

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

%

Date of decision: 19th January, 2015 .

+

LPA No.7/2015

BINDU DHANWAL & ORS

.... Appellants

Through: Mr. Vanshdeep Dalmia with Mr.
Hemant Raj Phalpher & Mr. Parth
Goswami, Advs.

Versus

**BALWINDER KUMAR, VICE CHAIRMAN,
DDA & ORS**

..... Respondents

Through: Mr. Dhanesh Relan with Mr. Arush
Bhandari, Adv. for DDA.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This appeal impugns the orders dated 19th November, 2014 and 6th January, 2015 of the learned Single Judge of this Court in Cont.Cas.(C) No.712/2014 filed by the respondent no.5 Smt. Karuna Gupta against the respondents no.1 to 4 being the officials of the Delhi Development Authority (DDA).

2. The appeal was filed on 7th January, 2015 itself and was mentioned for urgent listing and was taken up for hearing at about 1315 hours. It was then the case of the counsel for the appellant that the copy of the order of previous day i.e. 6th January, 2015 impugned in the appeal was not even ready or available till then and that in the meanwhile the property of the appellant was being demolished by the DDA in compliance of earlier order dated 19th November, 2014 in the contempt case. The counsel for the DDA also appeared on advance notice on 7th January, 2015. Since copy even of one of the impugned orders was not available till then, we while directing the appeal to be taken up for hearing on 12th January, 2015, directed that no further demolition of the property in question shall be undertaken.

3. We heard the counsel for the appellants as well as the counsel for the officials of the DDA on 12th January, 2015 and reserved orders. The file of the contempt case from which this appeal arises has also been requisitioned.

4. The contempt case from which this appeal arises emanated from the order dated 4th April, 2014 in W.P.(C) No.2247/2014 filed by the respondent no.5 Smt. Karuna Gupta, impleading North Delhi Municipal Corporation, DDA and the appellant no.1 Ms. Bindu Dhanwal respondents thereto. It was

the case of the respondent no.5 / writ petitioner, (i) that she was the resident of ground floor flat No.A-4/99 in Priyadarshni Apartments, Paschim Vihar, New Delhi; that the appellant no.1 was in occupation of the first floor flat no.A-4/100; (ii) that the appellant no.1 had unauthorizedly raised construction of a second as well as third floor of the property; and, (iii) that though the respondent no.5 / writ petitioner had complained against the said unauthorized construction but no action had been taken. Accordingly the writ petition was filed seeking a direction to the North Delhi Municipal Corporation and the DDA to take action with respect to the unauthorized constructions comprising of second floor and third floor above flat no.A-4/100 in Priyadarshini Apartments, Paschim Vihar, New Delhi. The said writ petition came up before the learned Single Judge, it appears for the first time, on 4th April, 2014 when the counsels for the North Delhi Municipal Corporation and DDA appeared on advance notice. The learned Single Judge disposed of the writ petition on the same day, without even serving notice thereof on the appellant no.1, and on the statement of the counsels for North Delhi Municipal Corporation and DDA that the building activities of the subject Society were still with the DDA and North Delhi Municipal Corporation had no role and that DDA will take necessary steps to examine

the complaint filed by the respondent / writ petitioner and take appropriate action thereon, by directing the DDA:-

“to examine the complaint submitted by the petitioner and if it is satisfied that there exists illegal / unauthorized construction in the subject flat owned by the respondent no.5, then appropriate action for removal of unauthorized construction shall be taken after issuance of notice to the respondent no.5 in accordance with law. A written intimation of the decision taken by the respondent no.2/DDA shall be communicated to the petitioner and the respondent no.5 within six weeks from today.”

5. The respondent no.5 / writ petitioner, on or about 11th September, 2014 filed the contempt case from which this appeal arises pleading that though the order dated 4th April, 2014 supra had directed the DDA to take action for unauthorized constructions within six weeks thereof but no action had been taken; that due to the continuance of the unauthorized construction the ground floor flat of the respondent no.5 / writ petition was being damaged.

