

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

+ **CONT.CAS(C)386/2009**

% ***Judgment dated 13.07.2012***

JAYABRATA BHATTACHARJEE Petitioner
Through: Petitioner in person.

versus

ASHOK KUMAR & ORS. Respondents
Through: Ms.Sangeeta Chandra, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Petitioner, who appears in person, has filed the present petition under Sections 11 and 12 of the Contempt of Courts Act, 1971, for initiating contempt of Court proceedings against the respondents for not complying with the order passed by this Court in CWP 1808/1994 dated 23.7.1999, which was upheld by the Supreme Court of India on 13.12.2007.
2. The facts, as stated in this petition and necessary to be noticed, are that the petitioner was arrayed as petitioner no.6 in a writ petition, being W.P.(C)No.1808/1994. The order dated 23.7.1999 was passed by this Court in a batch of writ petitions wherein the writ petitioners had sought quashing of demand letters issued by Delhi Development Authority requiring them to pay amounts in excess of the estimated cost mentioned in the original demand-cum-allotment letters, which were issued by the DDA under its Fifth Self-Financing Scheme. It is further averred in this petition that the High Court did not go into the merits of the fixation of the price by Delhi Development Authority but the High Court was pleased

to hold that DDA is not entitled to include in the cost of flats allotted, the equalization and conversion charges, and the interest element on the amounts charged under equalization and conversion charges heads. The relevant observation of the High Court in the order dated 23.7.1999, relied upon by the petitioner, reads as under:

“.... The upshot of the above discussion is that the DDA is not entitled to include in the cost of flats allocated/allotted to the petitioners, in this and in other connected writ petitions, the equalization and conversion charges and consequently the interest element on the amounts charged under these two heads. The DDA will, however, be entitled to impose and recover the transfer charges prescribed under the transfer scheme from all the allottees in terms of the said scheme if it proposes to continue with the scheme. Accordingly, we direct the DDA to recompute the price of each of the flats allotted to all the petitioners herein in terms of this judgment and issue fresh/final demand letters within four weeks from today. Since it is stated before us that majority of the allottees have already made payments in terms of the aforementioned interim orders, it seems that in view of the exclusion of the said two components as cost elements and interest thereon, some amount may become refundable to such allottees. If that be so, the refund shall accompany the fresh demand letter. It is, however, clarified that if any of the petitioners has not made full payment in terms of the said interim orders, the DDA will be entitled to charge interest at the nominal rate, which it is charging in other cases of non payment or delayed payment, except on the aforementioned two components and these allottees will make payment within four weeks of the receipt of fresh demand letters, failing which, the DDA will be at liberty to take action in accordance with the terms and conditions of allotment.....”

3. The aforesaid order was challenged by the DDA before the Supreme Court of India, however, the appeal was dismissed.
4. The petitioner submits that the Apex Court while dismissing the appeals held that the earlier judgment of the High Court in the case of *P.N.Verma v. Union of India* would be binding on the DDA. Petitioner further submits that after the dismissal of the appeal by the Supreme Court of

India, the DDA did not comply with the directions contained in the Order dated 23.7.1999 which attained finality. Petitioner next submits that DDA cannot plead ignorance of the order of the Supreme Court as the Registry of the Supreme Court of India sent a copy of the order dated 13.12.2007 to all the concerned parties including counsel for the DDA and the petitioner on 9.1.2008, which was duly acknowledged by the DDA on 11.1.2008. The said order was to be complied with by the DDA, however, the DDA has failed to comply with the said order of the Supreme Court of India and the High Court of Delhi.

5. It is contended by the petitioner that since the order was not complied with by the DDA, petitioner issued a communication dated 29.1.2008 to the DDA. Along with this communication the petitioner also enclosed a copy of the order passed by the Supreme Court of India dated 17.12.2007. The said communication was duly received by the DDA on 31.1.2008. As no reply was received from the DDA, the petitioner issued another communication to the DDA on 30.4.2008 calling upon the DDA to issue a fresh demand letter to the petitioner after excluding equalization, inter-category and conversion charges; requesting the authorities to show separately the conversion charges (transfer charges); and demanding the authorities to refund the equalization, inter category charges and also the counsel fee of Rs.25,000/- as awarded by the Supreme Court of India. It is further contended by the petitioner that since no response was received from the DDA, he met the Chief Legal Advisor, DDA, on 22.5.2008, Commissioner (Housing), DDA, on 24.7.2008. Since no positive response was received the petitioner addressed a communication dated 23.10.2008 to the Commissioner (Housing), DDA. A copy of this communication was also addressed to the Deputy Director, DDA. The petitioner also sent a fax of this communication to Deputy Director, DDA on 30.10.2008. On

8.11.2008 petitioner received a communication dated 7.11.2008 from the Deputy Director, SFS, Housing. By this communication, the petitioner was called upon to furnish certain documents to the DDA. The petitioner replied to this communication on 17.11.2008 reiterating his earlier request. The petitioner thereafter met the Director, SFS-Housing, DDA, on 17.11.2008; and also issued a communication to the Vice-Chairman, DDA, on 2.12.2008, however, no satisfactory response was received, which forced the petitioner into filing Cont.Pet.(Civil) 43/2009 in the Supreme Court of India. Subsequent to the filing of the said contempt petition, the petitioner received a communication from the DDA enclosing a cheque in the sum of Rs.34,990/- towards the refund of excess amount although no calculation/break up or statement of account was enclosed. This cheque was duly encashed by the petitioner. The contempt petition filed before the Supreme Court of India was dismissed on 30.3.2009 with the following observations:

“Having heard the petitioner appearing in person, we are of the opinion that as this Court has dismissed the appeal preferred by the DDA against the judgment and order dated 23.7.1999 passed by the Delhi High Court, the contempt petition would be maintainable before the High Court.

