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

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W.P.(C) 77/2016 &amp; CM APPLs. 416-417/2016

AIRPORTS AUTHORITY OF INDIA ..... Petitioner

Through Mr. K.K. Rai, Senior Advocate with  
Mr. Digvijay Rai, Mr. Syed Hassan  
Bin Taher, Mr. Anshul Rai and  
Mr. S.P. Pandey, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

AND ANR

..... Respondents

Through Mr. Ajay Verma, Sr. Standing  
Counsel with Mr. Vaibhav Mishra  
and Ms. Kirti Parmar, Advocates for  
R-1/DDA.  
Mr. Rajan Khosla, Advocate for R-2.

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Date of Decision : 11<sup>th</sup> January, 2016**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed with the following prayers :-

“(a) *Issue a writ, order or direction in the nature of mandamus directing the respondents to handover / transfer 60 acres of land to the petitioner as decided in the meeting held on 24.12.2001 and as per the requirements of the Petitioner i.e. 60 acres of land for residential use or to hand over 60 acres of land as*

- decided in the minutes of meeting held vide letter dated 10.05.2012 circulated vide letter dated 17.07.2012 and minutes of the meeting dated 01.10.2012; and*
- (b) *Pass any other further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

(emphasis supplied)

2. Mr. K.K. Rai, learned senior counsel for the petitioner states that on 24<sup>th</sup> December, 2001 a decision was taken that petitioner would provide ownership of 60 mtrs. width of road to the DDA in lieu of which DDA would provide 60 acres of land to the AAI along with the funnel of the proposed runway. The relevant portion of the Minutes of Meeting dated 24<sup>th</sup> December, 2001 is reproduced hereinbelow:-

*"After detailed discussions, the following decisions were taken:-*

- (i) *The Airports Authority of India would provide the ownership of land for 60 mtrs. width of road falling within their area to DDA.*
- (ii) *DDA will construct and upgrade the road with specifications provided to suit the requirements of Airports Authority of India and PWD and also construct of underpass under the railway line.*
- (iii) *DDA will construct a boundary wall for security purposes alongside the road.*
- (iv) *DDA will provide 60 acres of land along the funnel of the proposed runway to Airports Authority of India. This land will be utilized by the AAI for maintaining as green and for aviation related activities.*
- (v) *The land of Dwarka, Phase-II notified for acquisition on 12.12.2001 would be expedited for emergency acquisition. A formal request in this regard would be sent by DDA to Secretary (L&B) GNCTD to enable them to complete land acquisition within two months. Land Acquisition for about 2 KM stretch between Bapraula*

*and Najafgarh Road to connect Bapraula with Rohtak Road via Bakarwala by GNCTD/DDA.”*

*(emphasis supplied)*

3. Mr. Rai states that as no land was handed over by the respondent-DDA, petitioner filed a writ petition being W.P.(C) 2098/2012, which was disposed of vide order dated 13<sup>th</sup> April, 2012. The relevant portion of the said order is reproduced hereiblow:-

*“After hearing counsel for the parties at some length, it is deemed appropriate to refer the dispute raised in this petition to a Committee comprising of Secretary, Ministry of Urban Development; Secretary, Civil Aviation; Vice Chairperson of DDA and Chairperson of Airports Authority, who shall earnestly strive to resolve the dispute between the two Instrumentalities of the State and to take effective decision expeditiously i.e. preferably within a period of three months from today. Let the first meeting of the said Committee be held within a period of four weeks from today and status report of the deliberations undertaken be placed on record from time to time.*

*Needless to state that that if either of the party is aggrieved by the decision of the aforesaid constituted Committee, it would be open to it to take recourse to law, as available.*

*This petition and pending application are disposed of in the aforesaid terms, with no orders as to costs.”*

4. Mr. Rai states that in pursuance to the said order, meetings were held on 10<sup>th</sup> May, 2012 and 1<sup>st</sup> October, 2012. The relevant portions of said minutes of meeting are reproduced hereibelow:-

A) Minutes of Meeting dated 10<sup>th</sup> May, 2012 circulated on 17<sup>th</sup> July, 2012:-

*“3.1 After detailed deliberations in the matter, which brought*

*out that the land originally provided by AAI was non-residential and was specifically for providing connectivity to T-3, and AAI is now demanding 60 acres of residential land and though DDA is very short of residential land, it has tried to accommodate AAI, Secretary, Urban Development and Vice Chairman, DDA agreed to consider the allotment/transfer of 60 acres of land to AAI as under:-*