6. When the said contempt case came up before the learned Single Judge on 27th October, 2014, the DDA informed that action in compliance of the order dated 4th April, 2014 had already been taken. Thereafter a Status Report dated 15th November, 2014 was filed stating that sealing-cum-

demolition order for the entire Society including flat no.A-4/100 had been passed on 21st May, 2014 and illegal unauthorized construction over flat no.A-4/100 had already been partially demolished and sealed on 7th October, 2014. The contempt case was thereafter listed before the learned Single Judge on 19th November, 2014, when, finding that complete demolition action as warranted by the order dated 4th April, 2014 had not been carried out and further finding that though the original construction comprised of ground and first floor only but two full-fledged floors had been unauthorizedly constructed above the first floor and that only partial demolition action had been taken till then, the learned Single Judge directed the DDA to carry out complete demolition of both second and third floors as the same were putting additional load on the structural foundation of the entire property.

7. It is then that the appellant no.1 along with respondents no.2 & 3 i.e. Dhanno Devi and Ram Niwas claiming to be owners of the unauthorized construction ordered to be demolished, filed an application before the learned Single Judge, for being impleaded as a party to the contempt case and for recall of the order dated 19th November, 2014. The said application came up before the learned Single Judge on 12th December, 2014 when the

arguing counsel for the appellants did not appear and the application was adjourned to the date already fixed of 8th January, 2015. The appellants filed another application for early hearing of their impleadment application and on which arguments were heard and order reserved on 24th December, 2014. The learned Single Judge, vide order dated 6th January, 2015 dismissed the application of the appellants for impleadment and for recall of the order dated 19th November, 2014 and *inter alia* against which this appeal has been filed.

8. It appears that on 7th January, 2015 itself, in compliance of the order dated 19th November, 2014 commenced demolition of the second and third floor over the property and when the appeal was mentioned for hearing as aforesaid and stay of demolition granted.

9. The learned Single Judge has dismissed the application of the appellants for impleadment and for recall of the order dated 19th November, 2014 finding / observing / holding:-

- (i) that there was no merit in the contention of the appellants that in contempt case no direction as issued vide order dated 19th November, 2014 could have been issued; the said direction was

merely consequently to the order dated 4th April, 2014 in the writ petition and of which contempt was averred;

- (ii) that the appellant no.1, though respondent in the writ petition was not required to be impleaded as a respondent in the contempt case;
- (iii) that the appellant no.1 if aggrieved from the order dated 4th April, 2014 in the writ petition, ought to have filed an application for recall of that order in the writ petition and could not have sought impleadment in the contempt;
- (iv) that moreover the appellant if aggrieved with the order of demolition had the remedy of assailing the same before the Appellate Tribunal MCD;
- (v) that the Court, in the contempt case, was merely implementing the order dated 4th April, 2014 in the writ petition;
- (vi) that it was clear from the photographs that two full-fledged floors had been constructed unauthorizedly on a property which was intended to comprise of ground and first floor only.

10. The counsel for the appellants has found fault with the order dated 19th November, 2014 on the ground of being beyond the contempt jurisdiction and by placing reliance on *V.M. Mahohar Prasad Vs. N. Ratnam Raju* (2004) 13 SCC 610 laying down that the Contempt Court cannot pass any supplemental order to the main order. Fault is also found in the order dated 6th January, 2015 dismissing the application of the appellants for impleadment and for recall of the order dated 19th November, 2014 contending that since the order dated 4th April, 2014 as well as the order dated 19th November, 2014, though affecting the rights of the appellants, have been made behind the back of the appellants, the appellants were necessary and property parties and entitled to be heard.

