

**IN THE COURT OF SH. DIVYANG THAKUR  
DISTRICT JUDGE-03:  
SOUTH WEST DISTRICT: DWARKA COURTS:NEW  
DELHI**

**Contempt Petition No. 10/2019  
CNR No.: DLSW01-014541-2019**

**In the matter of:**

**Ved Prakash Vs. Radhey Shyam and Anr.**

**Order on Application under XXXIX R 2A of CPC**

1. *Vide* the present order I shall dispose of the petition under Order XXXIX Rule 2A CPC for alleged violation of interim orders of the Court dated 11.12.2019 passed in the suit CS 517383/16 titled "*Lokesh v. Radhey Shyam & Ors*" (hereinafter "subject suit") moved on behalf of defendant no 6 (hereinafter "petitioner") against defendants 1 to 5 (hereinafter "defendant contemnors") and SHO, PS Dwarka North (hereinafter referred to as SHO).

**2. Brief Background**

2.1 Before delving into the prayers and merits of the present petition, a brief narrative background would be required of the underlying subject suit out of which the present contempt petition arises. The subject suit has been filed by the Lokesh (the plaintiff of the subject suit) for partition of certain properties and ancillary reliefs on the basis of intestate succession under the Hindu Succession Act, 1956. The suit properties are described as Khasra 33/22/1 (0-19) and Khasra 38/2/8 (2-0) in Village Kakrola, New Delhi. The petitioner and defendant contemnors are all

*Ved Prakash Vs. Radhey Shyam and Anr.*

defendants in the subject suit. The suit was filed before the original side of the Hon'ble High Court of Delhi on 04.04.2014. *Vide* order dated 09.10.2014 the parties were referred to mediation and an interim order was passed wherein it was ordered that the "parties shall maintain status quo with regard to title and possession of the suit property." Subsequently the matter, due to the change in pecuniary jurisdiction was transferred to the present Court ultimately, whereupon, vide order of the Ld Predecessor of this Court dated 04.12.2019 it was observed that application under 151 CPC for withdrawal of written statement of defendant no 6 i.e. the petitioner herein and another application for appointment of local commissioner under Order XXVI Rule 9 was pending for adjudication. It was submitted before the Court that there was a violation of the status quo order dated 09.10.2014. The matter came up for hearing on 11.12.2019. As the said order dated 11.12.2019 forms the crux of the present petition, the same is being reproduced for convenience :

*"Ld Counsel for defendant no 6 has adverted to settlement between plaintiff and defendants no 1 to 5 effected at Mediation Centre on 26.03.2019 and submits that settlement has been effected between plaintiff and defendants no 1 to 5 without knowledge of defendants no 6 to 10 and defendants no 1 to 5 have started raising construction in property bearing no 33/22/1 and 38/2/8, Village Kakrola, New Delhi despite direction of Hon'ble High Court of Delhi to maintain status quo.*

*Four photographs showing laying of bricks and DPC with iron rods and copy of letter dated 08.12.2019 addressed to SHO, Dwarka North, Sector 17 has been filed by Ld Counsel for defendant no 6.*

*Defendant no 5 Shri Ramesh Kumar s/o Late Jagdish upon being asked to explain the construction work being raised without courts permission submits that aforesaid work has been carried out around 10 days back.*

*Since Hon'ble High Court of Delhi vide order dated 09.10.2014 had directed status quo w.r.t title and possession and settlement effected at Mediation Centre dated 26.03.2019 has not been confirmed by the Court so application under Section 151 CPC for restraining non-applicants/defendants from raising construction and creating third party interest in suit property bearing Khasra no 33/22/1 and 38/2/8 Village Kakrola measuring 2950 sq yds is allowed and defendants no 1 to 5 are directed to stop carrying out construction in the suit property and/or creating any third party interest in the aforesaid property.*

*Copy of order be sent to SHO, PS Dwarka North, Sector 17 for ensuring that no further construction is raised in aforesaid property and compliance report be filed on 06.01.2020.....”*

**2.2** Subsequently, the present petition has been filed alleging violation of the said status quo order dated 11.12.2019 as related above on 23.12.2019. The present petition and subject suit were

being listed together for further proceedings. Vide order dated 19.09.2023, Ms Surbhi Mehta, Learned Advocate was appointed as the Local Commissioner for determining the status of the suit property as it was alleged that the defendant contemnors had inducted tenants in the suit property and thereby created third party interest in teeth of the interim orders of the Court. The Learned LC thereafter had filed the report which was taken and kept on record in the subject suit. The details of the report shall be discussed hereinafter.

