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

+ **CONT.CAS(C) 533/2010**

**TC LAINUNHRAUI** ..... Petitioner  
Through: Mr. Satish Aggarwala, Advocate.

versus

**ASHOK KUMAR NIGAM** ..... Respondent  
Through: Mr. Dhanesh Relan, Advocate with  
Ms. Akshita Manocha, Mr. Harshit  
Manaktala and Mr. Varun Sharma,  
Advocates.

% Date of Decision: 03<sup>rd</sup> May, 2017

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

**CM Appls. 1035/2012, 2898/2012 & 7141/2012 in Cont.Cas(C) 533/2010**

1. Present contempt petition has been filed seeking a direction to dispose of the petitioner's representation and for issuance of a letter of shortfall in payment of installments and for handing over the possession of the flat on the first floor to the petitioner through attorney without any further delay. It is also prayed that disciplinary proceedings may be initiated against the respondents.

2. During the course of arguments, it transpires that the present petition has been filed alleging violation of order dated 17<sup>th</sup> September, 2008 by virtue of which petitioner's writ petition being W.P.(C) 3123/2008 was disposed of. The operative portion of the order dated 17<sup>th</sup> September, 2008 is reproduced hereinbelow:-

*“The petitioner is willing to give the requisite indemnity to the DDA. I, therefore, allow this petition and direct the respondent DDA to proceed to allocate a specific flat in the name of the petitioner and to raise the final demand-cum-allotment letter. The respondent DDA shall entertain the petitioner through the general power of attorney Ms. Alka Aggarwal daughter of Shri P.C. Aggarwal. The attorney shall produce the original power of attorney for the satisfaction of the respondent and shall also furnish the indemnity bond in the form which may be provided by the DDA. The attorney Ms. Alka Aggarwal is directed to appear before the Director (Housing)-I on 24.9.2008 at 3 p.m. along with the original power of attorney which shall be shown to the Director (Housing)-I for his satisfaction. At the same time the Director (Housing)-I shall provide to the attorney of the petitioner the form of indemnity bond that the attorney is required to furnish to the DDA. The attorney shall furnish the requisite indemnity bond within one week thereafter. The allotment of the specific flat and the demand-cum-allotment letter shall be issued to the petitioner through her attorney within six weeks thereafter.”*

3. Admittedly, in pursuance to the aforesaid order not only a demand-cum-allotment letter, but also a specific flat has been allotted to the petitioner.

4. However, learned counsel for the petitioner states that respondents have illegally levied/charged Rs.1,54,230/- and Rs.1,38,600/- on account of conversion penalty and conversion charges respectively. He states that till the illegality of the aforesaid charges is decided, present contempt petition

cannot be disposed of as satisfied.

5. In support of his contention, he relies upon the order dated 24<sup>th</sup> September, 2014 passed in present petition, which reads as under:-

“1. After brief submissions, the learned counsel for the petitioner has very fairly stated that he is confining the prayers made in the present contempt petition only to levying/charging of Rs.1,54,230/- and Rs.1,38,600 on account of conversion penalty and conversion charges respectively. It is contended by him that both the amounts are essentially for the purpose of seeking conversion of rights in the property in question from leasehold to free hold and it seems to be a case of amount charged in duplicate.

2. The learned counsel for the respondent has stated that he would like to obtain instructions in this regard and, if need be, shall file an appropriate statement giving the details of the amount charged with regard to conversion.

3. List on 12.12.2014.”

(emphasis supplied)

6. On the other hand, learned counsel for respondent states that in pursuance to the order dated 24<sup>th</sup> September, 2014, respondent has also filed an additional affidavit dated 05<sup>th</sup> May, 2016 wherein it was clarified that only Rs.1,38,600/- was levied as conversion charges. It was further stated that Rs.1,54,230/- had been inadvertently mentioned in the conveyance deed when the true and correct demand made by DDA and the amount paid by petitioner was Rs.1,38,600/-.

7. In rejoinder, learned counsel for petitioner states that the demand of Rs.1,38,600/- is contrary to the order dated 06<sup>th</sup> April, 2010 passed in W.P.(C) 8504/2009 whereby the DDA had been directed to issue fresh demand letter for the fifth installment at the rate at which similarly situated

persons were issued.