The petitioner may, therefore, file an appropriate contempt petition before the High Court. The contempt petition is dismissed with the aforementioned observation.”

6. The above facts have led to the filing of the present contempt petition.
7. During the pendency of this matter, cost of Rs.25,000/- stands paid to the petitioner. Reply to this contempt petition has been filed by respondent DDA wherein it is stated by the DDA that the order dated 23.7.1999, as upheld by the Supreme Court of India on 13.12.2007, stands complied with and the respondent has refunded the amount of Rs.34,990/- to the

petitioner towards the equalization charges and the interest element on the amounts charged under the equalization and conversion charges.

8. Counsel for the respondent submits that as far as grievances of the petitioner that the refund payment should have been accompanied by a revised demand-cum-allotment letter with the details and break up of the refund amount is concerned time was spent by the DDA to re-compute the cost of each of the flats allotted in the batch of matters including the case of the petitioner and the DDA issued refund in the form of cheques to the allottees entitled and no fresh demand letter was issued by the DDA in any of the 70 cases and nor did any allottee made a request for the same after the refund cheques had been received by the allottees/petitioners. It is for this reason, it is contended by counsel for the DDA, that inadvertently the DDA did not prepare a fresh demand letter in the case of the petitioner after issuing a cheque in favour of the petitioner in February, 2009.
9. Ms.Chandra, next submits that the break-up of the amount refunded to the petitioner was filed along with the present petition. A perusal of the said calculation would show that the amount of equalization charges was Rs.12,500/-, the amount of freehold charges was Rs.30,000/-, total amounting to Rs.42,500/-. This amount was deducted by the DDA from the balance cost indicated earlier by the 5th and final demand letter being Rs.3,59,720/-. Thus, after deducting Rs.42,500/- from Rs.3,59,720/- the balance amount was Rs.3,17,220/-. This exercise was carried out in terms of the directions issued by the Court wherein the DDA had been directed to re-calculate the amount due after deducting the interest charged on conversion charges and equalization charges. The chart reveals that earlier an amount of Rs.1,90,352/- was the interest calculated for delayed payment on the amount of Rs.3,59,720/-, which had been paid by the

petitioner. In terms of the direction issued the interest was recalculated on the amount of Rs.3,17,220/- (Rs.3,59,720/- less Rs.42,500/-). This worked out to Rs.1,67,862. Thus, the total amount refunded was Rs.12,500/- for equalization charges plus Rs.22,490/- (Rs.1,90,352/- less Rs.1,67,862/-) totaling to Rs.34,990/-.

10. In response to the reply filed by the respondent, the petitioner filed a statement of calculation of refund, which were due to him from the DDA, which reads as under:

“STATEMENT OF CALCULATION OF REFUND DUE TO ME (PETITIONER), FROM THE DELHI DEVELOPMENT AUTHORITY (DDA), AS DIRECTED IN THE JUDGMENTS OF THE HON’BLE SUPREME COURT AND THE HON’BLE DELHI HIGH COURT

A. Amount paid to me by the DDA on the 4th February 2009: Rs.34,990/-

(Comprising : Equalisation charges refund of Rs.12,500/- and refund of excess interest charged from 23.02.94 to 27.02.97, amounting to Rs.22,4290/-).

Due date for payment of this amount to me: 9th February 2008.

B. Additional amount payable to me on the 9th February 2008 : Rs.25,000/-, being legal expenses reimbursement, as ordered by the Hon’ble Supreme Court.

C. Also, refundable is inter-category charge as ordered by the Hon’ble Supreme Court (following the upholding of the P.N.Verma Judgment).

This amount is not known to me exactly, since the DDA refuses to disclose the exact costing of the flat.

However, the figure of 7% as inter-category charge for ground floor flats is mentioned in the P.N.Verma judgment. In the

present case, this would amount to Rs.51218/-. As the excess amount wrongly charged to me and which is refundable to me.

D. Excess interest wrongly charged to me, on inter-category charge from 23.2.94 to 27.2.97, using the same formula employed by the DDA :Rs.27,103/-, also repayable to me.

E. Amount due to me on the 9th February 2008 : $A+B+C=D$ Rs.138311/-.

F. Interest payable to me by the DDA w.e.f. 10th Feb. 2008 to 4th February 2009, using the same rates of interest as charged by the DDA to me (10% for the First 2 months, 12% for the next 1 month and 18% for the balance period) : Rs.18,672/-.

G. Amount due to me on the 4th February 2009 : $E+F$ Rs.156,983/.

H. Amount paid by the DDA to me on the 4th Feb. 2009: Rs.34,990/-.

Short payment on 4th February 2009 (G Less H) : Rs.121993/-

I. Interest is accruing 18% per annum on the shortfall of Rs.121,993/- w.e.f. 5th February 2009 till the date of payment by the DDA to me.

J. In addition, the Hon'ble Court is being requested to levy a penal interest on the contemnors for so shamelessly and blatantly violating the orders of the Highest Court of the land and a High Court.

The penal interest must be paid by the contemnors individually to the account of the legal aid services, or as may be directed by the Hon'ble Court.

NOTE: If the DDA can prove to the court that the inter-category charge of Rs.51218/- as mentioned in (C) above, is

different, the above calculation will change only to the extent of the inter-category charge and the interest thereon.”

