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

Date of decision: 19th November, 2018

+ CM(M) 1179/2018 & CM APPL. 40270/2018

DELHI DEVELOPMENT AUTHORITY Petitioner
Through: Mr. Naveen Kumar Raheja, Adv.

versus

RAM PRAKASH GUPTA Respondent
Through: Mr.H.K. Nahata, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T (O R A L)**

1. On 16th March, 1981, the respondent-plaintiff applied for allotment of plot under the Rohini Residential Scheme. At the time of applying, he had declared his name as “Ram Ashrey Dayal”. Thereafter, he changed his name to “Ram Prakash Gupta” purportedly without informing the petitioner (the DDA).

2. On 5th January, 2004, a draw of lots took place, in which the respondent-plaintiff was allotted MIG Plot No. 545, in Pocket 4, Block No.C, Sector 28, Rohini Phase IV. A demand letter was issued, to the respondent-plaintiff, dated 19-27th January, 2004, requiring him to deposit ₹ 3,71,520/-.

3. On 15th March, 2010, the DDA wrote to the respondent-

plaintiff, informing him that his allotment had been cancelled, as he had applied under a fictitious name and he was in possession of an alternate plot.

4. This prompted the respondent-plaintiff to file Suit No. 69/2013, which was renumbered as 58701/2016 (the decree bears Suit No. 58384/2016), seeking mandatory and permanent injunction in respect of allotment of Plot No. 545. He also prayed that the possession of the plot be handed over to the respondent-plaintiff. Injunction, against allotment of the said plot to anyone else, was also prayed.

5. The aforesaid Suit No.69/2013 came to be decided by the learned Senior Civil Judge Rent Controller *vide* judgment dated 2nd June, 2016. The learned Senior Civil Judge framed the following issues:

- “1. Whether the plaintiff is entitled to the possession of MIG Plot No.545, Pocket-IV, Block No. C, Sector-28, Rohini, measuring 60 sq. meter Phase-IV, or to any alternative of plot of similar size and similar area and locality? - OPP.
2. Whether the plaintiff is entitled to the decree of injunction? OPP.
3. Whether the suit is not maintainable? OPP.
4. Whether suit is hit by Section 53-B of Act ? OPD.
5. Whether the plaintiff has concealed any material fact? OPD.
6. Whether the suit is not correctly valued for the purposes of court fees and jurisdiction? OPD).
7. Relief.”

6. The following relief was finally granted, by the said judgment, to the respondent-plaintiff, in para 22 thereof:

“The suit, of the plaintiff is partly allowed. Plaintiff is held entitled for decree of mandatory injunction. Defendant is directed to allot alternative plot of similar size in similar area and similar locality to plaintiff in lieu of suit property i.e. MIG Plot No.545, Pocket-IV, Block No.C, Sector-28, measuring 60 sq. meter, Rohini, Phase-IV, under Rohini Residential Scheme, 1981 of DDA as the same has already been allotted to some other person. No order as to cost. Decree sheet be prepared accordingly. File be consigned to record room.”

7. The aforementioned judgment was followed by a decree, which reads thus:

“Claim: Suit for mandatory injunction with consequential relief of injunction.

Plaint presented on: 18/05/2012.

The case is coming for disposal before me today and it is ordered that the suit of the plaintiff is partly allowed. Plaintiff is entitled for decree of mandatory injunction. Defendant is directed to allot alternative plot of similar size in similar area and similar locality to plaintiff in lieu of suit property i.e. MIG Plot No. 545, Pocket-IV, Block No.C, Sector-28, measuring 60 sq. meter, Rohini Phase-IV, under Rohini Residential Scheme, 1981 of DDA as the same has already been allotted to some other person. No order as to costs.

Costs of the Suit

S No.	Plaintiff	Rupees	S. No.	Defendant	Rupees
1.	Stamp for plaint	NIL	1.		Nil
2.	Stamp for power	NIL	2.		Nil
3.	Stamp for Exhibits.	NIL	3.		Nil
4.	Pleader's fee on ₹	NIL	4.		Nil

5.	Subsistence for Witness	NIL	5.		Nil
6.	Commissioner's fee	NIL	6.		Nil
7.	Service of process	NIL	7.		Nil
8.	Miscellaneous	NIL			Nil
	Total	NIL		Total	Nil

Given under my hand and the seal of this Court on this 2nd
Day of June, 2016. ”

8. It is not in dispute that the aforementioned judgment and decree was never challenged and has, accordingly, attained finality.