**2.3** The following prayers have been made in the present petition : (i) prayer to initiate contempt against the defendant Contemnors and SHO; (ii) prayer for demolition of the construct raised at the suit property; (iii) prayer for removing the tenants from the suit property; (iv) prayer for maintaining status quo and restrain from creating any third party interest; (v) prayer for deposit of rent being realize by the defendant contemnors in the court.

### **3. Arguments at the Bar**

**3.1** Ld Counsel for the Petitioner, Sh A.N Aggarwal, has vehemently argued that the defendant contemnors are liable for contempt as they have flagrantly flouted the order dated 11.12.2019. It has been submitted that the report of LC is sufficient corroboration for the fact that the defendant contemnors have erected make shift tarpaulin and inducted tenants and they have also constructed shops from where they are enjoying rent. He has submitted that the defendant contemnors nowhere disclosed this fact and the Court was completely unaware of the status of the suit properties before the report was

filed by the Ld LC. He has therefore submitted that the Court allow the petition and exercise its powers under Order XXXIX Rule 2A CPC as against the defendant contemnors. In support of his contentions, he has relied upon the orders passed by the Hon'ble High Court in **Saptrishi Builders Pvt Ltd v. Devender Singh Dalal & Ors in CCP(O) 41/2022 dated 06.12.2022.**

3.2 *Per Contra*, the Ld Counsel for the Defendant Contemnors, Sh Shekhar Nanavaty has submitted that no permanent construction has been raised at the suit properties by the defendant contemnors after 11.12.2019. There was no restrain on construction but only a status quo on title and possession prior to the order dated 11.12.2019, which was complied with by the defendant contemnors. He has submitted that the report of the Learned LC is not an adjudication of rights and liabilities, and has relied upon the judgment of the Hon'ble Supreme Court in **MP Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District Sehore & Ors v. Modi Transport Service 2022 INSC 553.** He has submitted that objections have been filed to the said report which have to be decided. *Qua* the aspect of tenancy, he submits that the tenancy was existing even prior to the institution of the suit and that is why the Petitioner had filed an application in the subject suit for rendition of accounts. He has therefore submitted that once the old tenants left and the subsequent tenants have entered, would not constitute contempt of the orders restraining the parties from creating any third party interes. He has relied upon the judgment of the Hon'ble High Court of Delhi in **Manjula Saha & Anr v. Maya Rani Saha thru Lrs 2018 DHC 2727,** in support of the aforesaid

contention. Written Submissions were also filed in support of the aforesaid contentions.

#### **4. The Report of the Ld Local Commissioner**

**4.1.** The pertinent portions of the report are extracted herein for convenience :

*“Khasra no. 38/2/8 admeasuring about 2000 sq. yards was inspected first. The Khasra is divided into 12 parts as indicated in the site plan annexed herewith as Annexure-D (colly). There were no solid walls to demarcate the area internally. The areas indicated as “R” were temporary structures. They were small rooms that contained beds, mattresses, utensils, clothes and other amenities. Some of them also had coolers, televisions and refrigerators. For ease of reference these structures shall henceforth be referred to as “temporary structures/ rooms”. The remaining area was covered with waste and garbage that had been collected by the tenants who sell the same to earn a living. Most of the tenants stated that they had been occupying the premises with the permission of Mr. Pawan Kumar (Defendant no. 4) while some claimed that their employer has provided them with the accommodation and they had no direct contact with any of the Parties to the Suit. None of the tenants had rent agreements. Some of them stated that they paid rent to Defendant no. 4. Further, all the temporary structures/ rooms had separate electricity meters and the tenants claimed that they paid the electricity*

*charges directly to the authorities on the basis of meter reading. All the occupants claimed to be residents of Bihar who had immigrated to Delhi in search of work opportunities. Most of the tenants had left the Suit Property at the time of inspection. Out of the few present in the Suit Property, only a handful had identity proofs. The identity proofs of the occupants are annexed herewith.....*