11. In response to the additional affidavit filed by the petitioner, the DDA filed an affidavit wherein refund of inter category charges along with interest accrued thereon was disputed. The relevant portion of the affidavit reads as under:

“B. REFUND OF INTER CATEGORY CHARGES ALONGWITH INTEREST THERE UPON:

The petitioner has sought refund of inter category charges and interest on the said levy at clauses C & D of the calculation sheet.

In this regard, it is most respectfully submitted that the order passed by the Hon’ble Division Bench on 23.07.99 (page 26 of the paper book) and subsequently, by the Hon’ble Supreme Court on 13.12.07 gave directions to the DDA to refund the equalization and conversion charges and the interest element charged on the said amounts. The DDA was directed to re compute the price of the flats after ‘exclusion of the said two components as cost elements and interest thereon’. There were no directions to the DDA on the issue of ‘Inter Category Charges’ or any refund of the said charges, if levied.

It is necessary to explain that the inter category charges are those charges which have been levied @ 5.5% on Ground Floor flats only except Janta Category flat to provide cross subsidies to the Janta flat allottees. There is a clear differentiation in the levy of equalization charges and inter category charges. It is submitted with respect that it is only the equalization charges along with interest thereupon which was to be refunded by the DDA and there are no directions to refund the inter category charges.

Thus, the DDA has not committed any willful or intentional defiance and non-compliance of the orders of the Court and the amount refunded by the DDA is in terms of the judgment passed by the Hon’ble Courts.

Therefore, the amount shown at clauses C & D of the calculation sheet is not refundable by the DDA and hence, the subsequent calculations from E onwards will also not be sustainable.

5. That it is also very relevant to point out that the DDA has not refunded the inter category charges in any of the cases of the batch of petitions wherein, the petition of the petitioner was decided. Sample copies of the refund made in some of the cases are annexed hereto collectively as Annexure A-3.

The DDA had also issued a fresh intimation/demand letter to the petitioner on 22.01.10. A copy of the said letter is annexed hereto as Annexure A-4.”

12. Along with the reply, the DDA has filed sample copies of refunds made in some cases to show that similarly situated persons have not been refunded inter category charges. DDA also issued a fresh intimation/demand letter to the petitioner on 22.1.2010, a copy of which has also been filed along with the additional affidavit. The petitioner was dissatisfied with the reply of the DDA and yet again filed an additional affidavit dated 6.8.2010.
13. While placing reliance on the judgment passed by the Supreme Court on 13.12.2007, more particularly para 87, the petitioner submits that judgment of the Supreme Court is crystal clear and debars the DDA from levying/extracting any ad hoc charges from the flat buyer and inter category charges fall squarely and categorically under ‘Ad hoc charges’. Para 87 of the judgment reads as under:

“The lengthy and elaborate judgment of the High Court under appeal makes instructive reading in prohibiting the DDA from adding to the prices of the named flats an escalation termed as equalization and ad hoc charges. From the terms of the model contract entered into by the DDA with the people who opted for the self-financing scheme, charging of the said equalization and ad hoc charges is total missing. The DDA in support thereof has banked

upon the justness of its cause and demand, and has nowhere been able to project that to begin with, it was part and parcel of the cost factor. The High Court has seen through its design and has termed the venture as a camouflage. We see no reason to take a different view than the one taken by the High Court. The said decision is binding upon the DDA.”

[Emphasis added]

14. Petitioner, who appears in person, submits that DDA is trying to misinterpret and distort the judgment passed by the Supreme Court with a view to flout the order passed by this Court. Another grievance of the petitioner is that even otherwise the DDA did not bring to the notice of the Court or the petitioner that inter category charges were being levied.
15. The DDA filed an additional affidavit dated 17.1.2011 in compliance with the orders passed by this Court with a view to place certain additional documents on record to show that inter-category charges are not part of the ad hoc charges and there were no directions by either the High Court or the Supreme Court to refund inter category charges to the petitioner and, thus, there was no violation of the orders passed. In this additional affidavit dated 17.1.2011, the DDA has also explained the procedure for fixation of the disposal cost of flats/dwelling units as set out in Chapter 13. The relevant portion of this affidavit reads as under:

“4. The costing formula given in Chapter XIII is based in Authority’s Resolution No.429 dated 28.10.1980, Resolution No.447 dated 28.10.1980, Resolution No.9 dated 23.01.1985 and Resolution No.15 dated 23.01.1985.

As per Chapter XIII, which prescribed the fixation of disposal cost of the flats/dwelling units, it is clearly stated that Inter-Category (subsidies) charges are those charges which are to be levied at the rate of 5½% of the total cost of dwelling units/flats to be recovered from the allottees under the category of SFS, MIG and LIG categories on the ground

floor, and are to be deposited in a separate fund for the benefit of EWS Housing Schemes.

Thus, the inter-category subsidies charges are part of the formula through which the costing/disposal cost of the flats are worked out. A copy of the said Chapter XIII is annexed hereto and marked as Annexure AA-1.

Thus, since Inter Category charges are levied in all cases as per basis costing formula and not only in some particular cases, it is clear that they do not form part of Ad-hoc charges since the very word 'Ad-hoc' implies on a random case to case basis and not consistent basis, Inter-category charges cannot be considered as ad-hoc charges since ad-hoc charges are those charges which are not part of the costing.