9. The respondent-plaintiff filed Execution Petition 351/2017, seeking execution of the decree.

10. Opposing the said execution petition, the DDA sought to contend that the allotment of alternative plot could be made only in compliance with its rules and regulations, including payment of land costing and development charges. It was further submitted that approval, regarding the execution, was pending with the Finance Department of the DDA. The DDA submitted that it was ready to allot an alternate plot to the respondent-plaintiff, subject, however, to the financial aspects, regarding which the final decision rested with the Lieutenant Governor.

11. *Vide* order dated 11th May, 2018, the above submissions of the DDA were rejected by the learned Senior Civil Judge. It was held, in the said order, that Order XXI of the Code of Civil Procedure, 1908,

did not distinguish between execution of a decree by a government body or by a private person. It was also noted that the decree did not contemplate payment of any additional amount by the respondent-plaintiff, and that the judgment and decree had attained finality, having remained unchallenged.

12. Noting the fact that wilful disobedience of a decree would expose the person guilty thereof to detention in civil prison as well as attachment of property. Under Order 21 Rule 32 of the CPC, the learned Senior Civil Judge, nevertheless chose, for the time being, to direct issuance of warrants of attachment of the immovable property of the office of the Dy. Director of the DDA. The matter was directed to be placed before the learned ACJ for appointment of a bailiff on 19th May, 2018.

13. It appears that, thereafter, on 16th June, 2018, the DDA issued an allotment letter, to the respondent-plaintiff, allotting the respondent-plaintiff an alternative plot, subject, however, to the payment of various additional amounts.

14. The aforementioned order, dated 11th May, 2018, of the learned Senior Civil Judge, was challenged, by the DDA, by way of MCA 13/2018, which appeal was dismissed, by the learned Additional District Judge (hereinafter referred to as “ADJ”), for want of jurisdiction, *vide* order dated 10th August, 2018.

15. It was noted, therein, that the order, dated 11th May, 2018, was passed under Order XXI Rule 32 of the CPC, which provided for the mode of execution of a decree and that the appeal challenged the order issuing warrants of attachment itself.

16. It was conceded, by the DDA, before the learned ADJ, that the order dated 11th May, 2018 was not appealable under Order XLIII of the CPC; however, it was sought to be submitted, nevertheless, that it was appealable under Order XXI Rule 58 thereof. Holding that the Order XXI Rule 58 of the CPC. dealt with objections after attachment, and not adjudication prior to attachment, the learned ADJ held that the order issuing warrants of attachment was not appealable and, therefore, dismissed the Appeal.

17. The DDA, thereafter, moved an application under Order XXI Rule 26 of CPC. It was sought to be averred, therein, that, as, on 6th June, 2018, an alternate plot namely plot No. 102, Pocket C-2, Sector-28, Rohini which also measured 60 sq. meters, had been allotted to the respondent-plaintiff, and a copy thereof had been handed over to the bailiff on the spot, the order dated 11th May, 2018 was duly complied with, and could not be treated as unexecuted.

18. The application sought to fault the respondent-plaintiff in failing to comply with the directions contained in the said letter of demand. It was further sought to be contended that, unless and until the policy of the Government was declared null and void or modified,

it was beyond the jurisdiction of the court to direct any further action against the DDA, as, else, it would open a Pandora's box.

19. In these circumstances, the application sought to contend that the order issuing warrants of attachment deserved to be recalled and the execution stayed.

20. Holding that the judgment and decree dated 2nd June, 2016, as passed by the learned Senior Civil Judge, did not contemplate payment of any additional amount, by the respondent-plaintiff, for allotment of the alternate plot, the learned Senior Civil Judge held that there was clear disobedience, by the DDA, with the directions contained in the said judgment and decree. It was held that, in the circumstances, the issuance of the allotment letter, dated 6th June, 2018, could not be treated as complying with the said judgment and decree. No occasion, therefore, was found to exist, to interfere with the order issuing warrants of attachment.

21. The DDA has approached this Court, by means of the present petition, under Article 227 of the Constitution of India, challenging the order, dated 14th September, 2018, passed by the learned Senior Civil Judge.

22. Mr. Raheja, appearing for the DDA, has drawn my attention to various provisions of the C.P.C., namely, Order XXVI Rule 6 C.P.C., Section 33, Section 47 (particularly explanation B thereto) as well as to Rule 2(l) and Rule 6 of the Delhi Development Authority (Disposal

of Developed Nazul Land) Rules, 1981 (hereinafter referred to as “the DDA Rules”).