*Mr. Bipin Kumar (Mobile no. +91-8825187372) claimed to be a tenant in the Suit Property since March, 2021. He did not have a rent agreement but claimed that he paid a monthly rent of INR 6,500/- (excluding water and electricity charges) to Defendant no. 4 for occupying the premises. The area occupied by him had a temporary structure which had mattresses and a make-shift kitchen and a large open space which was covered with garbage. Mr. Bipin Kumar had a soft copy of his Aadhar Card in his mobile and a photograph of the same was taken. Mr. Madan Lal occupied 2 temporary structures/ rooms and the space around it in the adjoining area. He was not present at the time of the inspection. The undersigned met his daughter Ms. Neelam who informed her that she resided there with her parents and two brothers. She provided the undersigned with Mr. Madan Lal's number: +91-9718603251. The undersigned called Mr. Madan Lal who informed her that he had been residing in the Suit Property with his family since the summer*

of 2020 and paid a monthly rent of INR 1,500/- to Defendant no. 4 and thereafter abruptly disconnected the call. Mr. Mukesh Bind (Mobile no. +91-7782059596) occupied the adjoining area which comprised of two temporary structures/ rooms. He informed the undersigned that he has been residing there with four other members of his family since the second half of 2020 and paid a monthly rent of INR 2,500/- (excluding water and electricity charges) to Defendant no. 4. Mr. Rakesh (Mobile no. +91-8448814654) was residing in the adjoining area which contains 1 temporary structure/ room. He claimed that the accommodation belonged to his brother Mr. Jogi who had gone to his village. Mr. Rakesh claimed that he had been residing in the premises with a lady and 3 children for the past 10 days. He stated that he did not have an Aadhar card or any other identity proof. He failed to provide any information with respect to the rent of the property. The adjoining area had 3 temporary structures/ rooms which were being occupied by Mr. Shantu (Mobile no. +91-9304842625). The area marked "R" at the other end of the entrance in the site plan was in fact 2 temporary structures bifurcated by a make-shift wall. Mr. Shantu claimed that he had been residing in the Suit Property since the past 2-3 years but did not pay any rent. He did not provide any identity proof despite multiple requests. The undersigned found Mr. Govinda Ravidas

(Mobile no. +919334541356) and Mr. Shivmuni Chaudhari in one of the temporary structures/ rooms. They both provided their Aadhar Cards, copies of which have been annexed along with this Report. Mr. Govinda Ravidas informed the undersigned that he was a temporary labourer who worked for Mr. Shantu. He stated that he had been living in the Suit Property for 3 months and did not pay any rent as the accommodation had been provided by Mr. Shantu. The undersigned was also informed that there were other labourers also including Mr. Kamaljit, Mr. Suresh, Mr. Suraj and Mr. Vikas who worked for Mr. Shantu and resided in the Suit Property. The adjoining area was occupied by Ms. Puja Devi, her husband Mr. Shivu Prasad, their three daughters – Ms. Kareena, Ms. Srishti and Ms. Riya and their son Master Vikram. This area consisted of 2 temporary structures/ rooms. Ms. Puja Devi claimed that she had been residing in the Suit Property since an year. Like the other temporary structures/ rooms, this one too had a separate electricity meter. Ms. Puja Devi informed the undersigned that to the best of her knowledge no rent was being paid for the occupation of the premises. She stated that she paid electricity charges to the tune of INR 100-200 per month. She provided her PAN Card and the Aadhar Cards of two of her daughters and her husband, the copies of which have been annexed along with this Report. g. The adjacent area was occupied by