5. That it is also relevant to point out that a perusal of Chapter XIII (on which costing is based) makes it clear that since Inter Category Charges are mentioned therein, it would be considered to be a part of the brochure since the brochure for the SFS Schemes did not lay down any specific charges which were to be charges from the DDA. The brochure only set out the 'tentative cost' which costing of course, is based on Chapter XIII and as stated in the preceding paras, Inter Category subsidies charges form part of the costing formula shown in the said Chapter. A copy of the brochure is annexed hereto and marked as Annexure AA-2.
6. That in the present case, since the petitioner has been allotted a category III, Ground Floor and first floor that being flat No.9430, in Vasant Kunj area under Self financing Scheme in South Delhi Zone, he is liable to pay inter-category subsidies charges at the rate of 5 ½% of the total cost of the flat. Thus, the petitioner is liable to pay a sum of Rs.42,400/- as Inter Category Subsidy charges.
7. That it may be noted that although, even equalization charges form part of costing and therefore, did not qualify refund, since there were categorical directions to refund the said charges by the Hon'ble Court, the directions were duly complied with. It appears that at the relevant time the

existence and provisions of Chapter XIII were not pointed out to the Hon'ble Court and, thus, there is no specific discussion on this aspect.”

16. In response to the additional affidavit filed by the DDA, the petitioner has filed an affidavit dated 9.2.2011 wherein it is stated by him that that the documents filed by the DDA along with the additional affidavit dated 17.1.2011 have been produced for the first time and for the first time DDA admits that the petitioner was compelled to pay inter-category charges of Rs.42,000/-, whereas in all earlier affidavits the DDA had evaded the question. Reliance was again placed on the judgment rendered by the Apex Court on 17.11.2007 in support of the submission that the DDA is not entitled to recover from the registrants an additional amount over and above what has been stated under the terms of the brochure. It, is thus, contended by the petitioner that the brochure did not mention the inter-category charges and, thus, the same would be deemed to be ad hoc charges and cannot be recovered by the DDA.
17. During the course of hearing the petitioner has submitted that EWS scheme for which the inter-category charges were being obtained stood closed w.e.f. 1994. A counter affidavit alleged to have been filed by the DDA in another case was handed over in Court. This led to the DDA filing another application, being CM No.579/2011, to place additional information and documents on record. As per this application filed by the DDA, the DDA categorically stated on affidavit that EWS Scheme is still in force and even applicable in the Housing Scheme of 2010 wherein flats have been ear marked for allotment under the Janta category. A copy of the relevant page from the brochure was annexed and also a copy of the extract of the draw held in 2007 for the Janta Housing Scheme was filed to show that DDA has been and is still making allotment under the EWS

Janta Category Scheme. In this application DDA also pointed out that the pattern of costing was changed by the DDA in the year 2002 from actual standard costing. Even in cases where the cost is calculated currently for an allotment made prior to 2002 the inter-category charges are being taken by the DDA as per costing formula prevalent for the period prior to 2002. It has further been stated that even recently in a writ petition decided in 2010 where the DDA was directed to work out the costing at the rate prevalent in 1991, the DDA has levied inter-category charges of @5.5% of the premium amount.

18. I have heard the petitioner, who appears on person, and learned counsel for the respondent DDA. Petitioner is extremely pained on account of non-compliance of the order passed by a Division Bench of this Court on 23.7.1999, which was upheld by the Supreme Court of India on 13.12.2007. The petitioner has expressed deep pain and anguish in the manner the DDA has treated an ordinary citizen, the manner in which his communications remained unattended and the shoddy treatment meted out to him.
19. The petitioner has submitted that after passing of the orders dated 23.7.1999 and 13.12.2007 the DDA took its own time to make piecemeal part payments to the petitioner and that too after the contempt petition was filed. It is also the grievance of the petitioner that the DDA did not at any stage clarify that DDA had imposed inter-category charges on the petitioner in the sum Rs.42,500/- and it is only after the matter was heard that an affidavit was filed wherein the amount was mentioned and a justification sought to be made, which would show that the DDA has intentionally withheld and suppressed relevant facts from the Court. It is also the case of the petitioner that the orders passed by the Division Bench and the Supreme Court are crystal clear. The Courts have held that DDA

is not entitled to include any additional cost to flats allotted to the petitioners, the equalization and conversion charges and consequently the interest elements on the amounts charged under these two heads. The DDA was also directed by the Division Bench to re-compute the price of each flat and issue fresh final demand letters within four weeks from the date of the order (23.7.1999). It was also directed that since the majority of allottees had already made the payments in terms of the interim order some amounts would be refundable to the allottees. The Supreme Court in para 87 of the judgment passed on 13.7.2007 endorsed the view of the High Court. The Apex Court has also observed that “*only those components which fall within the brochure of the DDA or within the purview of the statutory requirements can be included in the exercise of price fixation. To the said extent are the decision of the Delhi High Court in P.N.Verma (supra), Narsing Jain v. Union of India [(80) 1999 DLT 742] and DDA SFS Flat Owners Society v. UOI [AIR 2001 del 39]*”. Para 86 of the judgment reads as under:

“86. It may be reiterated that it is only those components which fall within the brochure of the DDA or within the purview of the statutory requirements can be included in the exercise of price fixation. To the said extent are the decision of the Delhi High Court in P.N.Verma (supra), Narsing Jain v. Union of India [(80) 1999 DLT 742] and DDA SFS Flat Owners Society v. UOI [AIR 2001 del 39].”

20. It is, thus, contended by the petitioner that inter-category charges were nowhere mentioned in the brochure and more so EWS Scheme stand discontinued, for which the petitioner relied on a copy of the counter affidavit filed by the DDA in another case and, thus, it is submitted that once the Division Bench of the High Court has directed that the equalization and ad hoc charges cannot be levied, DDA has willfully and

intentionally flouted the orders of the High Court and thus the respondents should be held guilty of contempt of Court.

