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

+ **LPA 518/2016**

Date of Decision: 18th December, 2017.

SANMATI SABHA

..... Appellant

Through Mr. K.L. N. Murty, Sr, Advocate
with Mr. K.P.S. Rao and
Mr. Nimish Chib, Advocates.

versus

J K MITTAL & ORS

..... Respondents

Through Mr.J.K.Mittal, Advocate in person
as respondent no.1 with Rajveer
Singh & Mr. Nikhil Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL)

This intra court Letters Patent Appeal by Sanmati Sabha, Priyadarshini Vihar, impugns orders dated 29th July, 2016 and 7th September, 2016 passed by single Judges of this court in Contempt Case No. 339/2008.

2. At the outset, we record that though this appeal arises from contempt proceedings, it is not possible to dispose of the appeal keeping in view the parameters of contempt jurisdiction. The reason is a string of orders passed in the contempt proceedings and collateral proceedings which are noticed below. Hence we have tried to find a solution and adjudicate the dispute raised in the present appeal in a larger context and have not strictly gone by scope and ambit contempt jurisdiction. The aim and object has been to ensure that justice is done.

3. Mr. J. K. Mittal the first respondent in the present appeal had filed Writ Petition (Crl.) No. 153/2007 in which one of the prayers was for direction to register an FIR against Mr. U.S. Vajpayee, the fourth respondent, who was the President of the Residents Welfare Association of Priyadarshini Vihar. In addition, Mr. J.K. Mittal had prayed for direction that all public authorities should be directed to remove encroachment on public land and register cases against encroachers. Directions for initiation of departmental enquiry against the officers of the respondent/Municipal Corporation of Delhi and Delhi Police was prayed. Delhi Development Authority (DDA) was not a party to the said writ petition. Sanmati Sabha was also not a party to the writ petition. The writ petition did not specifically refer and make assertion about encroachment on public land in the form of construction of a temple by Sanmati Sabha. The said assertion was made in the rejoinder affidavit.

4. The writ petition was disposed of vide order dated 10th August, 2007 rejecting the prayer for registration of an FIR. However, MCD was directed to remove all encroachments on public land and to register

cases against encroachers. Direction was given to MCD to take action against all mis-users, illegal users, and unauthorised construction in the area. Deputy Commissioner (South) (sic East) was directed to file an affidavit of compliance within one month. Any direction given by the Court against installation or removal of the gates was to be complied.

5. Mr. J.K. Mittal, thereafter filed Contempt Case No. 339/2008 impleading Commissioner and Deputy Commissioner (MCD) Shahdara Zone as respondents alleging wilful non-compliance.

6. During pendency of the contempt proceedings vide order dated 6th January, 2012, DDA, who was not a party to the Writ Petition (Crl.) No. 153/2007, was impleaded as co-respondent to the contempt proceedings.

7. Order dated 8th February, 2013, in the contempt proceedings, records that status reports had been filed by the DDA accepting that land measuring 0.286 acres in Block-A was a part of land allotted to American Embassy Employees Cooperative Housing Society and was earmarked for nursery school upto first floor. This land had been encroached upon and temple etc. had been constructed. There was misuse and illegal construction on the said plot. The Court observed that DDA had failed to take appropriate action viz. Satsang Bhawan, office block and dispensary. Direction was given to the Religious Committee to look into the matter expeditiously and give their report to DDA to enable them to take action as per law.

8. Subsequent, order dated 15th January, 2014 passed in the contempt proceedings records that the Religious Committee after due deliberations

had recommend removal of religious structure on the plot. This order mentions that DDA had already approached SHO, Police Station, Shakarpur for aid and assistance. Noticing these facts, the contempt proceedings were adjourned to 17th July, 2014 with the direction to DDA as well as SHO, Shakarpur to file their reports.

9. Sanmati Sabha apprehending demolition action filed Writ Petition (C) No. 9198/2014, which was listed before the single Judge. Copy of the said writ petition has been filed on record by Mr. J.K. Mittal along with his affidavit. The prayer made in the writ petition was to set aside the report of the Religious Committee dated 15th January, 2014 and for restraining the respondents from taking action of demolition of the temple and Satsang Bhawan. By order dated 23rd December, 2014, notice was issued to respondents. Subsequently, the writ petition was dismissed by the single Judge on 10th August, 2015 recording that the petitioner/Sanmati Sabha had not been able to show any document of title over the plot or permission to construct from statutory authority.