8. In the additional affidavit filed by DDA, it has been averred as under:-

*“4. That however, there is another aspect to be considered in the present case. Herein, the initial flat allotted to the petitioner was re-allotted to another wait listed registrant during the pendency of litigation and the petitioner has now been allotted flat No.548, Sector 13-B, Dwarka. The directions therefore, in order dated 06.04.2010 for issuance of demand letter for fifth and final installment to similarly situated persons would have to be seen in the light of the allotments made to the other similar allottees in Sector 13-B, Dwarka.*

*The costing of the flats in Sector 13-B, Dwarka was finalized in 2001 and the costing of a third floor flat similar to that of the petitioner was approved at Rs.13,17,600/-. A copy of the said documents where the final disposal cost of houses in Sector 13-B, Dwarka has been finalized is annexed hereto as Annexure AA-2. The respondent is also annexing a copy each of two demand letters for allotments of similar flats on the third floor in Sector 13-B, Dwarka being flat Nos. 518 and 559. These flats are priced at over Rs.15 Lacs as indicated in the demand letters. A copy each of the demand letters are annexed hereto as Annexure AA-3. A perusal of the chart annexed with Annexures AA-2 would indicate that the flat Nos. of the two sample demand letters annexed as well as, that of the petitioner are all part of the same batch and thus, it is clear that the said demand letters pertain to similarly situated allottees.*

*The cost that has been raised from the petitioner is as follows:-*

- |                                                                                                               |                      |
|---------------------------------------------------------------------------------------------------------------|----------------------|
| <i>a. Old disposal cost excluding cost of land as intimated by HAC at page 45/N<br/>(13,17,600-4,58,900/-</i> | <i>Rs.8,58,700/-</i> |
| <i>b. Cost of land included in the above mentioned cost</i>                                                   | <i>Rs.4,58,900/-</i> |

|                                           |                |
|-------------------------------------------|----------------|
| c. Capitalized Service Charges            | Rs.34,418/-    |
| d. Freehold charges applicable in 2001-02 | Rs.62,370/-    |
| Total                                     | Rs.14,14,388/- |

*This cost that has been demanded from the petitioner is inclusive of the cost of Scooter Garage which, as stated above in para 3 measures 8.08 sq. mtrs. Thus, it is clear that the cost of Rs.14,14,388/- that has been demanded from the petitioner is in accordance with the terms of the order of this Hon'ble Court dated 06.04.2010 and is at parity with all other similarly situated persons.*

5. Justification of the demand for conversion penalty

That as regards the second issue of dispute raised by the petitioner, it is stated that the demand raised vide letter dated 14.02.2012 for the amount of conversion penalty is based on the conversion scheme wherein, penalty @ 66-2/3% of the rate of conversion charges is payable by the GPA holders of freehold property for execution of conveyance deed. A copy of the relevant order is annexed hereto as Annexure AA-4. The petitioner who is claiming through the attorney has accordingly been levied these charges strictly in accordance with the policy.

It may be pointed out that the calculation has been re-examined and is worked out as under:-

|                                                                                                                       |                      |
|-----------------------------------------------------------------------------------------------------------------------|----------------------|
| <u>Rate of conversion charges in respect of Category-III flat of Dwarka (Current Rate applicable w.e.f. 12.08.11)</u> | <u>Rs.2,07,900/-</u> |
|-----------------------------------------------------------------------------------------------------------------------|----------------------|

|                                     |                      |
|-------------------------------------|----------------------|
| <u>Penalty = 2,07,900 x 200/300</u> | <u>Rs.1,38,600/-</u> |
|-------------------------------------|----------------------|

*This is the uniform practice being followed by the DDA in all such cases and the petitioner is also in the same category since, it is the GPA holder to whom, the Conveyance Deed papers have been issued for stamping. The attorney, Alka Aggarwal, is pursuing the matter including filing of all applications.*

*Thus, the demand for conversion penalty raised by the DDA is not in any manner irregular or illegal. Such a demand is raised (in cases of GPA holders) only when the CD papers are issued for stamping.”*

(emphasis supplied)

9. In the opinion of this Court, the explanation given by respondent-DDA for charging Rs.1,38,600/- as penalty has not been adjudicated upon or determined to be illegal by any Court.

10. Moreover, from the aforesaid additional affidavit of respondent-DDA, it is apparent that conversion charges have not been charged in duplicate/twice over.

11. The Supreme Court in ***All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Ors., (2009) 5 SCC 417*** has held that contempt of Court is a quasi criminal act and as such the standard of proof required is that of a criminal proceeding and the breach or wilful disobedience has to be established beyond all reasonable doubt.

12. Consequently, in the absence of any specific direction/finding, it cannot be urged in the present contempt proceedings that by levying Rs.1,38,600/- as conversion penalty, the respondent-DDA has acted in wilful disobedience of any Court order.

13. Accordingly, present contempt petition and pending applications are closed.

14. However, petitioner is given liberty to challenge the conversion penalty of Rs.1,38,600/- in accordance with law. Rights and contentions of all the parties are left open.

**MANMOHAN, J**

**MAY 03, 2017**

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