

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

% Decided on: 13th March, 2018

+ **W.P.(CRL) 753/2018**

RAM KAUR & ANR

..... Petitioner

Represented by: Dr. H.P. Sharma, Mr. Paras
Joshi, Advs.

versus

UNION OF INDIA & ORS

..... Respondent

Represented by: Mr. Arjun Pant, Adv. for
DDA/R-2.
Ms. Mini Pushkarna, Standing
Counsel, North DMC/R-3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 4670/2018

At the outset learned counsel for the petitioner does not press Crl.M.A. 4670/2018 by which he had sought the relief that no coercive action be taken against the petitioner during the pendency of the present petition.

Application is dismissed as withdrawn.

W.P.(CRL) 753/2018

1. By this petition the petitioner seeks the following prayers:

“a) Issue a writ/ writs, direction/ directions in the nature of writ of mandamus directing the respondent number 2 and 3 to conduct an enquiry with regard to the resolution dated 28th of January 1943 and the action initiated upon the same.

b) Issue a writ/ writs, direction/ directions in the nature of writ of mandamus directing the Union of India the respondent

No.1 to initiate action against the guilty officers for forging the DIT resolution dated 28th of January 1943 particularly when such resolution was admitted by the officials of the respondent number 2 and 3.

c) Issue a writ/ writs, direction/ directions in the nature of writ of mandamus to compensate/ rehabilitate the petitioners after the duo enquiry in order to protect the interest of aggrieved person.

d) Pass such further order/ orders as to this Hon'ble Court may deem fit and proper in the interest of justice."

2. Learned counsel for the petitioner opened his argument contending that on the strength of a wrong statement made before the Court the respondent sought orders from this Court and the hon'ble Supreme Court. When this Court wanted to know about the wrong statement made before this Court, learned counsel for the petitioner referred to the Minutes of the Meeting held between the Vice-Chairman DDA and Commissioner MCD as per directions of this Court in LPA 58/2005 wherein in the conclusions of the second meeting it was noted that the following decisions were taken including:

"..... Looking into the ground realities and the fact that two prime pieces of public land have been grabbed using forged documents, DDA should take action to retrieve them at the earliest. It was noted that an FIR with regard to the forgery has already been filed."

3. Learned counsel for the petitioner states that based on this decision in the meeting this Court in RFA No.409/2004 and LPA 58/2005 passed the decision. Thus, the petitioner requires this Court to find out whether any FIR has been registered and what action has been taken thereon.

4. A brief background of the matter. The petitioner claims to be in

settled possession of various properties for more than 37 years having some documents in his favour. It is the case of the petitioner that in DDA late Ram Ashre Parashar who working as Assistant Engineer manipulated the documents due to which the petitioner suffered adverse directions of this Court and lost rights in properties bearing No.27/17 and 27/18 Shakti Nagar, Delhi-110007.

5. A perusal of the record reveals that two suits being suit No. 1558/84 and 204/85 were filed before the Additional District Judge who vide the common judgment passed the decree which was challenged by DDA by filing an appeal being RFA 409/2004 which was clubbed with LPA 58/2005 arising out of the judgment and order of the learned Single Judge dated 19th November, 2004 in W.P.(C) No.103/1986.

6. In the appeals i.e. RFA No.409/2004 DDA challenged the judgment and decree disposing of the two suits 158/2002 and 159/2002 which were initially filed as suit Nos. 1558/84 and 204/84 in this High Court, however due to the change in pecuniary jurisdiction they were transferred to District Court vide order 3rd October, 2002. The suits filed by Ram Kaur and Others sought injunction against the DDA in respect of plot No.17 and 18, Block 27, Shakti Nagar, Delhi.

7. Case of Ram Kaur, petitioner No.1 in the present proceedings and plaintiff in the suit was that she had purchased an area measuring 72.92 sq.yards with Kuchha Pucca rooms on plot No.17/27 Shakti Nagar from Amina Bi by a registered sale deed dated 24th November, 1981. For purchase of further portions, Ram Kaur and Gulam Moinuddin S/o Shiekh Qayam Uddin entered into an agreement for purchase of the property. On Moinuddin's refusal to execute the sale deed, Ram Kaur filed Suit

No.604/1981 for specific performance of the agreement to sell which was decreed on 17th May, 1982 and Gulam Moinuddin executed a sale deed dated 10th November, 1982. It was claimed by the petitioner No.1 that she had leased out the property to her son Parmanand Parasher/ petitioner No.2 herein on a monthly rent of ₹100/-.

8. Further case of the petitioner was that the said plots were allotted to Amina Bi and Haji Mohd Ismail, in lieu of the land acquired by Delhi Improvement Trust (in short DIT) and due to this allotment they had become the owners of the respective plots. Since no sale deeds were executed in favour of Amina Bi and Haji Mohd. Ismail, the matter was taken up in the ordinary meeting of DIT on 9th January, 1951 and a Resolution No.11 was passed noting that the interest of Trust would not be prejudiced in any way if the agreements were not executed as it had received the entire consideration and had the right holders in possession and it did not matter if the right holders did not wish for execution of the agreement.