10. Sanmati Sabha, thereafter preferred LPA No. 560/2015 which was disposed of vide order dated 28th August, 2015 recording as under:

“After some hearing, learned counsel for the petitioner sought liberty to withdraw the appeal and stated that liberty may be granted to the petitioner and the concerned Society – American Embassy Indian Employees Cooperative Housing Society Ltd. to seek allotment/conversion of the plot in question. In case, the application for that purpose is made

by both the Society within one week, the DDA shall take a decision and communicate the same within four weeks.

The appeal is dismissed as withdrawn in the above terms, along with all the pending applications.

A copy of this order be given dasti to the counsel for the parties under the signatures of Courtmaster and also be communicated to the DDA directly.”

11. It may be noted that Mr. J.K. Mittal was not a party to Writ Petition (C) 9198/2014 and LPA 560/2014.

12. On 31st August, 2015, Sanmati Sabha and American Embassy Employees Cooperative Housing Society moved a joint representation seeking regularisation and allotment of the plot for Satsang Bhawan and temple. Residents Welfare Association also made an application for allotment of the same land for senior citizen center on 17th September, 2015, which application was subsequently withdrawn on 22nd December, 2015 in favour of allotment of the plot to Sanmati Sabha.

13. Order dated 30th November, 2015 in the contempt proceedings, made adverse and strong observations against the proposal mooted to allot the plot for community hall without calling for tenders. An encroacher by mobilising large crowds, the court observed, cannot seek condonation of illegalities. Respondent authorities, it was directed, must act as per law. It was also directed that no commercial activities would be permitted. Court notice was issued to the President, Vice-President, Secretary of the Sanmati Sabha, returnable on 6th January, 2016.

14. On 6th January, 2016, the said officers were not present due to mis-communication and the case was adjourned to 7th January, 2016.

15. On 7th January, 2016, the said officers were present and had stated that they would make statement after General Body Meeting was held. Single Judge held that no useful purpose would be served by adjourning the matter to await decision of the General Body. The Court referred to the order dated 10th August, 2017 passed in Writ Petition (Crl.) No. 153/2007 and the orders in the contempt proceedings. Proposal of the DDA to allot 926 meters of land to the encroacher, i.e. Sanmati Sabha, for a sum of Rs.2.84 crores, it was observed, was unacceptable. Referring to the order dated 30th November, 2015, passed in LPA No. 560/2014, it was clarified that the representation of Sanmati Sabha had to be considered in accordance with law and not de hors the law.

16. Accordingly, vide order dated 7th January, 2016, DDA was directed to take action in accordance with the order dated 15th January, 2014 within six weeks. Deputy Commissioner of Police, East Delhi who was personally present in Court had assured full cooperation and support.

17. Sanmati Sabha, thereafter moved CM Nos.5295/2016 and 5296/2016. On 12th February, 2016, the following order was passed by the single Judge.

“CM No.5295/2016 & 5296/2016

1. After some hearing, learned counsel for the applicant submits that he would not press these applications if

their representation is considered by the Authority under the Delhi Development Act, 1957 within a period of four weeks and in the event of their representation being rejected by the Authority, the applicants shall peacefully handover the possession of the subject property and the structure thereon after removing the idols to DDA. Learned counsel for the applicant also agrees to file an undertaking to this effect before this Court.

2. Let the applicant's representation dated 31st August, 2015 be considered and decided by the Authority under the Delhi Development Act, 1957 within a period of four weeks.

3. Mr. Ajay Verma, learned senior standing counsel for DDA shall take up the matter with the concerned Authorities to fix a date for meeting of Authority within a period of four weeks and the date of meeting be intimated to this Court on the next date of hearing.

4. List on 16th February, 2016.

5. Copy of this order be given dasti to counsels for the parties under signature of Court Master.”

18. Thereafter, on 16th February, 2016, following order was passed by the Single Judge in the Contempt Proceedings.

“CMs 5295 and 5296 of 2016

1. Mr. Ajay Verma, learned senior standing counsel for Delhi Development Authority (DDA) submits that the Lieutenant Governor has fixed the date for considering the representation of the applicants by the competent Authority on 11th March, 2016.

