

\$~11

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 19th November, 2015

CM(M) 130/2015

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr.Sanjeev Rajpal, Advocate

versus

MOHD.RAZAQ & ORS

..... Respondents

Through: Mr.H.L.Narula, Advocate

PRATIBHA RANI, J. (Oral)

CM No.18712/2015 (Early hearing)

The prayer of the petitioner made in the above captioned application for early hearing is allowed. Date 8th December, 2015 already fixed in the matter, stands cancelled.

CM(M) 130/2015

1. The petitioner/DDA has filed the present petition impugning the order dated 4th June, 2013 passed by learned Executing Court in Ex.No.05/2011 as well as the order dated 7th July, 2014 passed by learned Appellate Court in MCA No.27/2013 upholding the order dated 4th June, 2013 passed by the learned Executing Court.

2. The grievance of the petitioner is that DDA has complied with the decree dated 22nd February, 2010 passed in RCA No.12/2009 allotting a plot to the decree holder but with direction to pay ₹ 33,40,220/-. The decree holder was never allotted any alternative plot hence allotment cannot be

without payment nor there could be any question of restoration of possession without there being any allotment made in favour of the decree holder at any stage. Hence, the direction given by the learned Executing Court vide impugned order to withdraw the demand of ₹ 33,40,220/- and restore the possession to the decree holder, which has been maintained by the learned Appellate Court in MCA No.27/2013 being illegal and perverse, warrants interference by this Court in exercise of its extraordinary jurisdiction.

3. On behalf of the respondent/decreed holder, Mr.H.L.Narula, Advocate has submitted that present petition is nothing but gross abuse of the process of law. He has submitted that the decree passed in RCA No.12/2009 has attained finality. Further during pendency of the execution petition DDA has been repeatedly seeking time for compliance of the decree but while issuing allotment letter raised a demand of ₹ 33,40,220/- without any basis in gross contempt of the orders passed by the Court hence the petition may be dismissed.

4. With a view to appreciate the rival contentions it is necessary to extract the relief granted to the decree holder vide decree passed in RCANo.12/2009 by the learned ADJ on 11.02.2010 :-

“By way of decree of declaration allotment of plot No.D-1/130, Rewari Line Industrial Area Phase-II, Mayapuri, New Delhi in the name of defendant No.2 is declared to illegal, void and without jurisdiction and the plaintiff is held entitled to Delhi allotment of alternative site/plot as against stall/shop no.23, Motor Market, Kabari Bazar, Jama Masjid, Delhi.

By way of decree of mandatory injunction and possession, defendant no.1 and defendant no.2 (now represented by his legal representatives-respondents no.3 to 23 (except who have left this world) are directed to restore allotment of alternative plot in the name of the plaintiff- now represented by his legal representatives or to allot any other plot in lieu of the plot surrendered by the plaintiff and also

deliver possession thereof.

By way of decree of perpetual injunction, defendant-respondent No.1 is restrained from executing any conveyance deed in favour of defendant No.2 or his legal representatives, in respect of plot No.1/130, Rewari Line, Industrial Area, Phase-II, Mayapuri, New Delhi.”

5. The above decree was challenged by Mohd.Abul Qayum,JD No.2 (since deceased) by filing appeal bearing RSA No.124/2010 before High Court of Delhi which has been dismissed vide judgment dated 9th February, 2011.

6. SLP No.16762/2011 preferred against the order of this Court passed in RSA No.124/2010 has also been dismissed by the Hon'ble Supreme Court on 5th December, 2011.

7. Admittedly DDA has never challenged the judgment and decree dated 22nd February, 2010 passed by learned ADJ and the decree has attained finality.

8. To comply with the directions contained in the judgment and decree dated 22.02.2010, DDA sent allotment letter dated 30th April, 2013 to the following effect:-

“No.F.21(215)75/LSB(I)/676

Dated : 30.4.13

To,

*Mohd. Razak & Other legal heirs
Of late Mohd. Ishaq*

*R/o 750 Motor Market, Jama Masjid,
Delhi*

*Sub : Allotment of plot No.D-1/130, Rewari Line Industrial
area, Ph-11, Delhi*

Sir,

*In compliance with the orders dated 22.2.2010 passed by
Additional District Judge (West), Delhi, it is to inform you that
the Competent Authority has approved allotment of plot No.D-*