9. Petitioner No.1 further claimed to have purchased adjoining plot No.18 in Block 27 measuring 223 sq.yards vide sale deed dated 17th March, 1981 from one R.P. Sharma who had purchased the said plot from Gulam Moinuddin vide registered sale deed dated 24th March, 1979. The petitioner No.1 further claimed that she had demolished the jhuggies and raised construction as per the sanctioned plans.

10. DDA disputed the petitioner's ownership as well as the right to construct on the plot and stated that the plaintiffs in the suit were unauthorized occupants of the property. DDA also alleged that DIT acquired certain lands on various dates and the owners of the land were suitably compensated and few of them were offered developed plots. The

acquired land was developed and divided into blocks that were sub-divided into various plots. Plot No.17/27 in Shakti Nagar with area of 222.91 sq. yards was sold by DIT on 3rd March, 1943 to K.B. Sahibuddin based on his bid through his tender and possession was also handed-over to him.

11. In nutshell the ownership and possession of the petitioner No.1 on the properties was disputed. On considering the rival contentions and issues the Division Bench of this Court in RFA No.409/2004 and LPA No.58/2005 set aside the decree and came to the conclusion that the petitioner had no right in the property. The conclusion of the Division Bench of this Court is as under:

““80. The Court had, during the proceedings in these set of appeals made efforts to ensure handing over of the possession to the rightful owners of the plot and also urged DDA and MCD to have a joint meeting of Commissioner, MCD and Vice President DDA. This meeting took place and the minutes of the meeting were placed on the record of this court on 23.08.2005. Thereafter, two meetings were held in the Chamber of Vice Chairman, DDA on 16.08.2005 and 19.08.2005 (Page 463 of Volume II LPA). After deliberating upon the issue, the minutes of the meeting were drawn. In their meeting held on 16.08.2005, they had decided to take various courses of actions including registration of FIR against the plaintiffs, possibility of locating an alternate plot, shifting of park and removal of encroachers from plot Nos. 17 and 18. The site too was inspected and the site inspection showed that MCD had constructed a landscaped garden encompassing almost 500 sq. feet of plot No.17. In the subsequent second meeting held on 19.08.2005, it was noted that FIR had already been registered against the plaintiff for committing forgery of various documents and a decision was taken to allot to the LR of Beli Ram Plot no.18, which was mostly vacant except encroachment on some portion of the plot. It is apparent that despite these meetings and the decisions taken at the higher level, MCD and

DDA had failed to hand over the vacant possession to LR's of Beli Ram after removing the encroachers from the suit properties.

81. MCD although was aware that plot No.17 belonged to LR's of late Sh.Beli Ram and the plot was required to be handed over to them, continued with possession of the park on said plot and did not vacate it within the time given by the Court. In these circumstances, we find no reason to set aside the order of the Learned Single Judge imposing costs of ₹30,000/-.

82. The Court has already held that plaintiff in suits nos. 158/2002 and 159/2002 are unauthorized occupants in the suit properties. They are therefore directed to vacate the said property within four weeks from today. In case the plaintiffs fail to vacate the suit property within four weeks, DDA and MCD are within their rights to get the property vacated within four weeks thereafter with the help of police force. After getting the properties vacated, the vacant possession of Plot No.17 shall be handed over to the LR's of Beli Ram. The plaintiffs are also restrained from creating any third party interest in the suit properties. The compliance report shall be furnished with this Court within three months from today.

83. In W.P.(C) No.103/1986, the single judge, in the impugned judgment had directed MCD to pay ₹70 lakhs to the petitioners towards current market value of Plot No.17 block No.27, Shakti Nagar since it had failed to handover the vacant possession of the plot to them. Since the Court has already issued directions for vacation of plot No.17 and then delivery of its possession to the writ petitioners i.e. legal representatives of Beli Ram, the order of payment of ₹70 lakhs is therefore set aside. MCD is directed to render all assistance to DDA to get both Plots 17 and 18 vacated.

84. With these directions, RFA No.409/2004 is allowed. The decree and judgment of the learned ADJ is hereby set aside. It is held that the LR's of Beli Ram are the true owners of the suit property. LPA No.58/2005 along with all the pending applications stands disposed of in terms of the directions given in the preceding paragraphs.””

12. Petitioner No.1 preferred a special leave petition against the judgment of the Division Bench of this Court which was also dismissed and no leave was granted.

13. The issue before this Court is thus whether on the basis of the statement as noted above; is this Court required to inquire whether any FIR has been registered and what action has been taken thereon. The proceedings qua the petitioner have attained finality and cannot be now interfered by this oblique process by filing the present writ petition. In case the petitioner has concrete material that any forgery was conducted and if the law permits he can avail remedies available to him.

14. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 13, 2018
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