*Ms. Gauri Devi (Mobile no. +91-8434672523) and her family. Ms. Gauri Devi was not present at the time of the inspection. The undersigned met her daughter Ms. Rinki and her son Mr. Kundan (Mobile no. +918252706320) who informed her that they had been residing in the premises since the past 3 years. The undersigned was further informed that apart from their mother, their brothers Mr. Chandan, Mr. Vikas, Mr. Birbal, their sister Ms. Simpi, Ms. Rinki's husband Mr. Dheeraj Paswan and Rinki's one year old son resided in the 4 temporary structures/ rooms that they occupy. These temporary structures/ rooms had a working cooler, LCD television and Godrej refrigerator. There was a separate electricity meter for these temporary structures/ rooms too. Ms. Rinki and Mr. Kundan called Ms. Gauri Devi who informed the undersigned telephonically that she paid a rent of INR 6,000/- per month (excluding electricity) to the Defendant no. 4 for the 250 sq. yards of area that she and her family occupy. She also stated that other tenants in the Suit Property were paying a similar amount. No rent agreement was provided. Further, despite the undersigned's request, Mr. Kundan and Ms. Rinki failed to provide the identity proofs of any of their family members. The adjoining area was a dumping ground for waste. Defendant no. 4 informed the undersigned that the same was used by daily wagers to dump all the garbage that they collected. There was*

another entrance next to this area which led to the areas being occupied by Ms. Rajo Devi, Mr. Sudhir Sharma and Mr. Gullu. Ms. Rajo Devi and her husband occupied 2 temporary structures/ rooms where they live with their 3 children. Ms. Rajo Devi informed the undersigned that nearly 150 daily wagers resided in the Suit Property. She stated that all of them earn a living by selling scrap. The 2 adjoining temporary structures/ rooms were occupied by Ms. Shivani who claimed that she lived there with her husband, Mr. Sudhir Sharma and their 3 daughters, She stated that they had arrived in the premises 2 weeks ago. None of them had any documentation with respect to their tenancy, identity proofs or mobile numbers. They informed the undersigned that the room in the adjoining area was occupied by Mr. Sudhir Sharma who had gone to work. There was a tin shed in the area next to Mr. Sudhir Sharma's temporary structure/ room which was filled with scrap and garbage and was therefore inaccessible. There was a similar uncovered area adjacent to it which was filled with scrap and garbage. Defendant no. 4 informed the undersigned that the said area was being used by Mr. Gullu. It is pertinent to mention that during the inspection, the undersigned observed that multiple men were sitting in the area marked as "ROAD" in the site plan of Khasra no. 38/2/8. Upon inquiry, they informed the undersigned that they were residing in the Suit

*Property with their relatives. While 1-2 people provided their identity proofs, the majority of them refused to provide any documentation. Group photographs of these individuals were taken and the same have been annexed along with this Report along with other photographs of the Suit Property. The photographs of the Suit Property are annexed herewith as Annexure-F (colly).*

*.....Khasra no. 33/22/1 admeasuring about 950 sq. yards has 3 parts that contain temporary structures/ rooms for residential purposes and 12 shops as indicated in the site plan annexed herewith as Annexure-D (colly). The areas indicated as “R” were temporary structures. They were small rooms that contained beds, mattresses, utensils, clothes and other amenities. Some of them also had coolers and televisions. The remaining area in the residential plots was covered with waste and garbage that had been collected by the tenants who sell the same to earn a living. None of the tenants had rent agreements. Further, all the temporary structures/ rooms had separate electricity meters. All the occupants of the residential area claimed to be residents of Bihar who had immigrated to Delhi in search of work opportunities. Most of the tenants had left the Suit Property at the time of inspection. Out of the few present in the Suit Property, only a handful had identity proofs.*

*There were 9 temporary structures/ rooms along with 1 toilet in the first segment of this Khasra. This entire area was vacant at the time of inspection. Adjacent to this area was a gated area that the undersigned was informed belonged to Mr. Lokesh (Plaintiff). The undersigned met Ms. Anita in the area who informed the former that she had been residing in the 1 temporary structure/ room in the area with her husband Mr. Mantosh Das (Mobile no. +91-8882524335) and their 5 children since the past 10 days. She did not have any proof of identity. She stated that she did not have any idea about the rent. The Plaintiff provided the undersigned with Mr. Mantosh Das' mobile number and claimed that he was not charging them any rent. This area also had a well constructed toilet and bathroom. The adjoining area had 2 temporary structures/ rooms which were being occupied by Mr. Dayanand, as informed by his son Mr. Sonu. His son confirmed that he, his father and his uncle were occupying 2 temporary structures/ rooms and the neighbouring temporary structure/ room was empty. Mr. Sonu informed the undersigned that he and his family had been residing in the Suit Property for the past 2 years. He stated that his father earned approximately INR 10,000/- per month and paid rent to Defendant no. 4 though he was not sure about the exact amount being paid. He provided the undersigned with his Aadhar Card, a copy of which has been*

