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

+ W.P.(C) 4160/2012 & CM APPLS. 9249/2012, 9250/2012, 12263/2012, 12301/2012, 19758/2012, 6718/2013

SMT.MONIKA SINGH Petitioner
 Through Mr. Uday Pal Singh, Husband of
 petitioner.

versus
 D.D.A. Respondent
 Through Mr. Ajay Verma, Advocate for DDA.
 Ms. Rachna Gupta, Advocate for
 applicant.

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Date of Decision: 06th August, 2013

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the action of respondent-DDA in demolishing and taking over possession of about 1100 sq. yards of property bearing Old No. B-339 / New No. B-1179, New Ashok Nagar, Delhi – 110096.

2. Mr. Uday Pal Singh, husband of the petitioner, who appears in person, submits that the officials of respondent-DDA in collusion with Mrs. Sudha Prasad and a land grabber Mr. Prempal Singh Sirohi as well as some officials of Residents Welfare Association of B-Block, New Ashok Nagar, Delhi have not only demolished petitioner's property but also dispossessed

her from a large portion of the same.

3. He further contends that the impugned action was taken by certain officials of respondent-DDA by way of 'revenge' against imposition of penalty of Rs. 25,000/- by the Central Information Commission on an appeal filed by the petitioner's husband for non-supply of information under the provisions of Right to Information Act, 2005.

4. Mr. Uday Pal Singh further submits that DDA had no jurisdiction to demolish or takeover possession of petitioner's land as the property in question had been denotified as development area under Section 12(1) of the Delhi Development Authority Act, 1957 (for short 'DDA Act') and the colony had been regularized by the Government of NCT of Delhi.

5. Mrs. Sudha Prasad who has filed an impleadment application in the present writ petition claims to be the owner of the property in question. It is the case of Mrs. Sudha Prasad that the petitioner and her husband are trespassers who have forged title documents and have forcibly taken over possession of the property in question and a First Information Reprot already stands registered in this regard. Ms. Rachna Gupta, learned counsel for Mrs. Sudha Prasad states that the applicant has also filed a suit being CS(OS) 1181/2008 under Section 6 of the Specific Relief Act, 1963 for recovery of possession against petitioner and her husband.

6. Mr. Ajay Verma, learned counsel for respondent-DDA states that land in question was acquired vide Award No.39/82-83 and was placed at DDA's disposal vide Notification dated 14th October, 1982. Mr. Ajay Verma submits that as DDA is the land owning agency, it is the DDA's duty to remove encroachment on any vacant land, notwithstanding denotification under Section 12(1) of DDA Act. He further states that after denotification

under Section 12(1) of DDA Act only the building activities and enforcement of building bye laws stand transferred to MCD. Mr. Ajay Verma specifically denies the allegation of collusion and/or 'revenge action' by respondent-DDA.

7. Mr. Ajay Verma further submits that in order to grab the Government land, fresh unauthorised construction was carried out by petitioner and her husband on the land in question. Even a police complaint was filed with the DCP (East), Delhi. Mr. Verma contends that it was only the fresh construction which was demolished by DDA, save some old construction existing on about 100 sq. yards, as it was apparently protected under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

8. Mr. Verma further contends that portion of the land in question, where old construction exists is also required under Right to Way of 45 M Master Plan Road and will be removed after taking a policy decision regarding all old constructions falling in the said Right to Way. Therefore, he submits that petitioner is not entitled to protection under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

9. Having heard learned counsel for parties, the admitted position that emerges is that the property in question is situated in an unauthorised colony, namely, New Ashok Nagar, on government land. Further, demolition was carried out by the DDA on 11th July, 2012, i.e., prior to any alleged final regularisation order being passed by the Government of NCT of Delhi.

10. The petitioner in the present petition has suppressed vital facts from this Court and has consequently not approached this Court with clean hands.

Petitioner failed to disclose that a suit for recovery and possession under Section 6 of Specific Relief Act by Mrs. Sudha Prasad is already pending. Moreover, as pointed out by learned counsel for Mrs. Sudha Prasad, petitioner has further failed to disclose that a First Information Report stood registered against the petitioner and her husband-Uday Pal Singh wherein charge-sheet under Sections 188, 193, 199, 380, 448, 467, 468, 471 and 120B IPC has been filed by the police and the case is pending before Metropolitan Magistrate, Karkardooma Courts, Delhi.