- (i) 13 acres of land at village Sayurpur has already been agreed by DDA for allotment to the Ministry of Civil Aviation for accommodation/housing requirements of CISF personnel, deployed at Indira Gandhi International Airport, New Delhi. DDA agreed that it will hand over this land to the AAI/Ministry of Civil Aviation, within one week's time.*
- (ii) DDA agreed in principle to consider the allotment of another 10 acres of land in Dwarka with land use restriction as Aviation related activities to AAI. The exact location is to be identified by DDA and DDA agreed to identify the land as soon as possible and communicate the same to AAI.*
- (iii) DDA agreed to consider the transfer of balance land (60 Acres – 23 Acres) in the approach funnel of runway 11/29 of IGIA to AAI as proposed earlier, to be maintained as given area.*

*4. Ministry of Urban Development and DDA assured that above transfer of land would be considered at the earliest. VC, DDA requested that the court case should be withdrawn by AAI following the above decisions. Secretary, Civil Aviation agreed for the withdrawal of the case by AAI.*

*5. The meeting ended with a vote of thanks to the Chair.”*

**B) Minutes of Meeting dated 1<sup>st</sup> October, 2012 :-**

*“Action by AAI: to indicate this land required for funnel of existing and proposed runways, thereafter, DDA will earmark*

*the same.*

*Action by DDA: To allot 13 acres of land free of cost at Sayoorpur village and allotment of 2 acres of land at Vasant Kunj and 10 acres of land for residential purpose at Sector 16, Dwarka to AAI.”*

6. Mr. Rai states that in pursuance to the aforesaid minutes of meetings, respondent-DDA should be directed to hand over 60 acres of land to the petitioner.

7. On the other hand, Mr. Ajay Verma, learned senior standing counsel for respondent-DDA states that discussions between Ministry of Civil Aviation and Ministry of Urban Development are still on and certain issues like cost, quantum and locality of land to be given are still being discussed. In support of his contention, he refers to a note dated 8<sup>th</sup> March, 2013 at page 162 of the paper book. The relevant portion of the said note is reproduced hereinbelow:-

*“After 2<sup>nd</sup> meeting which was held on 1.10.2012, vide their letter dated 11.10.2012 (copy enclosed), DDA has gone back from its earlier commitments and decision taken in the meeting held on 1.1.0.2012 by stating the following:*

- i) AAI will have to bear the cost of 13 acres of land of Sayurpur village;*
- ii) It is not possible for DDA to allot 8.2 acres of land at Sector 18B, Dwarka to AAI as discussed in the meeting held on 1.10.2012 and the same is already developed as residential complex of DDA.”*

8. Mr. Verma also states that in the Minutes of Meeting dated 12<sup>th</sup> December, 2014, which is subsequent to the two minutes referred to by

learned senior counsel for the petitioner, it was agreed that DDA would only hand over 23 acres of land in full and final settlement. The relevant portion of the Minutes of Meeting referred to by learned senior standing counsel for DDA is reproduced hereinbelow:-

*“Finally, it was decided that DDA will hand over the possession of the 13 acres of land at Sayoorpur, if not handed over till date, the Ministry of Civil Aviation on Priority without charging any premium. Further, DDA, will identify another 10 acres of land at Dwarka for residential purpose which will also be transferred to AAI. Once both these land parcels are handed over, DDA’s obligation in this regard is completed and AAI will not raise the issue of transfer of land from DDA.”*

9. Today in Court, Mr. Verma has handed over a letter dated 11<sup>th</sup> August, 2015 written by Institutional Branch of DDA to Under Secretary, Ministry of Urban Development which is actually in the nature of a status report to the Ministry of Urban Development in response to a query raised by Ministry of Civil Aviation. The same is taken on record. The relevant portion of the said letter reads as under:-

*“Kindly refer the above said D.O. letter dated 27.7.2015 from Secretary, Ministry of Civil Aviation and letter dated 6.8.2015 on the above subject. A status report on the subject has been prepared and attached as Annexure-1. The issues raised in the note of the AAI forwarded vide the D.O. letter have been examined in the DDA and status/observations are given below:-*

***Transfer of 60 acres DDA land to AAI at Dwarka***

*The issue of transfer of 60 acres of land to AAI was discussed in the meeting held under VC, DDA on 13.8.2014 in which it was decided that DDA will hand over the possession of 13 acres of land at Sayurpur to MoCA on priority without*

*charging any premium. Further, DDA, will identify another 10 acres of land at Dwarka for residential purpose which will also be transferred to AAI. Once both these land parcels are handed over, DDA's obligation in this regard is completed and AAI will not raise the issue of transfer of land from DDA. Copy of the minutes is placed as Annexure-3.*