*annexed along with this Report. The 2 temporary structures/ rooms were being occupied by Ms. Amirki Devi and her husband Mr. Rakesh Chaudhary and Mr. Dhanraj who claimed that they had been residing there for the past 1 year. They did not have any documents with respect to their tenancy, identity proofs or mobile numbers. They claimed that the accommodation had been provided by their employer Mr. Pradeep (a.k.a Kalu) who lives in the temporary structure/ room opposite to theirs. They claimed that made approximately INR 10,000/- per month and their employer paid the rent to Defendant no. 4. They were unaware of the quantum of rent. Two sides of this Khasra were covered with shops. The description of the shops is as follows: The first shop belonged to Mr. Vinod Kumar who claimed that he had been running the shop for the past 4-5 years but did not have a rent agreement. He claimed that he paid a monthly rent of INR 500/- to Defendant no. 4 for the shop. The second shop was closed. Defendant no. 4 informed the undersigned that the shop was owned by Mr. Raj Singh who paid him a monthly rent of INR 1,000/- for the same. He claimed that no rent agreement had been executed. The third and fourth shops were being run by Mr. Ankaj Kumar Singh. The undersigned met his brother Mr. Vicky Kumar (Mobile no.: +919899388209) who telephonically connected her to Mr. Ankaj Kumar Singh. During the telecom Mr. Ankaj*

*Kumar Singh informed the undersigned that he had a lease agreement with Defendant no. 4 for the 2 shops but the same stood terminated due to efflux of time. He stated that he was now paying a rent of INR 10,000/- per month to Defendant no. 4 for the two shops. A copy of the previous rent agreement was provided by Mr. Vicky Kumar along with his Aadhar Card. The copy of the rent agreement is annexed herewith as Annexure-G. The fifth shop was a grocery shop that was twice the size of the other shops and was being run by Mr. Balbir Singh (Mobile no.:+919211579637). Mr. Balbir Singh claimed that he had been running the shop for the past 12 years and paid a monthly rent of INR 1,000/- to 1,200/- to Defendant no. 2. He claimed that no rent agreement had been executed with respect to the shop and failed to provide any identity proof. The sixth shop was a sweet shop run by Mr. Ram Hari (Mobile no.: +919640736635) while the seventh shop was a dairy run by Mr. Man Singh (Mobile no.: +91-9990875251). Both of them claimed that they had been occupying the property for the past 12 years and paid a monthly rent of INR 1,000/- per month to Defendant no. They claimed that no rent agreement had been executed with respect to the shop and failed to provide any identity proof. The eighth shop was a beauty parlour run by Ms. Rajni (Mobile no.:+919811454392) and was the same size as the fifth shop. She claimed that she had been occupying the property for the past 6 years and*

*paid a monthly rent of INR 2,000/- per month to Defendant no. 4. She claimed that no rent agreement had been executed with respect to the shop and provided her Aadhar Card, a copy of which has been annexed with this Report. The ninth and tenth shop was closed. Defendant no. 4 informed the undersigned that they belonged to Mr. Aman and Mr. Rakesh respectively who paid a monthly rent of INR 1,000/- per month to him for each shop. The undersigned was further informed that no rent agreement had been executed. The eleventh and twelfth shop belonged to the Plaintiff. He claimed that he had let out the eleventh shop to Ms. Ritu for a monthly rent of INR 3,000/-. No rent agreement was provided.”*

**4.2** The report of the Ld LC would show that in Khasra No 38/2/8 measuring about 2000 square yards there are multiple people who are living in temporary structures and paying rent for the same to Defendant no 4. They are said to be scrap dealers who have also obtained electricity connections and are paying the charges for the same to the concerned service provider. As per the site plan almost 15-17 such temporary structures have been erected at the site where the families are staying and paying rent to the defendant contemnors. Similar is the situation with Khasra 33/22/1. However in that property there are almost 12 shops which appear to be *pucca* structures where the tenants are running their commercial shops and paying rent for the same. The photographs taken by the Ld LC corroborate the said fact of the existence of said shops and temporary structures as well as

the presence of the persons named in the report. The Ld LC has painstakingly recorded the name and the statements of the persons found at both the suit properties. The whole inspection has been carried out in a transparent manner in presence of the defendant contemnors as well as the petitioner.

