



\$~106

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

+ **W.P.(C) 16166/2024**

VIJAY MAHESHWARY

.....Petitioner

Through: Mr. Rajesh Yadav, Senior Advocate
with Ms. Ruchira Yadav and Mr. Vishal Singh,
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Prashant Manchanda, ASC with
Ms.Nancy Shah, Mr. Rohan Pratap Singh and
Ms.Rupali, Advocates for Respondent
No.1/GNCTD.
Ms. Shivangi Kumar, Advocate for Respondent
No.3/MCD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

21.11.2024

%

CM APPL. 67934/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 16166/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India for direction to the Respondents to not obstruct or interfere in construction work of the boundary wall around his land comprised in Khasra No. 171 admeasuring 16 Biswa (124 feet and 3 inches) situated in Village Bhalswa, Jahangirpuri, Delhi, owned by the Petitioner.
4. Factual matrix to the extent necessary and as averred in the writ



petition is that Petitioner is the attorney holder and in actual physical possession of subject land measuring 1 Bigha 4 Biswa out of Khasra No.171 since 06.02.2008 and it is averred in the writ petition that there is no dispute pending before any Court or authority with respect to title, possession and rights of the Petitioner over the subject land. It is stated that in August, 2015, Petitioner got the demarcation of his land measuring 1 Bigha 4 Biswa out of Khasra No. 171 min by TSM method and the demarcation was carried out by Revenue officials in the presence of the *kanoongo*, *Halka Patwari* and with the help and reference of relevant revenue records such as field book, Massavi etc. The demarcation report was signed by the then Tehsildar Model Town, Delhi. By Notification dated 16.05.2016, Village Bhalswa was urbanised.

5. It is further averred that being *bona fide* purchaser and in actual possession of the land, Petitioner intended to construct a boundary wall around the land measuring 16 Biswa out of 1 Bigha 4 Biswa, to protect his land from garbage dumping, trespassers and encroachers. However, when the Petitioner started to raise the boundary wall, one Sh. Ajeet Singh visited the property and started creating obstructions in the construction, for which Petitioner lodged a police complaint and later a *kalandra* was prepared under Section 145 Cr.P.C. After considering the record, learned SDM disposed of the matter vide order dated 06.11.2021 in favour of the Petitioner directing Sh. Ajeet Singh not to interfere with the construction of the boundary wall up to the permissible height as per law. However, despite this order, officials of Respondent No.2 on instigation by Sh. Ajeet Singh started creating hindrances in the construction and having no option, Petitioner has approached this Court.



6. Mr. Yadav, learned Senior Counsel for the Petitioner submits that construction of a boundary wall up to 5 feet height is permissible in law and in this context relies on the judgment of this Court in ***Gaon Sabha Nanakheri v. Sucheta Memorial Trust, 2018 SCC OnLine Del 11431***, where this Court held that though no height of the boundary wall is prescribed or specified under the Delhi Land Reforms Act, 1954 ('1954 Act') or its Rules, however, since some inspection has to take place with respect to agricultural land, wall can be constructed by a land holder around his land upto a height of 5 feet. He also relies on several orders passed by Co-ordinate Benches of this Court where similar permission has been granted. At the same time, Mr. Yadav, on instructions, assures the Court that Petitioner shall not construct the boundary wall beyond the permissible height or carry out any other unauthorized construction and that the revenue officials are free to carry out inspections to this extent as and when required.

7. To buttress his submissions, Mr. Yadav draws the attention of the Court to order dated 06.11.2021 passed by the Sub-Divisional Magistrate, Model Town, relevant part of which is extracted hereunder for ready reference:

"5. Heard both the parties. On the basis of evidence placed on file, argument heard and patwari report, this court thereby rejects the objection of first party regarding entry of portion of boundary wall in kh. No 170 has been brought to this effect by the first party Ajeet Singh. First Party Ajeet Singh is also further restrained from interfering with the peaceful possession over the land of the second party. It is, therefore, second party may carry out the work as per the demarcation report/map subject to prior approval of necessary authorities, like DDA/MCD whenever required."

8. It is also pointed out that in a subsequent order dated 10.06.2022 in execution proceedings filed by the Petitioner, learned SDM has directed Respondent No.2/SHO, PS: Bhalswa Dairy to ensure compliance of the



order dated 06.11.2021, however, despite these orders, it is Respondent No.2 who is now obstructing construction of the boundary wall.

9. Issue notice.

10. Learned counsels, as above, accept notice on behalf of the respective Respondents.

11. The grievance of the Petitioner is in a narrow compass. Petitioner is stated to be the lawful owner of the subject land and limited relief sought is for a direction to the Respondents to not obstruct the Petitioner from constructing a boundary wall around the land measuring 16 Biswas of land out of 1 Bigha 4 Biswa in Khasra No.171, upto a height of 5 feet, which is permissible under Bye-Law No. 2.0.1(d)(vii) of Chapter 2 of the Unified Building Bye-Laws for Delhi, 2016, which stipulates that construction/reconstruction of a boundary wall is permissible upto a certain height. Learned counsel for Respondent No.1 fairly submits, on instructions, that if the Petitioner restricts the construction of the boundary wall to a height of 5 feet, the answering Respondent will have no objection and there will be no obstruction. It is, however, submitted that the Petitioner must adhere to the assurance given and the concerned officers should be given the liberty to carry out inspection of the subject land to ensure that there is no other construction since the subject land is an agricultural land.

12. In view of the stand taken by Respondent No.1 as also looking at the orders passed by the learned SDM on 06.11.2021 and 10.06.2022 and in light of the orders passed by this Court permitting construction of boundary wall to the extent of 5 feet in ***Dharamvati Devi v. The State Govt. of NCT of Delhi Department of Revenue & Ors., W.P. (C) No. 13076/2023***, decided on 05.10.2023; ***Smt. Sangeeta v. Govt. of NCT of Delhi & Ors.***,



W.P. (C) No. 15008/2023, decided on 20.11.2023; and ***VRPL Real Estates LLP Through Authorized Signatory Naveen Gupta v. The Commissioner of Police & Ors., W.P. (C) No. 12581/2024***, decided on 09.09.2024, this writ petition is disposed of with a direction to the Respondents not to obstruct or hinder the Petitioner in constructing the boundary wall upto a maximum height of 5 feet around 16 Biswas of land out of 1 Bigha 4 Biswa in Khasra No.171, binding the Petitioner to the assurance that the boundary wall will not be constructed beyond a height of 5 feet. Respondent No.2 is particularly directed not to cause any hindrance if the boundary wall is raised upto the permissible height.

13. It is open to the District Magistrate of the concerned area to visit the subject land for the purpose of ascertaining that no unauthorised construction is raised by the Petitioner and in case any such construction is found, necessary action may be taken as per law.

JYOTI SINGH, J

NOVEMBER 21, 2024

B.S. Rohella