11. We have considered the controversy. Besides legalese, the gravamen of the matter is unauthorized construction. It is undisputed that the original construction of the property was of two floors i.e. ground and first floors only. It is also undisputed that a complete second and a complete third floor had been constructed. Though the counsel for the appellants admits that the construction of the third floor is indeed unauthorized, he prefers to call the construction of the second floor not as unauthorized but as irregular. However, when we asked him to show any document to the effect that any

part of the second floor is authorized or was in existence when the first floor was acquired by the appellant No.1, no answer was forthcoming. We see no reason to not believe the statement of the respondent No.5 / writ petitioner duly supported by the counsel for the DDA that the entire construction of the second floor is also unauthorized. This appeal though arising from contempt proceedings, it cannot be lost sight of that the contempt alleged is of an order in a writ petition under Article 226 of the Constitution of India. Any interference by us as is sought, would have the effect of our coming in the way of demolition of construction which is patently unauthorized. We are reluctant to, while exercising our judicial powers, perpetuate an illegality. The Supreme Court in *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994) 1 SCC 1 took note of the fact that the Courts today are inundated with land grabbers and persons indulging in unauthorized construction and sounded a word of caution against allowing the Courts to be used for retaining illegal gains indefinitely. Similarly, in *Dalip Singh Vs. State of U.P.* (2010) 2 SCC 114 it was held that to meet the challenge posed by the new creed of litigants who shamelessly resort to falsehood and unethical means, the Courts from time to time have to evolve new rules. Unless the Courts keep pace with the times and with the situations which they are called upon to meet today, the

Courts would be failing in their duty. Judge Learned Hand's observations in 52 HLR 361 (1939) that the Judge must discover some composition with the dominant needs of his times, were approved of by our Supreme Court in *Bandhua Mukti Morcha Vs. Union of India* (1984) 3 SCC 161 and it was held that the Court needs to balance the authority of the past with the urges of the future. Thus, once the construction is found to be unauthorized and patently illegal, the Courts cannot allow their process to be abused for preserving such unauthorized construction.

12. With the aforesaid preface, we proceed to examine the contentions of the counsel for the appellants. The first contention, as aforesaid, is that the learned Single Judge in exercise of contempt jurisdiction has passed an order of demolition. It is argued that in the writ petition, no demolition was ordered.

13. The aforesaid contention is however on an erroneous reading of the order dated 4th April, 2014 in the writ petition. The writ petition, as aforesaid, was filed seeking mandamus to the DDA to perform its statutory duty of removal of unauthorized construction. This Court disposed of the writ petition with a direction to the DDA to, in accordance with law, take

action with respect to the unauthorized construction, if any. The said action which was directed to be taken would necessarily include an order of demolition and demolition of the unauthorized construction. Thus, it cannot be said that the order dated 19th November, 2014 in the contempt case in any way enlarged the order in the writ petition. The DDA, by 19th November, 2014 when the contempt petition came up for hearing, had already passed an order of demolition but had not carried out the demolition, which also it was required to carry out in accordance with the order dated 4th April, 2014. The order dated 19th November, 2014 which again directed such demolition, is not akin to the order which ***V.M. Mahohar Prasad*** (supra) could not have been passed in contempt jurisdiction. The scope of contempt proceedings, besides being to punish the violators of the order / direction of the Court, is also enforcement of the directions / orders of the Court. Reliance, if any need in this regard can be placed on ***Subrata Roy Sahara Vs. Union of India*** (2014) 8 SCC 470 reiterating that contempt jurisdiction extends to enforcement of courts orders. It would be travesty of justice to hold that a person who has obtained an order in his favour from the writ court, can only have punished the persons who have not complied with that order but cannot enjoy the fruits of the orders.

14. Faced therewith, the counsel for the appellants contended that though the order dated 4th April, 2014 directed action with respect to unauthorized construction to be taken after issuance of notice to the appellant No.1 but it was not done so.

15. Per contra, the counsel for the DDA contends that the action with respect to the unauthorized construction had been initiated as far back as in the year 2013 and a copy of the order dated 29th May, 2014 of demolition was also served on the appellant No.1. He has in the Court handed over a copy of the said order and which is found to be addressed to the appellant No.1 also.