*1/130, Rewari Line Industrial Industrial Area Ph-II to you
subject to the payment of following dues:-*

- 1. Area of the plot: 100 sq.yds/ 83.61 sq.mtrs.*
 - 2. PDR as on 2009-10 Rs.39950/= per sq. mtrs.*
 - 3. Amount payable Rs.83.61x39950 = 33,40,220.00*
- Total Premium = Rs.33,40,220=00*
*(Rs.Thirty three Lac forty thousand
two hundred and twenty only)*

*You are requested to deposit the above said amount
within 30 days from the date of receipt of the letter, failing
which, action for cancellation of the allotment will be initiated
by this office.*

*After making payment of the above said amount, 3rd copy
of challan may be furnished to this office so that further action
can be taken.*

Sd/-

Asstt. Director(Indl.)

Copy to :-

Sr.A.O(IL) for information and necessary action.

Sd/-

Asstt. Director (Indl.)

30/4/2013

9. Aggrieved by the demand made in the allotment letter dated 30th April, 2013 the decree holder filed an application under Section 151 CPC before the Executing Court which was disposed of by passing the following order:-

“04.06.2013

Present: None for DH.

Ld. SLO for DDA along with Sh. P.P. Sharma, A.D.DDA

By this order I shall decide the application

filed by DH under Section 151 CPC.

The gist of plaintiff's application that DDA was supposed to be restoring the possession of the alternative plot. However instead of complying with the decree, they have raised a demand of ₹ 33,40,220/- on the DH and has also stated that failing such payment the allotment shall be cancelled. It is the contention of DH that conduct of DDA is contemptuous and hence it is prayed that DDA be directed to comply with the decree without suit for imposing any such condition of payment and that the contempt petition against DDA be proceeded with.

DDA has opposed this application on the ground that there never was any allotment in the name of the DH and there therefore there is no question of restoring allotment. It is the contention of DDA that this is the case of fresh allotment and DH ought to pay as per pre determined rates of the year 2009-10.

Heard. Perused.

This court is not supposed to go any further than what the judgment and decree dated 22.02.2010 mandates. The judgment records that plaintiff had prayed for declaring cancellation of allotment in the name of plaintiff as null and void. Plaintiff has also prayed for mandatory injunction to restore the allotment. While giving detailed findings, Ld. ADJ observed that plaintiff was in possession of the property in lieu of which the alternative plot was allotted. It was also observed that plaintiff was entitled to the alternative plot and not defendant no.2. In the conclusion of the judgment, Ld.ADJ observed that the allotment in the name of defendant No.2 was null and void and it was plaintiff who was entitled to the alternative plot. It was further observed that DDA was to restore the allotment in the name of the plaintiff. Similar observations have been recorded in the decree sheet also. In such eventuality, I am unable to agree with Ld.SLO for DDA that this was the case of fresh allotment.

*Once it has been held that DH was entitled to the allotment and the allotment to defendant was illegal, DDA is ought to rectify its mistake and restore the allotment in the name of DH. Naturally restoration can only mean as per the rates applicable when the allotment out (**sic ought**) to have been made in the first place.*

Accordingly DDA is directed to withdraw the demand as raised in letter dated 30.04.2013 and allot the alternative plot to DH as per rates prevailing at the time of initial allotment. Application is accordingly disposed.

Re-list for compliance on 26.07.2013.”

10. The order passed by the Executing Court has been challenged by the DDA by filing MCA No.27/2013 which stands dismissed by learned ADJ vide impugned order. The learned Appellate Court has noted down the contentions raised by the DDA in para 3 of the impugned order, which are to the following effect:-

“3. The appellant has challenged the impugned order on the grounds that the Ld. Civil Judge erred in interpreting “Restoration of allotment” to mean allotment as per the rates applicable when the allotment ought to have happened; the Ld. Civil Court erred in interpreting the order dated 22.02.2010; the Ld. Executing Court erred in interpreting that entitlement for allotment is analogous to allotment; the Ld. Civil Judge failed to appreciate the decision of Hon'ble Supreme Court in the case titled as 'Delhi Development Authority vs. Mrs. Vijaya C. Gurshaney & Anr.' cited as AIR 2003 SC 3669; the Ld. Civil Judge overlooked the fact that no legal consequences or rights can arise out of an unconcluded contract; the Ld. Civil Judge failed to appreciate the well settled principle that the Executing Court cannot go behind the decree.”

