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

Date of Decision: March 16, 2018

+ **CONT.CAS(C) 509/2014**

ADARSH SHARMA Petitioner

Through: Mr. Pradeep K. Bakshi, Advocate

versus

BALVINDER KUMAR & ORS Respondents

Through: Mr. Arjun Pant, Standing Counsel
for respondent-DDA with Mr. Fasihullah Khan,
A.E.

Ms. Mini Pushkarna, Standing Counsel and
Ms. Anushruti, Advocate for respondent SDMC

+ **W.P.(C) 5849/2015 & CM 10540/2015**

R.K. JAIN Petitioner

Through: Mr. Mayank Jain, Mr. Madhur Jain
and Mr. Parmatma Singh, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Arjun Pant, Standing Counsel
for respondent-DDA with Mr. Fasihullah Khan,
A.E.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Contempt of Order of 19th July, 2006 is alleged in this petition. Vide aforesaid order, a Division Bench of this Court had directed respondent-DDA to allot a plot measuring 250 square yards in South Zone at the rates prevalent in the year 1989, within a period of four weeks

and on receipt of Allotment-cum-Demand Letter, petitioner was to deposit the allotment money. In the petition filed by *R.K. Jain*, an order to restrain respondent-DDA from allotting the plot in question is sought.

2. Order of 21st August, 2015 takes note of the stand of, petitioner-*Adarsh Sharma* which is as under: -

“1. The learned counsel for the petitioner has stated that he has already filed additional evidence pointing out that the plot of land allotted to him is not acceptable to him on account of the fact that certain common utilities/services are flowing underneath the said parcel of land and therefore, it cannot be used by the petitioner for erection of a residential structure on the said plot of land.

2. This fact is also confirmed by the applicant, who has purportedly filed an application for impleadment under Order 1 Rule 10 CPC. It has also been pointed out by the learned counsel that he has already filed an independent writ petition seeking appropriate writ, order or direction against the respondent/DDA that the parcel of land which is purported to be allotted to the petitioner, cannot be allotted because of the common services flowing underneath the said parcel of land.”

3. In the above background, the contempt petition and the writ petition filed by *R.K.Jain* were heard together and by this common order, they are being disposed of.

4. Vide order of 28th April, 2016, the concerned Executive Engineer of South Delhi Municipal Corporation (*hereinafter referred to as SDMC*) was directed to carry out inspection of the plot in question and the Executive Engineer of respondent-DDA was directed to remain present at the time of inspection and respondent-SDMC was given liberty to take

assistance of an expert, if required, to ascertain the existence of a *nala* underneath the plot in question.

5. As per order of 22nd July, 2016, affidavit filed by SDMC revealed existence of an underground barrel (*nala*), known as Arjun Nagar Nala, beneath vacant plot No. B-5/1A, Safdarjung Enclave, New Delhi. Vide aforesaid order, respondent-DDA was called upon to take appropriate action. Learned counsel for respondent-DDA submits that in pursuance of order of 22nd July, 2016, a physical inspection of the plot in question was carried out by DDA by means of a manual boring at five different points at an interval of 200 meters at a depth of 30 feet and according to learned counsel for respondent-DDA, no *Nala* was found underneath the plot in question. Joint Inspection Report of 4th May, 2016 has been placed on record by learned Standing Counsel for respondent-SDMC.

6. Learned counsel for petitioner-*Adarsh Sharma* submits that since the inspection carried out by respondent-DDA is on the basis of manual boring, therefore, it ought to be preferred over the joint inspection report of respondent-SDMC and the allotment of plot No.B-5/1A, Safdarjung Enclave, New Delhi be directed to be finalized as petitioner is ready to deposit the allotment money at the rates prevalent in the year 1989.

7. Learned counsel for respondent-DDA submits that the area of plot No.B-5/1A, Safdarjung Enclave, New Delhi is 223.57 square yards whereas entitlement of petitioner is of 209 square yards and if petitioner is ready to pay the average auction rate for the excess area beyond 209 square yards, then it can be allotted to him, otherwise an alternate plot of 250 square yards can be allotted to him in Dwarka Zone, where such plots have been carved out.

8. Learned counsel for petitioner-*Adarsh Sharma* submits that under the interim orders of this Court, respondent has reserved the plot in question, which measures more than 250 square yards and so, petitioner is ready to pay for the excess area of land at the rates of the year 1989 and not at average auction rate, as demanded by respondent-DDA.

9. Learned counsel for applicant-*R.K. Jain* submits that SDMC is the Managing Agency and so, the report of SDMC ought to be preferred over and above the report of respondent-DDA. Learned counsel for respondent-SDMC submits that a huge storm water drain is running beneath the Safdarjung Enclave Area and if petitioner-*Adarsh Sharma* is permitted to dig the whole plot to carry out construction of basement, etc., then the whole area is likely to be flooded.

10. After having heard counsel for the parties and on perusal of order of 19th July, 2006 of which contempt is alleged and the material on record, I find that the question of there being a *Nala* beneath the plot in question pales into significance in view of the unrebutted stand taken on behalf of respondent-SDMC regarding there being huge storm water drain running beneath the entire Safdarjung Enclave Area, where the plot in question is located. The apprehension expressed by learned counsel for respondent-SDMC is that if petitioner-*Adarsh Sharma* is permitted to dig the plot to construct basement, etc., the whole area of Safdarjung Enclave is likely to be flooded.

11. In the above background, report of respondent-SDMC or that of respondent-DDA need not be weighed in golden scales. Such a view is taken because petitioner-*Adarsh Sharma*, in the first instance, had also taken the stand that certain common services are there underneath the plot

in question and had expressed unwillingness to accept the plot in question. It is so evident from the order of 21st August, 2015. Not only this, since petitioner-*Adarsh Sharma* is not ready to pay for the excess area in the plot in question at the average auction rate, therefore, there is no justification to permit petitioner-*Adarsh Sharma* to obtain excess area in the plot in question at the rates prevalent in the year 1989.

12. In such a situation, it is deemed appropriate to direct respondent-DDA to allot an alternate plot of 250 square yards in Dwarka Zone, so that order of 19th July, 2006 is complied with in letter and spirit. Upon deposit of requisite payment within two weeks, respondent-DDA shall make the said allotment to petitioner-*Adarsh Sharma* within a period of six weeks.

13. Since it would not be feasible to allot plot in question to any private party, therefore, respondent-DDA is called upon to take steps for optimum development of the plot in question without digging it, so that apprehension of respondent-SDMC of the whole area being flooded does not come true. If deemed appropriate, respondent-DDA may consider handing over the plot in question to respondent-SDMC for maintaining it as a park, etc., or as deemed appropriate in public interest.

14. With aforesaid directions, the above captioned writ petition and the pending application as well as the contempt case are disposed of.

(SUNIL GAUR)
JUDGE

MARCH 16, 2018

s/v