16. The counsel for the appellants of course controverts.

17. It is however the admitted position that in compliance with the order dated 4th April, 2014 in the writ petition, on 7th October, 2014 demolition was partly carried out. The photographs of the said demolition action show the demolition then carried out to be substantial. In any case, it was not unnoticeable. We have thus enquired from the counsel for the appellants, whether not the appellants, if not earlier, at least on 7th October, 2014 from the action of demolition, became aware of the proceedings.

18. We have further enquired that even if it is the contention of the appellants that prior to the order dated 29th May, 2014 of demolition, no hearing was given to the appellants, why the appellants immediately after 7th October, 2014 did not approach the Appellate Tribunal, MCD with the said grievance and why did the appellants waited till the passing of the order dated 19th November, 2014 which merely directed completion of the demolition action.

19. The counsel for the appellants is answerless.

20. It is quite clear that the appellants, knowing fully well that the illegality in the form of unauthorized construction perpetuated by them was indefensible, were satisfied in having the said unauthorized construction only partially demolished, perhaps in the hope of again unauthorizedly repairing the damage and that further demolition action would not be carried out. Whatever the appellants are urging today, they could have, if aggrieved, urged immediately after 7th October, 2014. The appellants rather succeeded in obtaining an order from us from 6th January, 2015 of stay of demolition; but now having gone through the record, we do not find any ground to interfere with the orders of the learned Single Judge. The

contention of the counsel for the appellants that the DDA did not give notice to the appellant No.1, before proceeding with the action for demolition of unauthorized construction, in the facts and circumstances aforesaid, is unbelievable. Moreover, the said plea also could have been taken in appeal.

21. The same is the answer to the other grounds urged, of the appellants being a necessary or a proper party to the contempt proceedings. We fail to see, as to what purpose the presence of the appellants in the contempt case would serve. The grievance, if any of the appellants should have been from the order dated 4th April, 2014. The appellants have not made any application for recall of that order or for impleadment in that writ petition. As long as that order remains, DDA is bound to comply therewith and in compliance has to carry out the demolition action.

22. The counsel for the appellants next contended that the Co-operative House Building Society which has allotted the flats, itself has filed writ petition No.8069/2014 in this Court for regularization of the second floor which has been constructed in a large number of properties in the colony and there is a stay of demolition in the said writ petition also. However, the counsel himself is not in possession of any such order.

23. The counsel for the DDA controverts and states that the writ petition has rather been disposed of with a direction to the DDA to consider the claim for regularization. He denies that there is any stay.

24. The counsel for the appellants is unable to controvert.

25. We do not approve the aforesaid conduct of the counsel for the appellants, of making misstatement before this Court, to somehow or the other procure an order of stay.

26. The counsel for the appellants then contends that the appellants only have been singled out and no action is being taken with respect to the second floor unauthorizedly constructed in most of the other properties.

27. This submission of the counsel for the appellants is also not borne out from the order dated 29th May, 2014 of demolition which is with respect to a large number of properties in the colony. The counsel for the DDA also states that demolition action with respect to all the properties is being taken, of course in a phased manner.

28. The counsel for the appellants in the end relies on The National Capital Territory of Delhi Laws (Special Provisions) Amendment Bill 2014, to contend that unauthorized construction is protected thereunder. The counsel however is himself not in possession of the said legislation. There are no pleadings in this regard. There is nothing to show that the subject construction is covered by the said legislation. Moreover, the said defense if any ought to have been taken in the writ petition. It cannot be lost sight of that there is no challenge to the order directing demolition of the subject construction. Thus, the said plea also does not come to the rescue of the appellants.

29. We therefore do not find any merit in this appeal and dismiss the same. We had while reserving orders continued the interim order dated 6th January, 2015. Needless to state that with the dismissal of the appeal, the said stay stands vacated. To balance equity, we direct the DDA to now, after one week herefrom and within a further period of one week therefrom, comply with the order dated 19th November, 2014 of the learned Single Judge.

30. The contempt file which was requisitioned to this Court be forthwith returned.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JANUARY 19, 2015
'pp/bs'