11. While rejecting the contentions raised in MCA No.27/2013 the learned ADJ held as under:-

“4. Ld. Executing Court has correctly observed that the case of the Decree Holder was not of fresh allotment and the appellant had no authority to raise fresh demand of Rs.33,40,220/- on the respondents. Ld. Executing Court further correctly observed that once it has been held by the Ld. First Appellate Court that the Decree Holder was entitled to the allotment and the allotment to Late Sh. Abdul Qayyum was illegal, the appellant ought to rectify its mistake and restore the allotment in the

name of the Decree Holder. Ld. Executing Court correctly observed that the restoration can only mean as per the rates applicable, when the allotment ought to have been made in the first place. The Ld. Executing Court correctly directed the appellant to withdraw the demand as raised in letter dated 30.04.2013 and to allot the alternative plot to the Decree Holder as per rates fixed at the time of initial allotment. I find no merits in the present appeal and the same is dismissed. The appellant is however directed to comply the decree as early as possible preferably within six months from today.”

12. Despite the contention justifying demand of ₹33,40,220/- from the decree holder being rejected by the Executing Court as well as by the Appellate Court, the DDA has invoked the extra ordinary jurisdiction of this Court justifying this demand with a prayer to set aside the impugned order expressing the willingness to handover the possession of the plot only if the amount demanded vide letter dated 30.04.2013 is deposited by the decree holder.

13. The DDA cannot go behind the decree passed by the learned ADJ which was neither challenged at any point of time by the DDA nor any clarification was sought from the concerned Court as to interpretation, if any, required in respect of the directions given while passing the decree of mandatory injunction to the following effect:-

‘By way of decree of mandatory injunction and possession, defendant no.1 and defendant no.2 (now represented by his legal representatives-respondents no.3 to 23 (except who have left this world) are directed to restore allotment of alternative plot in the name of the plaintiff- now represented by his legal representatives or to allot any other plot in lieu of the plot surrendered by the plaintiff and also deliver possession thereof.’

14. By raising such contentions, infact the DDA is trying to set up a new

case for the reason that neither the judgment and decree dated 22.02.2010 was ever challenged by the DDA nor any clarification was sought about the charges payable by the decree holder. The decree holder surrendered the shop in his possession in the walled city in the year 1975 under the resettlement drive for the commercial establishment in that area. The decree holder became entitled to alternative plot in the industrial area developed by the DDA in lieu of the establishment surrendered by him and on payment of ₹6900/- which he has already complied with. The DDA raised the demand of ₹33,40,220/- taking the rate prevalent as on 2009-2010.

15. The proceedings before the Executing Court dated 30th January, 2015 copy of which has been annexed by the respondent/decreed holder record that the decree holder has complied with all the formalities at his end including deposit of ₹ 6900/- with the DDA vide challan dated 11th November, 2013. DDA could not have interpreted the decree as to treat it a case for fresh allotment requiring the decree holder to make the payment as per the rates prevalent as on 2009-2010. Not only the Executing Court as well the Appellate Court has rightly directed the DDA to withdraw the demand of ₹ 33,40,220/- as it was raised illegally and contrary to the decree passed in RCA No.12/2009 filed by the decree holder.

16. The DDA cannot be permitted to raise such demand by interpreting the decree in a manner not in consonance with judgment and decree passed in favour of the decree holder.

17. Proceeding under Article 227 of The Constitution of India is an extraordinary discretionary constitutional remedy to advance justice and not to thwart it. In the case ***Jai Singh & Ors.. vs. Municipal Corporation of Delhi & Anr. 2011 (1) RCJ 343 (SC)***, the Apex Court has considered the scope of power of High Court under Article 227 of The Constitution of

India. The relevant paragraph of the report is extracted as under :

*‘25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of **The Estralla Rubber v. Dass Estate (P) Ltd., 2001 8 SCC 97, wherein it was observed as follows :***

“The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limited of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to”.’

18. When the prayer of the petitioners is examined in the light of above, I find that the learned Executing Court or the learned Appellate Court have not committed any error by directing the petitioner to withdraw the demand of ₹33,40,220/-.

19. Finding no illegality, infirmity or perversity in the impugned order, the petition is dismissed.

20. No costs.

CM No.2755/2015

Dismissed as infructuous.

NOVEMBER 19, 2015

‘pg’

PRATIBHA RANI, J.