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

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Date of Judgment: 23rd May, 2017

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CONT. CAS. (CRL.) No.7/2013

COURT ON ITS OWN MOTION

..... Petitioner

Through

Ms.Maninder Acharya, Sr.Adv.
(Amicus Curiae) with Mr.Sahil Sood,
Adv.

versus

RAJ KISHORE & ORS

..... Respondents

Through

Mr.Rakesh Tiku, Sr.Adv. with
Mr.Sandeep Kumar, Adv. for Raj
Kishore and Nand Kishore.
Ms.Shobhana Takiar, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

G.S.SISTANI, J. (ORAL)

1. A criminal contempt was registered pursuant to observations made by the learned Single Judge of this Court while deciding RFA No.579/2010 on 09.07.2013.
2. The appellants (respondents herein) had filed an appeal under Section 96 of the Civil Procedure Code, impugning the judgment and decree dated 04.06.2010. The appellants (plaintiffs in Suit No.78/06/97) had filed the suit for permanent injunction to restrain the Delhi

Development Authority and other defendants from demolishing or seeking to take possession of three premises measuring 4 Bighas 2 Biswas, bearing Nos.225A, 225B and 225C in Khasra No.164 of Village Lado Sarai, Tehsil Mehrauli, New Delhi, till the disposal of the representation dated 08.04.1997. A direction was also sought against the then defendants to consider the said representation.

3. The suit came to be dismissed vide order dated 04.06.2010 after recordal of evidence adduced by parties. An appeal came to be filed challenging the said order of dismissal. The learned Single Judge while disposing of the appeal was pained to note that in fact, the representation made by the plaintiffs/appellants was rejected as far back as on 08.10.1997 and a copy was supplied to them on 17.11.1997 which fact was not disclosed to the Court. The Court had also noticed in the same judgment that even the counsels for the respondents therein had not cared to go through the files or point out the aforesaid facts which had resulted in public injury and had the respondents acted diligently and informed the Court the order of rejection of the representation, the suit would have ended then itself, stay would have stood vacated and public projects not held up for 15 years. The learned Judge also observed that even on the said date of hearing, the counsels for the respondents were unaware of the said fact and this was revealed only on going through the order sheet of the suit file.
4. It is in this backdrop that the Court observed that the conduct of the appellants is *prima-facie* found to be in obstruction and interference in the course of administration of justice and to curb such practices by

litigants, the Court deemed it appropriate, while dismissing the appeal, to issue notice to show cause to the appellants as to why they should not be proceeded against for contempt of Court.

5. At the outset, Mr.Tiku, learned Senior counsel appearing on behalf of the respondents herein, who have been arrayed as contemnors, submits that the respondents tender their unqualified apology for the delay caused for the disposal of the suit. Mr.Tiku further submits that the representation was filed prior to the filing of the civil suit and that too by the predecessor-in-interest of the present respondents being their father who died in the year 2004. The father of the respondents as also the respondents are villagers and not formally educated and the present respondents are Class 10th and 8th pass respectively who inherited the litigation from their father. At present, they are 78 and 71 years of age respectively. Mr.Tiku further submits that having regard to the background of the respondents and the fact that they had entrusted their matter to the counsels and were acting on their advice, it cannot be said that the respondents had any intent to suppress the material facts from the Court.
6. Mr.Tiku further submits that the suit was simplicitor a suit for permanent injunction with an alternate prayer for deciding the representation made by the then plaintiff. Under these circumstances, the lapse, if any, is on behalf of the then defendants and if they had also diligently pursued the matter, such fact could have been brought to the notice of the Court at the earliest. Mr.Tiku further submits that the learned Single Judge relied upon the order sheets of the suit but

none of the contesting defendants in the suit being DDA, GNCTD, Union of India and others placed the rejection dated 08.10.1997 of the representation dated 08.04.1997 on record.

7. Learned Senior counsel submits that keeping in view the social status, the family background and educational qualifications of the present respondents and also keeping in view the fact that the suit was not instituted by them and at the time when the plaint was filed, the representation was not rejected, and also their age and the apology tendered by them in Court that they had no intent to mislead the Court or seek any advantage, the apology may be accepted and the contempt petition may be disposed of.
8. Ms.Shobhana Takiar, learned counsel for DDA submits that the representation was not rejected by the DDA neither it was made to the DDA, but the same was rejected by the Land and Building Development and the said department was being represented before the learned Single Judge by a separate counsel. Ms.Takiar also submits that the order sheets would show that in fact, the copy of the rejection was placed on record, which is disputed by Mr.Tiku, learned Senior counsel for the respondents.
9. Ms.Acharya, learned Amicus Curiae appointed in this matter has strenuously urged before this Court and highlighted the conduct of the respondents. She submits that such sharp practices are on the rise; they should be curbed with a heavy hand and the Court should ensure that the litigants should approach this Court with clean hands and should not suppress any material facts.

10. We have heard the learned counsels for the parties, considered their rival submissions and given our thoughtful consideration to the matter. We have noticed in brief as to what has led for initiation of show-cause notice to the respondents. The learned Single Judge was deeply pained by the fact that the appellants (respondents herein) had not disclosed in the plaint that the representation had been rejected. We find from the record that the plaint was filed on 06.08.1997, prior to the rejection of the representation. We also notice that the suit was instituted by the father of the present respondents who was also a villager and we are told that he was completely uneducated.
11. We also find and are surprised to note that during the admission/denial of documents in the High Court where the suit was initially filed, the Joint Registrar had passed the order on 21.11.2002 which is reproduced below:-

“No written statement by defendant no. 4 filed. Learned counsel for plaintiff has offered the documents vide list of documents dated 9.4.97. None has responded from the side of defendant no. 1 to carry out admission/denial of documents of the plaintiff. The representation dated 8.4.97 offered for admission/denial by the plaintiff inter se parties since has not been admitted/denied despite opportunities given to defendant no. 1. Thus, the same is deemed to be admitted under Order 12 Rule 2-A CPC and given exhibits P1/D1 (subject to just exceptions).

For defendant no. 1 only photo copies of documents have been filed which cannot be offered for admission/denial.

Thus, the admission/denial for documents as on record is complete.

To be placed before the Hon'ble Court for the date already fixed i.e. 03.12.02.”

Thus, the defendants did not even admit the existence of the representation, during admission/denial of documents.

12. We may also notice that in the cross-examination of PW-1 Raj Kishore on 23.05.2009, a suggestion was made to him that a representation was made to the Government for consideration releasing the portion of the acquired land. However, we find no cross-examination on this by the counsels for the Statutory Bodies. No suggestion was made that the representation stood rejected, which, in our view, creates a doubt, especially in the absence of any copy of representation placed on record. However, we feel that this aspect does not require any consideration from us in these proceedings while we find the concerns of the learned Single Judge to be just and fair.
13. We are of the view that since the suit was filed by the predecessor-in-interest of the present respondents and the fact that the present respondents are today in their 78 and 71 years of age respectively except for basic education and the fact that they had entrusted the matter to a counsel and more particularly, the fact that even the Statutory Bodies duly represented by the counsels did not bring this fact to the notice of the Court at any point of time and no application under Order VII Rule 11 CPC was filed for rejection of the plaint and there may not have been a deliberate attempt to suppress. We have today recorded the statements of both the respondents who have tendered their apology to the Court. In view of the peculiar facts of

this case, the apology tendered by the respondents in Court is accepted. Notice of contempt is discharged.

14. The contempt petition is accordingly disposed of.

G. S. SISTANI, J.

PRATHIBA M. SINGH, J.

MAY 23, 2017/ka

