
(2013) 01 DEL CK 0137

In the Delhi High Court

Case No : Cont. CAS (C) No. 820 of 2012

Anjuman-E-Haideri (Regd.)

APPELLANT

Vs

The Chairman, NDMC and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0137

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Advocate : Tasneem Ahmadi, for the Appellant; Madhu Tewatia and Ms. Sidhi Arora for NDMC, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—Contempt is averred of the orders dated 17.05.2012 & 25.09.2012 in W.P. (C) No. 646/2012 pending before this Bench. Vide order dated 17.05.2012, upon the counsel for the parties agreeing that the boundary wall as per the demarcation report, referred to in the said order, be constructed by the NDMC, NDMC was directed to go ahead with the construction of the boundary wall without prejudice to the rights and contentions of the parties. Vide subsequent order dated 25.09.2012, on the statement of the counsel for the relator/petitioner who is the respondent No. 6 in the writ petition that inspite of the order dated 17.05.2012, NDMC had not completed construction of the boundary wall, it was ordered that if the order dated 17.05.2012 had not been complied with, the same be complied within eight weeks. It is the averment of the petitioner that the boundary wall has not been constructed.

2. Notice of this petition was issued and reply has been filed on behalf of the respondents/alleged contemnors pleading, i) that NDMC had been directed to construct the said boundary wall vide order dated 09.11.2005 in earlier W.P. (C) No. 4907/2005 filed by the petitioner; ii) that when NDMC commenced the work of construction of the boundary wall in compliance of the said order, certain difficulties were encountered with regard to the Dargah Shah-E-Mardan, as a result whereof NDMC was constrained to file an application seeking clarification;

iii) that vide order dated 03.04.2007 in the earlier writ petition on the said application, the difficulties being encountered by the NDMC were noticed and NDMC was required to construct the boundary wall with regard to two properties being Chhoti Karbala and Kanati Masjid only and not in regard to the four properties; iv) that the order aforesaid dated 17.05.2012 was only for compliance of the directions in the earlier writ petition and which have been complied with; v) that the difficulties which were being countenanced by the NDMC still persist and rather the disputes in W.P. (C) No. 646/2012 have been referred to mediation and in which mediation proceedings, NDMC is also participating and had apprised the Mediation Committee of the said difficulties. The counsel for the NDMC states that NDMC has already constructed the boundary wall with the assistance of the Delhi Police in regard to the two properties, being Chhoti Karbala and Kanati Masjid and is not in willful disobedience of any direction qua the other two properties. The counsel has further offered that the NDMC is willing to comply with any direction which may be issued.

3. We have perused the order dated 17.05.2012 of which contempt is averred, the subsequent order dated 25.09.2012 being merely the reiteration thereof. Though the directions in the orders in the earlier writ petition find mention in the said order, but the order records that the demarcation report had been accepted by all the parties and the direction for construction of the boundary wall was issued on the said basis. It was further noticed that NDMC had already invited tenders for construction of the boundary wall. The counsel for the NDMC who was present during the hearing on 17.05.2012 did not contend that the tenders which had been issued were for construction of the boundary wall of two properties only and not for all the four properties or that there was any difficulty in construction of the boundary wall of the four properties. Rather the order dated 17.05.2012 is a consent order. Even if there was any difficulty earlier in construction of the boundary wall or any doubts, upon the counsels for the parties on 17.05.2012 agreeing to such construction, the earlier difficulties/doubts disappeared and the NDMC was required to raise construction of boundary wall strictly in accordance with the demarcation report. NDMC even thereafter did not approach this Court for any modification/clarification of the order and has given the explanation aforesaid only on receipt of notice of this contempt petition. We are of the considered opinion that NDMC has undoubtedly not given due regard/weightage to the orders of this Court. A litigant against whom orders have been made does not have the option to comply or not to comply therewith and if facing difficulty in compliance, is required to immediately approach this Court. Unless such rule is strictly followed, the orders of this Court shall lose their sanctity. Having observed so, but considering the nature of the dispute and the sensitivity of the matter involved and giving the benefit of doubt to the NDMC, we dispose of this contempt petition with direction to the NDMC to within one month hereof and in accordance with the demarcation report, construct the boundary wall. If the order still remains un-complied, no further

indulgence shall be shown.

No costs.