**4.3.** Here, I may also deal with the objections filed against the report of the Ld LC by the defendant contemnors. It is stated that the Ld LC was favouring the present petitioner, but I find such objection absolutely baseless. The report is corroborated by the photographs and identity proofs annexed therein. There is no reason to assume that the Ld LC had any cause to favour one party over the other, especially as she was only to ascertain the facts as required in the order passed by this Court. It is further stated in the objections that the Ld LC did not determine whether the persons found at the suit properties were tenants or licensees. It is stated that there are only three tenants at the suit properties and the rest are licensees. These objections are also ill-founded. The Ld LC has recorded the statements of the persons found at the suit properties. The report would show that the persons were also asked about the rate of rent, the existence of any written lease agreement, and the period of their tenancy. Some of the persons were found to have been residing at the suit property since the past one to two years. Varying rates of rent are being paid by them.

## **5. Findings**

**5.1** I have heard the parties and considered the record. Rule 2A of Order XXXIX of the CPC reads as :

*“In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms in which the injunction was granted or order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of such person to be detained in the civil prison for a term not exceeding three months unless in the meantime the Court directs his release.”* The disobedience has to be wilful in nature. The act of the contemnor should not be in good faith. The purpose of this rule is to ensure the enforcement of the restraint order and not to punish the person who has disobeyed the injunction. Any action by which the process of the Court is sought to be thwarted has to be taken seriously. These are not criminal proceedings and proof beyond reasonable doubt is not required. There should be clear evidence to show that the contemnor as flouted the orders of the court.

**5.2** In the case of *Kapildeo Prasad Sah v. State of Bihar* (1999) 7 SCC 569 : AIR 1999 SC 3215, the Hon’ble Supreme Court has observed that :—

*“For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence,*

*these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied. Even negligence and carelessness can amount to disobedience particularly when attention of the person is drawn to the court's orders and its implication. Disobedience of court's order strikes at the very root of rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.”*

**5.3** In the order cited by the Ld Counsel for the Petitioner i.e. ***Saptrishi Builders (supra)***, the Hon’ble High Court found that the order of injunction restrained the defendants from creating any third party interest and that the granting of a lease, even if it was a month to month tenancy is a creation of interest and that the contemnors were liable to be proceeded for contempt. In ***Bristol Dealcom (P) Ltd. v. Murti Devi, 2022 SCC OnLine Del 4520*** it was **observed that** “the meaning of the expression “creation of an interest” must be determined within the contours of the Transfer of Property Act, 1882 (hereinafter referred to as “the TPA”). Section 8 of the TPA describes as to when a transfer operates. Section 8 states that the transfer of property passes forthwith to the transferee all the interest which the transferor is capable of passing in the property, and in the legal incidents thereof. In case the property is a land, the legal incidents include

*easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the Earth.”*

**5.4** The report of the Ld LC would show that many of the persons claimed to have arrived at the property in the years 2020, 2021 and even a few days and months before the inspection was conducted on 04.10.2023. They were all living in temporary structures and having electricity meters. They claimed to be paying rent to the Defendant no 4. It is quite pertinent to note that at the time of passing of the order in question dated 11.12.2019, no such fact was ever disclosed by the defendant contemnors to the Court. Even in the reply to the present petition, the defendant contemnors have never bothered to inform the Court about these facts and in fact, on affidavit, have blithely denied the existence of any such tenancies or licensees in the suit property. Certainly, the Court was never informed that there were infact *pucca* structures on the suit properties which were being used as shops and being rented out by the defendant contemnors. The purpose of the restraint on construction and third party interest was to protect the interest of the co-sharers who were not in possession of the joint properties. It is only after the inspection was conducted by the LC that the defendant contemnors have acknowledged that there were in fact such tenants/licensees on the suit properties and that the defendant contemnors were enjoying the rent from them. Till date, the defendant contemnors have neither offered to deposit such rent in the Court pending adjudication of the suit nor have they even offered to give a statement of the rent being enjoyed. It is pertinent to note that many of the shop keepers have stated that they have been

enjoying the tenancy for the past many years but in the reply on affidavit the defendant contemnors seem to have wilfully misled the Court by blandly denying that there was any tenancy in the properties in question. Only an adverse inference can be drawn from such conduct.

