit property falls in Khasra No. 49/22/2 and 52/2/2 or whether it falls in Khasra No. 65, the Trial Court vide order dated 21.03.2016 directed the respondents/defendants to conduct a demarcation proceedings so as to demarcate Khasra No. 65 as well as Khasra No. 49/22/2 and 52/2/2. It appears that such demarcation was carried out and the demarcation report dated 04.05.2016 was placed on record before the learned Trial Court. The learned Trial Court subsequently vide its order dated 10.11.2016, dismissed the application of the petitioners under Order XXXIX Rule 1 and 2 of the CPC seeking interim relief.

18. The learned Appellate Court before whom the petitioners challenged the order dated 10.11.2016, had set aside the order and directed the learned Trial Court vide order dated 18.07.2017 to re-hear the parties after fresh demarcation proceedings and pass a fresh order on the interim application of



the petitioners/ plaintiffs. The petitioners being aggrieved by this fresh demarcation report dated 18.04.2018 preferred objections before the learned Trial Court. While hearing the objections on the said demarcation report dated 18.04.2018, the respondent suggested for a further fresh demarcation. To that, the petitioners suggested that the demarcation should now be done by an independent agency at the expense of the petitioners for which the petitioners were to suggest a name. Upon failure of the petitioners to suggest the name, the learned Trial Court directed the respondents to carry out the demarcation.

19. Since the dispute is about the identification of the property, the demarcation and identification cannot be proved in absence of public record and the Court shall order local investigation for the purpose of elucidating any other matter in this field. If the said issue is not addressed at the present stage of the proceedings, it can be noticed that the execution of the plea either way will have some repercussions. In fact, it is noticed from the orders passed by the learned Trial Court that all throughout, the petitioners have been arguing for demarcation of the suit property. Further, intention of the learned Trial Court is to ascertain the exact identification of the suit property.

20. In so far as quashing the demarcation report dated 18.04.2018 is concerned, it is too early for the petitioners to contend that the same ought to have been quashed or set aside by the learned Trial Court before directing another demarcation. The petitioners are not right in their contention that the learned Appellate Court vide its order dated 18.07.2017 set aside the demarcation report dated 04.05.2016. There is no such observation in order



dated 18.07.2017. Further, another demarcation was agreed by the parties and the petitioners themselves agreed to bear the expenses of the demarcation and now cannot make a grievance out of the same. Therefore, there is no infirmity in the Trial Court order as such.

21. For the reasons stated above, petition, in my opinion, lacks merit and stands dismissed.

22. Before parting, it is observed that matter is pending for demarcation since 2016, which is being delayed unnecessarily. The respondents are directed to carry the demarcation in accordance with law and after giving notice to the petitioners to identify and demarcate the suit property and a specific and scaled site plan be prepared and the demarcation proceedings shall also specifically mention whether the suit property falls in Khasra No. 49/22/2 and Khasra No. 52/2/2 or it falls in Khasra No. 65 or some other Khasra number. Further, the demarcation be done by appropriate tools. The entire exercise be completed within 6 weeks from today without any further delay.

SHALINDER KAUR, J.

MARCH 04, 2024

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