11. In view of aforesaid, this Court is of the opinion that the petitioner has suppressed material facts. The Supreme Court in ***K.D. Sharma vs. Steel Authority of India Limited and Others***, (2008) 12 SCC 481 has held as under:-

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. in the following words: (KB p. 514)

“.... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But

it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

(emphasis supplied)

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.*

37. *In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (KB pp. 495-96)*

“... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

38. *The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary*

jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open.....”.

12. Further, the factum of possession of petitioner over the land in question prior to the cut off date of 08th February, 2007 stipulated in the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 seems doubtful to this Court as all the documents including General Power of Attorney in petitioner’s favour are of 2008. Consequently, this Court is prima facie of the view that the land has been brought under petitioner’s possession or has been encroached upon only in Mid 2008. In fact, the petitioner has herself stated in this writ petition that the electricity connection was applied and energised in June, 2008 whereas water connection was installed on 15th April, 2010. Also the petitioner has stated that she has been paying house tax only since 2008 onwards. In fact, issues regarding that who has been in possession of the land in question has been framed in CS(OS) 1181/2008 (Issues No. 3 & 6).

13. Another curious aspect is that petitioner has stated that she purchased only 900 sq. yards and then goes on to claim that she is in possession of 1300 sq. yards—for which only a bald statement is made in para 5 of petition that *“the adjacent 400 sq. yards land out of the same Khasra was already in possession of the petitioner”*. How and on what basis petitioner came into possession of 400 sq. yards. has not been revealed. Even MCD house tax receipt annexed at page 36 records shows that tax has been paid with regard to 900 sq. yards only. What is further astonishing is that petitioner, then further goes ahead and claims herself to be owner of the entire 1300 sq. yards in various representations made to various authorities,

like the representation dated 10th September, 2012 to Lieutenant Governor and other authorities, annexed with rejoinder at page 605.

14. This Court's predecessor passed an order dated 07th August, 2012 whereby a stay application filed by petitioner was dismissed against which a LPA No.591/2012 was filed, which also stands dismissed vide order dated 04th September, 2012, which is reproduced hereinbelow:-

“1. The writ petition filed by the appellant is still pending. Along with the writ petition, an interim application was filed seeking restraint order against the respondent from digging the earth and raising a boundary wall in the property bearing No. B-1179 (Old No. B-339), built on a plot measuring 1300 sq. yards out of Khasra no. 389/263/1, village Chilla Saronda Banger, Shahdara, Delhi, presently known as New Ashok Nagar. The learned Single Judge has dismissed this application on the ground that the land in question is not protected from any provision of law including Delhi Law Special Provision Act, and since it is the DDA land, the DDA has the right to protect its own land. We see no reason to interfere with such an order passed by the learned Single Judge.

2. It is submitted by Mr. Datar that colony in question is going to be regularized and orders are expected in this behalf in near future. Depending upon the kind of orders likely to be passed and whether the petitioner is entitled to any protection because of those orders, it would be open to the petitioner to approach the concerned authorities.

The appeal stands disposed of with these observations.”

(emphasis supplied)

15. The order records that petitioner is not protected from any provision of law including the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. Order dated 04th September, 2012 was not

challenged and has attained finality. In view of above, this Court is of the view that petitioner cannot claim any protection of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

16. Further, as the allegations of collusion and vendetta have been denied by DDA, Mrs. Sudha Prasad and Mr. Prempal Singh Sirohi, this Court is of the view that present writ petition involves disputed questions of fact. Moreover, as admittedly there is a serious dispute as regards title and possession between the petitioner and Mrs. Sudha Prasad [applicant herein and petitioner in W.P. (C) 4451/2012], this Court is of the opinion that the present writ petition involves disputed questions of fact which cannot be examined under Article 226 of the Constitution of India.

17. In the opinion of this Court, in the facts of the present case a person seeking any right, title or interest to a vacant land in an unauthorised colony should first seek declaration of title to such land. It is, therefore, not possible for this Court to grant any relief in the present petition.

18. Consequently, present writ petition is dismissed. All applications also stand disposed of. Needless to say, civil court, if approached, would decide the matter on its own merits and without being influenced by any observation made by this Court.

MANMOHAN, J

AUGUST 06, 2013

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