5.5 *Qua*, the aspect of construction, it appears that temporary structures covered by tarpaulin wraps have been erected on the suit properties by the defendant contemnors, and the same are being rented out to various persons who are conducting the work of scrap dealing. As per the report of the Ld LC, these temporary structures are also equipped with electricity meter connections. There is no refutation of this fact by the defendant contemnors. It is reasonable to suppose that the defendant contemnors would be instrumental in the installation of electricity meters at the properties especially when there are no lease agreements in writing and no conventional house constructed at the property. The defendant contemnors have never even disclosed as to when such structures were erected and when such meters installed. The photographs placed on record by the plaintiff rather show empty and vacant land with some rudimentary construction which was started to lay foundation of a building. They certainly neither show the shops or the temporary structures as is evident from the photographs placed on record by the Ld LC. At time of filing of reply also, the defendant contemnors never filed any photographs to counteract the allegations and the photos placed on record by the petitioners, though it would have been well within their powers to do so.

5.6 At this stage, the authorities cited by the Ld Counsel for the Defendant contemnors may be dealt with. In *M.P Rajya (supra)* the Hon'ble Supreme Court was dealing with an arbitration proceeding where a chartered accountant was appointed to place on record a report of the voluminous transactions between the parties. It was in this context that the Hon'ble Supreme Court held that the report of the CA could not be considered to be part of the award. However, this judgment has no application to the facts of the case. Apart from the report of the Ld LC, the facts placed on record by the petitioner and the conduct of the defendant contemnors has also be noted. Moreover, the LC is appointed as the eyes and extension of the Court to determine the actual facts of the case. The factual report of the Ld LC cannot be discarded lightly, especially when it is a report prepared by an Advocate who is the part of the noble profession and an officer of the Court. In *Manjula Saha (supra)*, the facts were that the property was a flat which had always been under a tenancy and the Hon'ble High Court held that the mere induction of a new tenant did not constitute a violation of the interim orders. However, this is not the situation in the present case. The defendant contemnors had never revealed to the Court that the properties were under a tenancy or that a license had been granted to scrap dealers for residing and performing their work at the property in exchange for monetary consideration. It appears that the temporary structures have been erected and huge amount of persons are residing in the properties and paying some consideration to the defendant contemnors, well after the order of the Court dated 11.12.2019. The defendant contemnors have

therefore carried out the disobedience of the orders of the court restraining construction and creation of third party interest at a large scale.

From a conspectus of the facts and circumstances, the defendant contemnors are found to have wilfully violated the order dated 11.12.2019. Without commenting on the merits of the subject suit, once the interim order was passed, the defendant contemnors were bound to obey the same, whether or not they were in agreement with the same or not.

As an addendum, it may be stated that the concerned SHO, P.S. Dwarka North has not paid any attention or heed to the orders passed by this Court, however, no further action is being taken against the concerned police officials at this stage.

6. In view of the same, the following orders are passed in the present petition :

- a) The defendant contemnors shall submit a statement on oath of the rent enjoyed by them during the pendency of the suit from the suit properties since December 2019 till date within 4 weeks.
- b) They shall deposit the entire rent as per their statement in the form of an FDR simultaneously within 4 weeks.
- c) The defendant contemnors shall ensure that the temporary structures as per the site plan prepared by the LC are vacated by the tenants/licensees within 4 weeks from today and that the said structures are demolished/removed by the next date of hearing as it is imperative to restore the *status quo ante*.
- d) The defendant contemnors shall appear on the next date of hearing to show cause as to why civil imprisonment should not be imposed on them.

e) The Defendant contemnors shall deposit an FDR of Rs. 5,00,000/- within one week before this Court.

7. The matter shall be listed on **06.06.2024** for compliance and appearance of the defendant contemnors.

**Announced in the open court  
On 25.04.2024**

**(Sh. Divyang Thakur)  
DJ-03/South West  
Dwarka / New Delhi**