



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

% **Judgment reserved on : 10 July 2024**
Judgment pronounced on : 18 July 2024

+ **CONT.CAS(C) 942/2019 & CM APPL. 42191/2021, CM APPL. 14038/2022, CM APPL. 43561/2022**

BIMLA SACHDEVPetitioner
Through: **Mr. Sunil Dalal, Sr. Adv. along with Mr. Dileep Singh, Mr. Nikhil Beniwal, Mr. Navish Bhati & Mr. Vikram Singh Dalal, Advs.**

versus

SUBUR & ANRRespondents
Through: **Ms. Shobhana Takiar, Standing Counsel for R-2/DDA.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

CM APPL. 46325/2022

1. This order shall decide the present application moved on behalf of respondent No.2/Delhi Development Authority¹ seeking recall of the order dated 11.07.2022 passed by this Court.
2. The aforesaid application has been moved in the pending contempt proceedings initiated by the petitioner in terms of Section 11 of the Contempt of Courts Act, 1971² for wilful disobedience of the directions of this Court *vide* judgment dated 04.02.2019 in W.P.(C)

¹ DDA

² C.C. Act



12172/2016 and CM APPLs. 48057/2016, 15579/2018, titled “Bimla Sachdev v. DDA”.

3. Shorn off unnecessary details, the petitioner instituted the aforesaid writ petition claiming that her deceased husband had been allotted a Plot bearing No.C-71, Vikas Puri, New Delhi, under the Low/Middle Income Group Scheme of the DDA and the possession of the said plot was handed over to her deceased husband on 30.09.1976 and in this regard, a lease deed was executed on 19.03.1977. However, on account of ill-health, her husband was not able to submit the lease deed papers and have them stamped within the stipulated time, and therefore, despite making payment of the entire sale consideration, the allotment was cancelled *vide* letter dated 03.08.1987. Although an application for restoration was moved on behalf of the petitioner, the same was rejected by the DDA *vide* letter dated 26.12.1996.

4. The husband of the petitioner challenged the decision of respondent No.2 /DDA *vide* W.P.(C) 2003/1997, which got dismissed in default for non-prosecution on 26.09.1999. Unfortunately, the husband of the petitioner expired on 05.02.2006. The petitioner preferred a representation for restoration of allotment of the aforesaid flat, which was favourably acceded to by the DDA *vide* letter dated 14.09.2012. However, in the interregnum, the aforesaid plot got allotted to someone else and after communication to and fro, a draw of lots was held on 04.10.2012 wherein she was allotted the premises bearing No. C-389, Vikas Puri, New Delhi and entire sale consideration was paid on 05.11.2012 and 28.12.2012; and the



physical possession of the plot was delivered to her on 21.01.2013. Consequently, lease deed and conveyance deed were executed in her favour on 18.02.2013 and 05.05.2013 respectively.

5. However, the newly allotted plot of land was involved in some litigation wherein some interim orders had been issued for maintaining the *status quo*. As her request for allotting her an unencumbered land fell on the deaf ears of the Officials of the DDA, this writ was filed and this Court, finding that the entire sale consideration had otherwise been deposited by the petitioner, allowed the writ petition and passed the following directions *vide* order dated 04.02.2019:-

“34. The DDA is directed to allot, forthwith, to the petitioner, an unencumbered plot, of the same area as the plot at C-71, Vikas Puri, New Delhi. On such allotment being made, the petitioner would forthwith release the relevant documents for the allotment of the plot at C-71, Vikas Puri, New Delhi, made in her name.

35. It is also made clear that the plot allotted should be one which is habitable, and not one over which, for example, high tension wires may be running, as would pose a risk to life and limb.

36. The petitioner has, in the pleadings, referred to **a plot at A-1/1, Sector 8, Rohini, Delhi, which admeasures 144 sq. mtrs.**, and stated that she is willing to accept the said plot in lieu of plot at C-389, Vikas Puri, New Delhi, which admeasures 160 sq. mtrs. The DDA may consider, if possible, allotting the said plot at Rohini in favour of the petitioner.

37. The writ petition stands allowed in the above terms with costs, which are quantified at Rs.50,000/-, to be paid to the petitioner within four weeks.”

6. In the face of the aforesaid admitted facts, the present contempt petition was filed, upon which, notice was issued on 22.10.2019 for non-compliance of the directions passed in the order dated 04.02.2019.



7. Having heard the learned counsels for the parties in some detail and on meticulous perusal of the entire record, it is clearly brought out that on 11.07.2022, a consent order was passed to the following effect:-

“Learned Standing Counsel for DDA states on instructions from the concerned Deputy Director, Land Disposal that the difference in the market price of the first allotted price and the re-allotted plot, is to the tune of Rs.1,09,50,680/-, and not Rs.72 Lacs as asserted by the petitioner.