2. Learned counsel for the applicants submits that Mr. Raghbir Kapur, Chairman of Sanmati Sabha, A-Block, Priyadarshini Vihar, Delhi and Mr.R.N. Gupta, General Secretary of Priyadarshini Vihar Residents Welfare Association, convened a meeting of all the residents of Priyadarshini Vihar on 13th February, 2016 in which it was unanimously agreed and decided that all the residents of Priyadarshini Vihar will abide by the decision taken by the Authority under DDA Act on the joint representation dated 31st August, 2015 and in case the said representation is rejected, the possession of the subject property along with structures thereon, after removing the idols, shall be handed over to DDA.

3. Learned counsel for the applicants submits that Mr. Raghbir Kapur, Chairman of Sanmati Sabha and Mr.R.N. Gupta, General Secretary of Priyadarshini Vihar Residents Welfare Association have filed separate undertakings on affidavit on 15th February, 2016. Copy of the same is handed over and taken on record. The undertakings of Mr. Raghbir Kapur, Chairman of Sanmati Sabha and Mr.R.N. Gupta, General Secretary of Priyadarshini Vihar Residents Welfare Association are hereby accepted.

4. Learned counsel for the applicants further submits that in the event of the applicants representation being rejected by the Authority on 11th March, 2016 and the same being communicated, the applicants shall hand over the keys in respect of the vacant and peaceful possession of the subject property, after removing the idols, to DDA before this Court on the next date of hearing.

5. Learned additional standing counsel for Govt. of NCT of Delhi submits that in view of the undertaking given by Mr. Raghbir Kapur, Chairman of Sanmati Sabha and Mr.R.N. Gupta, General Secretary of Priyadarshini Vihar Residents Welfare Association to this Court and the same having been accepted, DDA

and Delhi Police shall await appropriate directions by this Court after the decision of the Authority.

6. List for reporting the decision of the Authority under DDA Act on the applicants' representation on 18th March, 2016 at 2.30 pm.

7. Mr. Raghbir Kapur, Chairman of Sanmati Sabha present in Court undertakes to remain present before this Court on 18th March, 2016 alongwith keys in respect of the vacant and peaceful possession of the subject property after removing the idols to hand over the same to DDA in the event of the applicant's representation being rejected by the Authority. The undertaking of Mr. Raghbir Kapur, Chairman of Sanmati Sabha is hereby accepted.

8. In the facts and circumstances of this case, the Authority under the DDA Act shall consider the applicants representation on 11th March, 2016 in terms of the statements made hereinabove and the decision taken thereon be communicated to the applicants as well as their counsel by 15th March, 2016. In the event of the applicants representation being rejected, the applicants shall remove the idols from the structures within two days and bring the keys in respect of the subject property and structures thereon before this Court on 18th March, 2016 at 2.30 pm. With respect to the demolition action planned by the Delhi Police and DDA , further directions shall be passed on the next date of hearing.

9. Mr. Raghbir Kapur, Chairman of Sanmati Sabha and Mr.R.N. Gupta, General Secretary of Priyadarshini Vihar Residents Welfare Association shall remain present in Court on the next date of hearing as undertaken before this Court.

10. Mr. Raghbir Kapur, Chairman of Sanmati Sabha present in Court shall sign this order before leaving the Court.

11. The date of 29th February, 2016 is cancelled.

12. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.”

19. The above orders have been recalled by the single Judge vide the first impugned order dated 29th July, 2016. The reason was that the two applications i.e. CMs. 5295/2016 and 5296/2016, had not been served on Mr. J.K. Mittal. Further, Mr. J. K. Mittal being unaware was not present in the hearing on 12th February, 2016 and 16th February, 2016. Thus, the two orders and directions given were, in absence and without notice to Mr. J. K. Mittal. Counsel for Sanmati Sabha had not informed this to the Court and the Court was unaware, that the contesting party was not present. Noticing the aforesaid position, the recall order dated 29th July, 2016 records:-

“6. On hearing the parties, this Court is of the view that it was mandatory on the part of the applicants in CM 5295/2016 to serve the advance copy of the application as well as notice of motion on the petitioner. The applicants have abused and misused the process of law by not serving the notice of motion and the advance copy of the application on the petitioner. The applicants misled this Court by not disclosing that they were not parties to the proceedings and the copy of the application has not been served on the petitioner.

7. For the aforesaid reasons, the application is allowed and the orders dated 12th February, 2016 and 16th February, 2016 are recalled.