21. The petitioner has relied upon *Kapildeo Prasad Sah and Others v. State of Bihar and Others*, reported at (1999) 7 SCC 569 in support of his contention that even negligence or carelessness in implementing the Courts order may amount to contempt when attention is drawn to the implementation of the order to the concerned person. The petitioner has strongly urged before this Court that the respondents should be held guilty of contempt of court as it is necessary for the maintenance of an effective legal system. The petitioner has also relied upon *Indira Sawhney v. Union of India and Others*, reported at 1995 5 SCC 429 wherein the Apex Court has held the respondents guilty of contempt and expressed displeasure that despite issuance of contempt notice the State Government did not realize the urgency of implementing the order.
22. It is submitted by the petitioner that he made repeated requests, sent various reminders and also filed number of applications to the DDA for compliance of the order passed, all of which have fallen on deaf ears. While, learned counsel for the DDA has stated that on account of the large number of allottees there was delay in implementing the orders of the Courts, however, the amount stands refunded to the petitioner and cost of Rs.25,000/- also stand paid to the petitioner. Learned counsel for the DDA has also contended that there is no willful disobedience of the orders of the Court, DDA is a statutory authority and is bound to act fairly, and the petitioner has not been singled out. Counsel further submits that all persons similarly situated have been paid the amount due to them, none of the allottees have been refunded inter-category charges nor was it directed by the High Court or the Supreme Court that the inter-charges be refunded. Counsel next contends that inter-category charges cannot be

termed as ad hoc charges as inter-category charges are those charges which have been levied @5.5% on ground floor flats only except Janta category flats to provide cross subsidies to the Janta Flat Allottees. Counsel also submits that Chapter 13 of which costing is based makes it clear and since inter category charges are mentioned therein it would be considered to be part of the brochure, since the brochure of SFS Schemes did not lay down any specific charges which were to be charged by the DDA and the brochure only sets out the tentative cost based on Chapter 13 and the inter-category charges form part of the costing formula. Counsel for the respondent DDA has relied upon *Tamilnad Mercantile Bank Shareholders Welfare Association (I) v. Tamilnad Mercantile Bank Limited*, reported at (2008) 15 SCC 529 in support of her plea that where an order is ambiguous and was reasonably capable on more than one interpretation proceedings for contempt would not be maintainable.

23. To appreciate the rival contentions raised by the parties, facts in detail have been noticed in the paragraphs foregoing. The Division Bench has noticed in the judgment dated 23.7.1999 that after the decision of Full Bench of this Court in the case of *Smt.Sheelawant v. Delhi Development Authority*, reported at 1995 (1) ad (Delhi) 725, the controversy with regard to pricing of flats constructed by the DDA under various scheme had come to an end. The only question, which came up for determination before the Division Bench was the price of flats demanded by the DDA from the registrants/allottees under the Fifth Self Financing Housing Registration Scheme 1982. The Fifth Self-Financing Scheme provided for financial participation of the intending purchasers during the process of construction of the flats. The registrants initially deposited Rs.15,000/- for category III flats and Rs.10,000/- for category II flats. As per the terms and conditions, the mode of payment of cost of the flat was in installments

to be paid at regular intervals as per the brochure. The petitioners received demand-cum-allotment letter from DDA informing them that they had been declared successful for allotment of flats under the Scheme. The letters further contained details of locality, flat number, estimated cost of the flat and the terms of payment. The estimated cost of the flat under category II was Rs.3,89,200/- and under category III it was Rs.5,01,700/-. When the writ petitions were filed, the petitioners had claimed that they had paid 90% of the cost in installments, however, in November, 1993, the petitioners received demand letters against the fifth and the final installment wherein the final price of flats demanded under category II ranged between Rs.5,78,000/- and Rs.6,15,000/- and in category III it ranged between Rs.7,60,000/- and Rs.8,25,000/-. The petitioners had protested against the enhancement of cost of flats and in their representations they also sought details of actual cost of flats. Since the DDA did not favourably respond to the representations of the allottees a batch of writ petitions were filed. The Division Bench in its judgment has noticed that the grievance of the petitioners was that instead of realizing the price quoted in demand-cum-allotment letters the DDA had now issued demand letters to the petitioners requiring them to pay amounts much in excess of the estimated cost, which was highly exorbitant and arbitrary.

24. During the pendency of the writ petition, an application, being CM No.4447/1997, was filed by the petitioners seeking a direction to the DDA to deliver possession to all those petitioners, who made full payment excluding the equalization charges, the conversion charges and the interest being claimed by the DDA on both these charges. The request of the petitioners was allowed on 10.4.1995. However, the said order was modified on 28.11.1996.

25. The Division Bench in its judgment dated 23.7.1999 noticed that the petitioners did not seriously contest the formula adopted by the DDA for pricing the flats. However, relying on the decision of the Supreme Court in the case of ***DDA v. Self Financing Residence Welfare Association and Others***, Civil Appeal No.4402/1985, they vehemently contended that the petitioners were neither liable to pay equalization charges and the interest charges nor interest thereon as part of cost of the flat allotted to them. Relevant portion of the order of the Apex Court was quoted in the judgment of the Division Bench. Since the same is relevant to decide the present contempt petition, it would be appropriate to reproduce the same. The order dated 28.11.1996 reads as under:

“The lengthy and elaborate judgment of the High Court under appeal makes instructive reading in prohibiting the DDA from adding to the prices of the named flats and escalation termed as ‘equalisation and ad hoc charges’. From the terms of the model contract entered into by the DDA with the people who opted for the self financing scheme, charging of the said equalization and ad hoc charges is evidently totally missing. The DDA in support thereof has banked upon the justness of its cause and demand and has nowhere been able to project that to begin with, it was part and parcel of the cost factor. The High Court has seen through its design and has termed the venture as a camouflage. We see no reason to take a different view than the one taken by the High Court.”