The learned senior counsel appearing on behalf of petitioner submits that the petitioner is willing to pay the aforesaid amount of Rs.1,09,50,680/- within a period of two weeks from today. Accordingly, let the conveyance deed be executed in favour of the petitioner in respect of the concerned plot within four weeks from payment of the said amount by the petitioner, subject to completion of necessary formalities by the petitioner.

List for reporting compliance on 14.12.2022.”

8. On perusal of the record, it is brought out that for non-compliance of the aforesaid directions dated 04.02.20219 passed by this Court, a contempt case bearing CONT.CAS(C) 942/2019 was filed and the order dated 05.02.2020 passed by this Court reflects that learned counsel appearing for the respondents, upon instructions from the concerned officials of the DDA, stated that possession of the allotted plot had already been handed over to the petitioner and that the Conveyance Deed would be executed in three weeks time. It appears that the matter came up for hearing on 05.01.2021, on which date, a new twist to the story was introduced by the DDA that instead of a conveyance deed, a lease deed would be executed, which proposal too was accepted by the petitioner.



9. The matter then came up for hearing on 07.10.2021 and this time, the learned Standing Counsel for the DDA, upon instructions, stated at the Bar as under:-

“1. The learned Standing Counsel for the DDA states, upon instructions, that the plot of land of which the petitioner is in possession of, is valued at more than three times the amount the petitioner has paid for it, therefore, in terms of this court's order dated 04.02.2019 passed in W.P.(C) 12172/2016, an alternative plot of land of an equivalent value would have been given to the petitioner. She submits that huge loss will be caused to the statutory body in case the fair amount is not recovered, for handing-over the property in question.

2. The learned counsel for the DDA further submits that as per rules, a conveyance deed cannot not be issued in favour of the petitioner; that as per the allotment letter only a perpetual lease could have been executed and not the conveyance deed, therefore, the earlier submissions made on behalf of the DDA were erroneous, therefore, the order dated 04.02.2019 be corrected.”

10. A bare perusal of the order dated 07.10.2021 would show that the said proposal was accepted by the respondent and it was stated that she was ready and willing to pay the market rate for the land already allotted and handed over to her by the DDA. The matter then came up on 11.07.2022, wherein, it was recorded that the difference in the market price of the allotted site and re-allotment plot was to the tune of Rs. 1,09,50,680/- and not Rs. 72 Lacs, as was asserted by the petitioner. Anyhow, the petitioner made a statement that she was ready and willing to make the payment of Rs. 1,09,50,680/- within a period of two weeks . Admittedly, the said amount was paid and accepted by the DDA and the matter was placed for compliance on 14.12.2022.

11. Astonishing as it may look, a complete somersault is now made by respondent No.2/DDA by filing the present application for



recalling of the order dated 11.07.2022 on the premise that the matter was put up for consideration before the Worthy Vice Chairman, DDA and a meeting was convened on 17.10.2022, which was attended by the Finance Member, DDA; Chief Legal Advisor, DDA; Commissioner (LD), DDA; Additional CLA, DDA; Director, RL; Deputy Director/LAB(Resdl.); SLO(LD), and Standing Counsel, DDA, to deliberate upon the issue and a unanimous decision was reached to the effect that the two plots i.e. the plot surrendered by the petitioner originally being Plot No.C-389, Vikas Puri and the plot which the petitioner is seeking viz Plot A-1/1, Sector-8, Rohini, are dissimilar and a statement was made before the Court on 11.07.2022 *based on a theoretical estimate of the difference in the value and in complete ignorance of the fact as also in violation of law* since the disposal of the property on payment of price based on a broad theoretical estimate, is not only contrary to the DDA (Disposal of Developed Nazul Land) Rules, 1981, but also detrimental to the financial interests of the DDA.

12. During the course of the arguments, learned counsel for the petitioner has pointed out that the entire file of the DDA had been summoned by Hon'ble Mr. Justice Subramonium Prasad on 22.03.2022 and evidently, it was found from the official notes that the estimates, being the difference in the two plots to the tune of Rs. 1,09,50,680/-, were considered and approved at the end of the then Worthy Vice Chairman, DDA.

13. Learned counsel for the petitioner has vehemently urged that the DDA has been changing its stand time and again, thereby,



depriving the petitioner of the fruits of the final directions passed by this Court dated 04.02.2019.

14. *Per contra*, Ms. Shobhana Takiar, learned Standing Counsel for the DDA has urged that the original directions passed by this Court dated 04.02.2019 never directed the DDA to allot the Rohini Plot to the petitioner, and rather, she was not entitled for the Rohini Plot since her husband was initially allotted a plot under the Low/Middle Income Group Scheme of the DDA, whereas, the plot in question falls under mixed land use area and since the plot at Rohini has not been put in auction, it would not only be against the public policy but also in violation of the statutory laws, and therefore, the question of executing the conveyance or lease deed in favour of the petitioner does not arise.