*a. Transfer/handing over 13 acres of land at Sayurpur for accommodation/housing requirement of CISF personnel deployed at the Airport.*

*13 acres of land at village Sayurpur was identified by DDA and allotment letter was issued to MoCA vide DDA's letter dated 8.5.2012 (Annexure-2). Presently, it has been reported by the Land Management Deptt. that, out of the said 13 acres of land, about 6 acres of land is under litigation under Section 24(2) of LARR, 2013 and the Hon'ble High Court of Delhi has passed an order to maintain status quo in respect of the suit land in WP No. 2541 of 2015. The remaining 7 acres of land can be allotted to AAI for the Housing development of CISF personnel. The 6 acres of land under litigation will be allotted to AAI, if the cases are decided in the favour of DDA.*

*b. Regarding allotment of 10 acres of land in Dwarka,*

*It is submitted that DDA has proposed to allot of 10 acres of land at sector 24 Dwarka vide letter dated 3.7.2003. Presently the land is forming part of the Diplomatic Enclave. Hence an alternative land measuring 7.41 acres has been identified in sector 16B and is being processed for the feasibility study. At present no other land pocket is available in Dwarka for this purpose. This 7.41 acres of land can be allotted to AAI for residential development as per planning norms.*

*It is again reiterated that once both these land parcels are handed over, DDA's obligation in this regard is completed and AAI will not raise the issue of transfer of land from DDA."*

10. In rejoinder, Mr. K.K. Rai, learned senior counsel for petitioner states that present writ petition is maintainable as Minutes of Meeting dated 24<sup>th</sup> December, 2001 constitute a sovereign guarantee. In support of his submissions, he refers to a judgment of a Coordinate Bench of this Court in ***Airports Authority of India and Ors. Vs. State of Jammu and Kashmir and Ors., W.P.(C) 76/2010*** decided on **4<sup>th</sup> January, 2012** wherein it has been held as under:-

*“17. In the present case, firstly, it may be noted that the primary relief is to seek enforcement of a sovereign guarantee of the State of Jammu and Kashmir. Moreover, there is absolutely no disputed question of fact arising before this Court. The factum of the petitioner having invested in the said bond is not in dispute. The fact that the said bonds were issued by respondent no.2, and guaranteed by respondent no.1 has also not been disputed. The fact that there was consistent default in payment of interest, and in redemption of the said bonds on the due dates is also not in dispute. It is not the respondents case that any other amounts have been paid under the said bonds, apart from those disclosed by the petitioners in the writ petition. There is no accounting dispute raised by the respondents.”*

11. Mr. Rai also refers to a judgment of the Apex Court in ***Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt. Ltd., (1983) 3 SCC 379*** wherein it has been held as under:-

*“9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the*

*State which would be “other authority” under Article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be “other authority” under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play.....”*

12. In the opinion of this Court, the Minutes of Meeting dated 24<sup>th</sup> December, 2001 do not constitute a sovereign guarantee. It is pertinent to mention that the primary prayer in **Airports Authority of India and Ors. Vs. State of Jammu and Kashmir and Ors.** (supra) was to seek enforcement of sovereign guarantee issued by the State of Jammu and Kashmir. In the said case respondent no. 2 had invited investment in bonds guaranteed by the State of Jammu & Kashmir. The said fact that the bond was issued and

guaranteed by the State of Jammu & Kashmir was not in dispute. However, in the present case, no such sovereign guarantee was given. Consequently, the said judgment has no application to the facts of the present case.

13. Even *Gujarat State Financial Corporation* (supra) has no application to the present case as it deals with the concept of promissory estoppel.

14. Moreover, in the opinion of this Court, a writ petition normally cannot be filed to seek possession of land. Even if possession is sought in pursuance to a minutes of meeting, the petitioner must file a suit as relief of specific performance cannot be granted in a writ petition. Just because a court in an earlier writ petition directed Committee of secretaries to examine the petitioner's request for land, does not mean that present writ petition is maintainable, especially when disputed questions of fact are involved. For instance, in the present case, parties are not at ad-idem with regard to identity, boundary of the land, extent of land to be transferred, as well as its cost.

15. In the present case, as the effect of Minutes of Meeting dated 24<sup>th</sup> December, 2001 would have to be examined in the context of subsequent minutes of meeting, this Court is of the view that present writ petition is not maintainable. Accordingly, present writ petition and applications are dismissed with liberty to petitioner to avail alternate remedy as may be available to it in accordance with law. The rights and contentions of both parties are left open.

**MANMOHAN, J**

**JANUARY 11, 2016**

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