26. The Apex Court had thus held that the equalization charges cannot be said to be part of cost of the flat and the Division Bench in the light of the decision of the Apex Court held that the equalization charges, which the DDA included in the cost of flats being demanded were not payable by the petitioners. The only other issue before the Division Bench was as to whether the charges towards conversion being demanded by the DDA for allotting flats on freehold basis in terms of its general policy instead of

lease hold basis under the original scheme could be recovered as cost of flat. Since the payment of conversion charges is not an issue in the present contempt petition it is not necessary for this Court to go into this question as even otherwise the Division Bench has held that being a uniform scheme the DDA was entitled to claim conversion charges. The Division Bench while deciding the writ petitions has held as under:

“.... The upshot of the above discussion is that the DDA is not entitled to include in the cost of flats allocated/allotted to the petitioners, in this and in other connected writ petitions, the equalization and conversion charges and consequently the interest element on the amounts charged under these two heads. The DDA will, however, be entitled to impose and recover the transfer charges prescribed under the transfer scheme from all the allottees in terms of the said scheme if it proposes to continue with the scheme. Accordingly, we direct the DDA to recomputed the price of each of the flats allotted to all the petitioners herein in terms of this judgment and issue fresh/final demand letters within four weeks from today. Since it is stated before us that majority of the allottees have already made payments in terms of the aforementioned interim orders, it seems that in view of the exclusion of the said two components as cost elements and interest thereon, some amount may become refundable to such allottees. If that be so, the refund shall accompany the fresh demand letter. It is, however, clarified that if any of the petitioners has not made full payment in terms of the said interim orders, the DDA will be entitled to charge interest at the nominal rate, which it is charging in other cases of non payment or delayed payment, except on the aforementioned two components and these allottees will make payment within four weeks of the receipt of fresh demand letters, failing which, the DDA will be at liberty to take action in accordance with the terms and conditions of allotment.....”

27. After passing of the order by the High Court, the DDA filed an appeal before the Apex Court, which was decided by a detailed judgment. In para 86 of the said judgment, the Apex Court has held as under:

“86. It may be reiterated that it is only those components which fall within the brochure of the DDA or within the purview of the statutory requirements can be included in the exercise of price fixation. To the said extent are the decision of the Delhi High Court in P.N.Verma (supra), Narsing Jain v. Union of India [(80) 1999 DLT 742] and DDA SFS Flat Owners Society v. UOI [AIR 2001 del 39].”

28. While expressing deep pain and anguish, petitioner has contended that all his communications had either remained unreplied or the reply was unsatisfactory despite his personal visits to the office of the DDA, the petitioner pointed out that DDA had willfully not complied with the orders as a fresh demand letter excluding the equalization charges and inter category charges was not issued at the first instance. The DDA had not shown separately the transfer charges/conversion charges, equalization and inter category charges had not been refunded with interest already charged on them and Rs.25,000/- as counsel fee. During the pendency of the matter Rs.25,000/- of counsel fee was paid to the petitioner.
29. During the pendency of this matter while giving explanation for the delay, the DDA also filed a break-up of the amount, which had been deducted and which was liable to be refunded to the petitioner. According to the DDA the petitioner was to be paid only a sum of Rs.34,990/-. As per the calculation submitted by the petitioner he was also entitled to refund of inter category charges and according to the petitioner a sum of Rs.1,29,993/- together with interest accrued thereon was payable. In response to the calculation of the petitioner DDA filed another affidavit wherein it was stated that there was no specific order by the Division Bench or by the Supreme Court to the DDA on the issue of inter category charges or any refund of the said charges if levied. The affidavit went on to explain that the inter category charges were those charges, which had

been levied @5.5% on ground floor flats only except janta category flats to provide subsidies to janta flat allottees. A categorical stand was taken that there was no direction to refund the inter category charges and, thus, no contempt had been committed and there was no defiance. Another stand has been taken by the DDA in the affidavit that no allottee, similarly placed as the petitioner, has been refunded inter category charges. The stand of the petitioner is that although the Division Bench may not have used the words 'inter category charges' but the Division Bench while relying on the observations of the Supreme Court has held that even ad hoc charges are not liable to be recovered.

30. According to the petitioner inter category charges fall in the category of ad hoc charges. The meaning of ad hoc as defined by the Chambers Advanced Dictionary or Oxford Dictionary is 'made for a particular purpose or led or created or done for a particular purpose as necessary'.
31. There is little room for doubt after the perusal of the judgment of the Division Bench that neither the question of inter category charges was raised by the petitioners nor pointed out by the DDA that inter category charges had been levied on the allottees. It is for this reason that the Division Bench had noticed that the petitioners had contested that they were neither liable to pay equalization and transfer charges nor interest thereon. The Division Bench noticed that since the question of equalization charges had already been decided by the Supreme Court the Division Bench ruled out that DDA was not entitled to recover equalization charges. As far as transfer charges were concerned the Division Bench noticed the stand of the allottees that transfer charges cannot form part of the cost of land and therefore its inclusion in the price of flat, being demanded, amounted to re-fixing the price of the flat on a different criteria. The only stand taken by the DDA in response to this

submission was that the scheme for conversion from lease hold to free hold was unanimously applied in all future allotments and was for the benefit of the allottees. The Division Bench has also noticed that under the scheme an allottee is bound to pay to the DDA the cost of flat. The relevant para is reproduced below:

“Under the scheme, an allottee is bound to pay to the DDA the cost of the flat, or in other words the price of the flat because, according to the dictionary meaning, the term “cost” is nothing but the “price paid or to be paid for something”. “Price” is the consideration which a purchaser is to pay to acquire a commodity, a flat in the instant case. “Price” comprises of cost of the product to the seller, i.e. what has gone out of his pocket to acquire it and may be something more by way of his margin of profit. The transfer charges, which are sought to be recovered from the petitioners are, strictly speaking, not in the nature of an expense, liable to be charged by the DDA, spent on the flats and thus includible as cost of the flats. It is an ad hoc charge under an independent transfer scheme, being charged on leasehold properties for converting these into freehold.”