8. Since orders dated 12th February, 2016 and 16th February, 2016 are recalled, the applicants in CM 5295/2016 are directed to deposit the keys in respect of the satsang hall/community hall with the Registrar General of this Court within a period of two weeks from today and till then, the applicants shall not carry out any activity whether commercial or otherwise, in the said premises. Delhi Development Authority shall withhold any further action in this matter. This order is considered necessary as the subject premises were scheduled to be demolished on 16th February, 2016

9. Learned counsel for the applicants tender an apology and submits that the copy of the application was not served on the bona fide impression that the same was not required to be served on the petitioner. This Court is not satisfied with the explanation given by the applicants."

20. Having heard counsel for the appellant and the respondents, including Mr. J.K. Mittal, we do not find any infirmity in the order dated 29th July, 2016 recalling the orders dated 12th February, 2016 and 16th February, 2016 passed in CMs 5295/2016 & 5296/2016. We may observe that counsel for the said appellants Sanmati Sabha had tendered apology to the Court for these orders were passed behind the back of Mr.J.K.Mittal, who was from the beginning opposing the prayer by Sanmati Sabha for regularisation. We have recorded in some detail history of litigation only to show and highlight contentious issues which had arisen and the earlier orders passed in the contempt proceedings on the question of encroachment of land and demolition.

21. Mr.J.K.Mittal has highlighted that CM Nos. 5295/2016 and 5296/2016 were filed by the same Advocates, who had earlier preferred Contempt Appeal No. 1/2016 impugning the order dated 7th January, 2016 passed in Contempt Case No. 339/2008. This appeal was preferred by the Cooperative Society. The Contempt appeal was withdrawn on 29th January, 2016. CM Nos. 5295/2016 & 5296/2016 were filed on 10th February, 2016 i.e. immediately after the disposal of the Contempt Appeal. These applications were filed on behalf of Sanmati Sabha.

22. This brings us to the second part and issue raised in the present appeal which impugns the order dated 7th September, 2016. Before we deal with the said order, it would be appropriate to record subsequent developments pursuant to orders dated 12th February, 2016 and 16th February, 2016. The issue of regularization was taken up on the administrative side by the "Authority" under the Delhi Development Act, 1957. Copy of the minutes of the "Authority" have been placed before us and were also placed before the Single Judge. After detailed discussion, the "Authority" as a special case approved allotment/regularisation of plot measuring 926 sq. metres in Priyadarshini Vihar in favour of Sanmati Sabha and American Embassy India Employee Housing Society for temple and Satsang Bhawan under religious/social allotment. This resolution was communicated to the Resident Welfare Society and Sanmati Sabha vide order/ letter dated 15th March, 2016.

23. Approval resolution and the letter refer to the proceedings and different orders passed by the Court including orders dated 12th February, 2016 and 16th February, 2016. These orders were duly noticed and

considered before accepting the representation of Sanmati Sabha for allotment of the plot. These orders dated 12th February, 2016 and 16th February, 2016 have been recalled by the single Judge. We have accepted the decision of the single Judge recalling these two orders.

24. In these circumstances, we feel that the matter of allotment must be re-examined and considered afresh by the "Authority" under the Delhi Development Act. The said reconsideration would be without being influenced by the earlier resolution dated 11th March, 2016. Fresh consideration would be without taking into consideration the orders dated 12th February, 2016 and 16th February, 2016, which stand recalled. The decision would be on merits and as per law.

25. Parties to the present litigation or person who wants to make a representation for consideration by the "Authority" is at liberty to file written representation which will be sent to the Vice-Chairman of the DDA within a period of four weeks.

26. In case the "Authority" has procedure for oral hearing, notice will be given to all parties who have made representation including J.K. Mittal. The decision taken would be thereafter communicated to the parties including Mr. J.K. Mittal. A copy of the decision/ resolution would be also filed in the contempt proceedings. The interim order passed by this Court on 20th September, 2016 shall continue. Thereafter, it will be for the single Judge to continue, to amend, to modify and vacate the said order.

27. We clarify that it will be for the single Judge to decide whether the contempt proceedings would survive or not. We also clarify that we have not made any comment on merits/allotment of plot or any other issues which are stated to be pending before the Single Judge.

28. The Appeal is disposed of in the above terms, without any order passed as to costs.

C.M.Nos.34210/2016, 43237/2016 and 9202/2017

In view of the order passed today, we are not inclined to pass any further order on these applications and these will be treated as disposed of in terms of the orders passed in LPA No. 518/2016.

Order Dasti under signature of the Court Master.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

DECEMBER 18, 2017
mr/mw