



2024:DHC:8704-DB



\$~33

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

+ **LPA 1100/2024 & C.M.Nos.64892-64894/2024**

AFSHAN PRACHA

.....Appellant

Through: **Mr.Rajesh Tyagi, Advocate.**

versus

DELHI JAL BOARD AND ORS

.....Respondents

Through: **Ms.Malvi Balyan, Advocate for DJB
(Through VC)
Ms.Shobhana Takiar, standing
counsel with Mr.Prateek Dhir,
Mr.Shivam Takiar and Mr.Kuljeet
Singh, Advocates for DDA.
Mr.Tushar Sannu, standing counsel
with Mr.Sahaj Karan Singh, Advocate
for MCD.**

%

Date of Decision: 06th November, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 05th September, 2024 in W.P.(C) No. 12433/2024 whereby the learned Single Judge has dismissed the petition on the ground that the Appellant can seek redressal of her grievance before the concerned Executive Magistrate in accordance with Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS').

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 14.11.2024
13:42:43

LPA 1100/2024

Page 1 of 4



2. It is pertinent to mention that the underlying writ had been filed by the Appellant seeking quashing of the work order No.304 dated 15th February, 2022 issued by the Respondent-Delhi Jal Board and seeking directions for removal of the sewage pipeline allegedly embedded in the property of the Appellant.

3. The learned Single Judge has held that the grievance of the Appellant/Petitioner pertains to a case of “public nuisance” and thereby can be raised before the concerned Executive Magistrate.

4. It is the case of the Appellant that the subject property bearing Khasra No. 1168/1110 and Khasra No.1169/1110, Village Kilokari, Bhogal, Ashram, Delhi has been the subject matter of illegal encroachment and construction by the Respondent-Authorities who have acted in collusion with ex-MLAs and sitting MLC.

5. Learned counsel for the Appellant states that the Respondent-Delhi Jal Board has demolished the compound wall of the Appellant-Petitioner’s property and dug into the private land of the Appellant and laid down a sewage system which has rendered the land unusable. He states that multiple complaints were made including a complaint to the Delhi Jal Board, but the work did not stop.

6. He submits that the learned Single Judge failed to appreciate that Section 152 of the BNSS deals with public nuisances and the grievance of the Appellant is of a private nature and executive magistrate can neither quash the impugned work order of the Delhi Jal Board nor restore the demolished wall of the Appellant. In support of his submission, he relies upon the judgments of the Supreme Court in *Suhelkhan Khudyarkhan & Anr. vs. State of Maharashtra & Ors., Criminal Appeal No.1039/2005*



dated 15th April, 2009 and Kachrual Bhagirath Agrawal & Ors. vs. State of Maharashtra & Ors., Appeal (Crl.) No.1350/2003 dated 22nd September, 2004.

7. He further states that the learned Single Judge has overlooked the fact that the Delhi Jal Board has already laid down a sewage line under the subject property, based upon a purported work order, and the same can only be quashed by this Court under writ jurisdiction.

8. He states that the work order was passed in respect of the subject property without initiating any land acquisition proceedings or issuance of any notification with regard to the same, even though the subject property is part of the approved site plan of the DDA and MCD.

9. Per contra, learned counsel for Delhi Jal Board, who appears on advance notice, states that before the learned Single Judge, Delhi Jal Board had filed a counter affidavit explicitly stating that no boundary wall was demolished and the sewage pipe line had been laid as there were complaints from the residents with regard to overflow of sewage. She further states that sewage pipe line had been laid without any resistance from any member of the public and it has been laid on *kuchha* public land.

10. At the outset, it is noted that the work order was issued by the Delhi Jal Board on 15th February, 2022 and the Appellant had filed the underlying writ on 28th August, 2024, i.e. approximately two and a half years after issuance of the work order. Consequently, the present appeal is hit by laches.

11. Moreover, it is the case of the Appellant that the demolition of boundary wall/raising of sewage line, had been carried out in 2022 itself. This prima facie shows that the Appellant was not in possession of the alleged property when the sewage system was laid – which she now claims



in the underlying writ petition as well as in the present appeal.

12. A perusal of the work order also makes it clear that there is no express reference to the subject property.

13. Further, from the documents on record, the Appellant has not been able to make it good that the alleged demolition/construction was carried out on the Appellant's property itself. In fact during the course of hearing, the Appellant was unable to point out as to which area of page 54 of the paper book was and is in Appellant's exclusive possession.

14. Even though a suit for partition between the co-sharers is pending adjudication, yet a perusal of the paper book reveals that the Appellant has neither made the other co-sharers nor the concerned MLA and MLC as parties to the writ petition. It seems to this Court that the underlying writ petition had been filed with the oblique motive of perfecting title.

15. If the Appellant had a genuine grievance, she would have filed a suit, as the case involves highly disputed questions of fact inasmuch as the status, ownership and possession of the property is in dispute.

16. Consequently, the present appeal along with the applications is dismissed with liberty to file proceedings in accordance with law. The rights and contentions of all the parties are left open.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 06, 2024
KA