[Emphasis added]

32. Although while noticing the fact that the cost of the flat strictly speaking are not in the nature of expense liable to be charged by the DDA, the Division Bench had observed that the conversion charges is for the benefit of all the converted owners the Division Bench allowed the DDA to charge conversion charges. The Division Bench has also held that “.... *The upshot of the above discussion is that the DDA is not entitled to include in the cost of flats allocated/allotted to the petitioners, in this and in other connected writ petitions, the equalization and conversion charges and consequently the interest element on the amounts charged under these two heads. The DDA will, however, be entitled to impose and recover the transfer charges prescribed under the transfer scheme from all the*

allottees in terms of the said scheme if it proposes to continue with the scheme.”

33. The rational of the judgment of the Division Bench wherein the order of 28.11.1996 passed by the Supreme Court has been quoted is that as per the self-financing scheme charging of equalization and ad hoc charges is totally missing. The stand of the DDA before the Division Bench were as under:

“The petition is resisted by the DDA, mainly, on the grounds that : (i) the dispute raised in the writ petition is in the realm of a contract and no case of arbitrariness or discrimination having been made out, it is not a case for interference by the court in exercise of writ jurisdiction under Article 226 of the Constitution of India: (ii) the cost announced and indicated in the letter of allocation was based on the expenditure estimated at the time of announcement of scheme and the final cost could not be worked out then, which could be done only after completion of construction of flats and after tabulation of the expenditure incurred by various branches: (iii) the costing policy of the DDA is based on a rational and scientific basis and the price of each flat has been arrived at after meticulous calculations taking into account all relevant factors and (iv) it was clearly stated in the brochure that the DDA had reserved its right to alter the terms and conditions of the allotment and the costing of flats constructed at different times and allotted at different periods of time, the petitioners as such could not now complain of enhancement in the final cost of flats and at any rate the disputes raised by the petitioners have already been considered and decided in a number of decisions of this court, particularly in Sheellawanti’s case (supra) and, therefore, need not be gone into afresh. Along with the affidavit, charges showing estimated expenditure and final costing have been filed.”

34. It may be noticed that even at that stage, the DDA did not bring to the notice of the Court that in addition to equalization charges and conversion charges the allottees were liable to pay another hidden cost, which was inter category charges. In my view, a litigant must place all material facts

and information relevant to the dispute and appear before Court with clean hands and not suppress and withhold material facts. The petitioners were unaware that in addition to equalization charges and conversion charges the DDA had also imposed inter category charges and, thus, obviously, there could have been no finding specifically on inter category charges. But certainly in the order passed by the Supreme Court on 28.11.1996 the DDA was not permitted to charge either the equalization charges or ad hoc charges. While it was the stand of the DDA that inter category charges have been levied throughout and even till date the onus was on the DDA when the matter came up for hearing before the Division Bench of this court and then before the Apex Court to state that in addition to the above charges inter category charges were also being levied on the allottees. The word ad hoc has been defined in Blacks Law Dictionary “as formed for a particular purpose” and as per the Legal Thesaurus, Deluxe Edition, the word ad hoc has been defined as “extemporaneous, for the sake of, for this case alone, improvised, in consideration of, on account of”. As per the stand taken by the DDA in its additional affidavit, which has been filed, inter category charges are not part of ad hoc charges. According to the additional affidavit dated 17.1.2011 inter category charges are those charges, which are levied at the rate of 5½% of the total cost of dwelling units/flats to be recovered from the allottees under the category of SFS, MIG and LIG categories on the ground floor, and are to be deposited in a separate fund for the benefit of EWS Housing Schemes. No doubt the aim and object is laudable. It is a levy to be recovered from the allottees under different categories, which have been allotted flats on the ground floor and for the benefit of EWS Housing Scheme. But there is no explanation as to why DDA was shy to

bring to the notice of the allottees, or the Court that they were charging inter category charges.

35. The stand taken by the DDA in the contempt petition is to be read in conjunction with the stand taken by the DDA in the writ petitions in which the order dated 23.7.1999 was passed. According to the DDA the cost, which was announced was based on the expenditure estimated at the time of announcement of the scheme. It was contended before the Division Bench that the costing policy of the DDA is based on a rational and scientific basis. The particulars of each flat had been arrived after a meticulous calculations and taking into account all the relevant factors. Even at that stage DDA did not spell out what were the charges levied by them on the allottees in addition to the cost of the land and the construction. It is primarily for this reason that the order dated 28.11.1996 noticed that the DDA was prohibited from adding to the price of flats the escalation termed as equalization and ad hoc charges. The Division Bench also noticed that the people who had opted for self-financing scheme, charging of said equalization and ad hoc charges was evidently totally missing. In my view as neither the inter category charges were brought to the notice of the Division Bench or to the Supreme Court, there was no opportunity for the Court to categorically disallow the DDA from charging the same. But since inter category charges would be included in ad hoc charges having regard to the definition of the word ad hoc and the purpose for which inter category charges are levied the stand taken by the DDA cannot be appreciated. The reading of the judgments would make it clear that the courts were of the view that additional charges sought to be levied by the DDA on the allottees had to be struck down. The Division Bench held that the transfer charges, sought to be recovered from the petitioner, are directly speaking not in the nature of an expense liable to

be charged by the DDA spent on the flats and thus not includable as cost of the flats. The Division Bench held that it is an ad hoc charge under an independent transfer scheme and going by the rational of the Division Bench inter category charges are also not in the nature of an expense liable to be charged by the DDA. It is an ad hoc charge, not related to the cost of land or cost of construction.