ANALYSIS AND DECISION:

15. In the said backdrop, unhesitatingly, this Court finds that the officials of respondent No.2/DDA are guilty of committing civil contempt for wilful disobedience of the order dated 04.02.2019 passed by this Court.

16. The pleas advanced by learned counsel for the respondent that the earlier concession granted based on a statement made on its behalf on 11.07.2022, which was based on a theoretical estimate of the difference in the value and in complete ignorance of the fact as also in violation of the law, is not palatable and cannot be sustained in law. It would be apposite to refer to Section 115 of the Indian Evidence Act, 1872, which reads as under:

“**115. Estoppel.**—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor



his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

17. In the case of the **Pratima Chowdhury v. Kalpana Mukherjee**³, the Supreme Court, while laying down the law with regard to the rule of an *estoppel*, observed that it needs to be understood that the rule of estoppel is a doctrine based on fairness. It postulates the exclusion of truth of the matter and the four salient preconditions before invoking the rule of estoppel, which were explained as under:

(i) *Firstly*, one party should make a factual representation to the other party.

(ii) *Secondly*, the other party should accept and rely upon the aforesaid factual representation.

(iii) *Thirdly*, having relied on the aforesaid factual representation, the second party should alter his position.

(iv) *Fourthly*, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position.

Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.

18. It would also be apposite to refer to the decision in **Workman v. Food Corporation of India**⁴, wherein the Supreme Court observed that the phrases “approbate” and “reprobate” mean that no party can be allowed to accept and reject the same thing as the principle behind the doctrine of election is in-built in the concept of approbate and

³ (2014) 4 SCC 196

⁴ (2023) 8 SCC 116



reprobate, that is, a person cannot be allowed to have the benefit of an instrument while questioning the same. It was noted that an element of fair play is in-built in this principle and it is a species of estoppel dealing with the conduct of a party. In a recent case of **Baini Prasad v. Durga Devi**⁵, wherein an earlier decision in the case of **B.L. Sreedhar v. K.M. Munireddy**⁶ was cited with approval, it was held that when rights are invoked, estoppel may, with equal justification, be described both as a rule of evidence and as a rule creating or defeating the rights. It referred to the observations in **B.L. Sreedhar (supra)** in paragraph (30), which goes as under:-

“30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.”

19. To sum up, once the respondent has been acquiescing in accepting the legal rights of the petitioner in having a new plot at Rohini and delivered the possession thereof, the decision taken in the meeting by the Vice Chairman, DDA on 17.10.2022 thereby, withdrawing the concession, cannot be accepted. The decision amounts to deliberate and wilful disobedience of the directions of this Court. The respondent No.2/DDA acquiesced directly with full knowledge of the entire history of the litigation and as there was an express approbation, therefore, the possession cannot be reprobated.

⁵ (2023) 6 SCC 708

⁶ (2003) 2 SCC 355



20. In view of the foregoing discussion, respondent No.2/DDA and its officials are held guilty for wilful and deliberate disobedience of the directions of this Court and should be proceeded under Sections 11⁷ and 12⁸ of the Contempt of Courts Act, 1971.

⁷ **“11. Power of High Court to try offences committed or offenders found outside jurisdiction.** —A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

⁸ **12. Punishment for contempt of court.** — (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation. —An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. —For the purpose of sub-sections (4) and (5),—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”



21. Resultantly, the following directions are passed:
- (i) The respondent No.2/DDA through its Vice Chairman, is directed to execute a conveyance deed in favour of the petitioner *qua* the property bearing Plot No. A-1/1, Sector-8, Rohini, Delhi, within four weeks from today;
 - (ii) The entire cost of the conveyance deed including the cost of stamp papers and the registration charge shall be borne by the respondent No.2/DDA; and
 - (iii) Lastly, issue notice to the Vice Chairman, DDA, as also Mr. Prashant Prasad, S/o Sh. B. N. Prasad, Deputy Director (Land Disposal), LAB (Resdl.), DDA, Vikas Sadan, New Delhi, to appear before this Court in person and show cause as to why they be not punished and sentenced in accordance with law for committing contempt of this Court on 21.08.2024.
22. Renotify for compliance report to be submitted by respondent No.2/DDA and for personal appearance of the Vice Chairman and Mr. Prashant Prasad, S/o Sh. B. N. Prasad, Deputy Director (Land Disposal), LAB (Resdl.), DDA, Vikas Sadan, New Delhi, for hearing them on sentence on 30.08.2024.

DHARMESH SHARMA, J.

JULY 18, 2024

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