36. A query was raised to counsel for the DDA as to whether in any of the pleadings before the Division Bench or the Apex Court, the DDA brought to the notice of the Court that they had also levied inter category charges on the allottees. In response to the query raised, counsel for the DDA submits that since the writ petitions were filed as far back as in the year 1995, DDA had not been able to lay their hands on the pleadings, however, to the best of their knowledge and information the DDA at no point of time had pointed out to the Division Bench or to the Supreme Court that the DDA had also levied inter category charges on the allottees.
37. While the petitioner, who appears in person has all alone submitted that the defendant has violated the orders knowingly, deliberately and in a pre-planned manner and the defiance of the DDA is writ large on the face of the record. Counsel for the DDA has submitted that neither the judgment of the High Court nor the Supreme Court, has referred to inter category charges and if at all there is non-compliance, the same is neither deliberate nor intentional and more so the DDA cannot be held guilty of contempt, where an order is ambiguous or reasonably capable of more than one interpretation for which reliance was placed on **Tamilnad Mercantile Bank Shareholders Welfare Association (Supra)**. It has been repeatedly held by the Apex Court that for holding the respondent guilty of contempt it has to be established that the violation is willful and power to punish under contempt is resorted to when there is clear violation of the

court's order. The Apex Court has also held that punishment for contempt has far reaching consequences and such powers should be invoked only when a clear case of willful disobedience of the Court's order has been made out. In the case of **Kapildeo Prasad Sah (Supra)** it was held that disobedience of the Court's order strikes at the very root of the rule of law on which Indian system of governance is based. Power to punish for contempt is for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice..... Jurisdiction to punish for contempt exists to provide ultimate sanction against the person, who refuses to comply with the court's order or disregards the orders continuously. The purpose for noticing the facts in detail and the chronological events in this matter are that the dispute between the parties has a long history. The orders and judgments have been extracted in detail with a view to crystallize whether the contempt which is alleged against the respondent, is made out or not. The stand taken by the DDA that in the judgments there was no reference of inter category charges and also the stand that when the two interpretations are possible, it cannot be said that the DDA has willfully disobeyed the orders. The stand taken by the DDA is without any force in view of the fact that the DDA is a State and the State must act in a fair and just manner. The judgment of the Division Bench has made it abundantly clear that additional charges sought to be levied by the DDA on the allottees had to be struck down. The Division Bench has also held that transfer charges sought to be recovered from the petitioner are strictly speaking, not in the nature of an expense, liable to be charged by the DDA, spent on the flats and thus includible as cost of flat with the same rationale inter category charges are not part of the cost of the flat. It is the DDA, who had levied these charges, hence, it was for the DDA at that

stage to have informed the Division Bench that such a charge had been levied on the allottees, if not at that stage at a later stage, especially after filing of the contempt petition and after receiving ample number of letters from the petitioner. The DDA remained silent on levy of inter category charges on the allottees.

38. During the course of hearing of this matter the Court in its order dated 17.08.2010 had observed that *prima facie* reading of the judgment of the Apex Court and the Delhi High Court would show that DDA was not entitled to recover inter category charges from the petitioner. In spite of this observation, I find the attitude of the DDA has been extremely defiant.
39. In my view DDA has in fact wilfully disobeyed the order of the High Court, as confirmed by the Supreme Court of India. Assuming if the DDA was under the impression that there are two interpretations with respect to the order which has been passed, it was open for the DDA to seek clarification at the first opportunity available. Further the stand sought to be raised by the DDA in the contempt proceedings, seems to be an afterthought, as DDA has failed to take this defence in response to various letters written by the petitioner to the DDA at any point of time. The impression gathered by this court is that DDA tried hard to tire out the petitioner, as he had been persistently writing letters to the DDA and had been raising uncomfortable questions to them; and the DDA has decided to teach the petitioner a lesson and made him to run from pillar to post. In case the DDA was of the view that the inter category of charges were not covered by the decision of the Division Bench, at the first opportunity available, which is soon after passing of the order of the Division Bench dated 23.7.1999 and the order of the Supreme Court dated 13.12.2007, they should have informed the petitioner that they have levied

the inter category charges on the petitioner and they are not bound to refund the same, as they are not covered by the orders of the High Court and the Supreme Court. The power of contempt is to be used sparingly. This court is conscious of the fact that power of contempt must be exercised reluctantly and with great care and caution and only with the object to ensure that dignity and authority of the Court of law is not impaired.

40. In my view respondent has committed contempt by imposing inter category charges on the petitioner and despite repeated requests not refunded the same. Respondents must purge the contempt by refunding inter category charges levied on the petitioner with 8% interest within six weeks of receipt of this order, failing which, the concerned respondents are directed to remain present in court for addressing arguments on punishment.
41. List on 07.09.2012 for arguments on punishment.

G.S. SISTANI, J.

JULY 13, 2012

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