23. Mr. Raheja admits the fact that the decree did not specifically require any additional payment to be made by the respondent-plaintiff, as a condition for grant of alternate plot to him. He also admits that the judgment and decree, dated 2nd June, 2016, of the learned Senior Civil Judge, were never challenged and had attained finality. He, however, seeks to piggyback on para 17 of the said judgment and decree of the learned Senior Civil Judge, which reads thus:

“17. Since the suit property has already been allotted to some other persons, hence as per the rules of DDA and on the basis of above discussion, plaintiff is entitled for possession of alternative plot of similar size, similar area and locality from DDA. Both the issues are accordingly, decided in favour of plaintiff and against defendant.”

The submission of learned counsel is that the use of the words “as per the rules of the DDA”, as employed in the afore-extracted para 17 of the judgment of the learned Senior Civil Judge, entitled him to ask for additional payments, from the respondent-plaintiff. However, he submits that there was no concession on the part of the DDA, recorded in the judgment of the learned Senior Civil Judge, to the effect that the alternate plot would be allotted at the same rate.

24. Mr. Raheja has also sought to draw my attention to various provisions of the DDA Rules, as well as to various notifications and instructions issued thereon, which dealt with the “pre-determined

rates”, which would be applicable for allotment of plot of area of 60 sq. meters, which, in his submission, increase year by year.

25. His submission is that it is not possible to allot an alternate plot to the respondent-plaintiff, unless and until the said payment is made by him.

26. In my view, the submissions of learned counsel for the petitioner are totally devoid of merit and, in fact, the respondent-plaintiff has been needlessly dragged into an avoidable litigation, owing solely to the caprice of the DDA. There is no dispute about the fact that the judgment and decree, as passed by the learned Senior Civil Judge, which was never challenged, directed allotment of alternate plot to the respondent-plaintiff, without adding any caveat, thereto, regarding payment of any additional amount by him.

27. Insofar as para 17 of the said judgment and decree, on which learned counsel for the petitioner seeks to place reliance, is concerned, I am unable to subscribe to the submission that the said para would entitle the petitioner to ask for any additional payment from the respondent-plaintiff.

28. Quite clearly, the use of the word “as per the rules of the DDA” in the said para only refers to the fact that the Rules of the DDA permitted allotment of an alternate plot. That does not mean that, having capriciously withheld, from the respondent-plaintiff, the plot to which he was allotted, having allotted the said plot to someone else and, thereafter, having dragged the respondent-plaintiff to needless

litigation to secure enforcement of the judgment and decree which stood passed in his favour, the petitioner could burden him with additional payments for compliance with the decree.

29. Learned counsel for the petitioner sought to emphasize that it was not permissible for the scope of a decree to exceed the scope of the judgment itself. There can be no cavil with such a proposition. However, I am of the view that no such infirmity exists in the decree passed in the present case.

30. Learned counsel for the petitioner sought to rely on the judgment of the Kerala High Court in *Kunju Kunju Chandran v. Velouthakunju Raghavan*, AIR 2005 Ker 317, and drew my attention to the judgment of the Supreme Court in *Bhavan Vaja v. Solanki Hanuji Khodaji Mansang*, AIR 1972 SC 1371 which was relied therein.

31. The law, as postulated in the said passage, is to the effect that, while the executing court cannot go behind the decree, it had a duty to find out the true effect of the decree, for which purpose it was required to take into consideration the pleadings and proceedings leading upto the decree. The decision also stated, therein, that the jurisdiction of the executing court did not begin and end merely by looking at the decree as it was finally drafted.

32. I do not see how this judgment comes to the aid of the petitioner, in view of my finding, hereinabove, that there was no

discrepancy between the judgment and the decree, as they came to be passed by the learned Senior Civil Judge.

33. Learned counsel for the petitioner also sought to rely on the prayers contained in the plaint and pleadings of the respondent-plaintiff which read thus:

“A-(i) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant, thereby, directly the defendant/DDA to hand over possession of the suit property bearing MIG Plot No.545, Pocket-IV, Block No. C, Sector-28, measuring 60 sq. meters, in Rohini, Phase-IV, Delhi in Rohini Phase IV Residential scheme in the name of Plaintiff Ram Prakash Gupta; or alternatively,

A-(ii) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant, thereby, directly the defendant/DDA to allot and hand over the possession of any other plot of similar size in similar area and locality with similar facilities as that of suit property, in case suit property has already been allotted by the defendant to any third person.

(B) Pass a decree of Permanent Injunction in favour of the plaintiff and against the defendant, thereby restraining the defendant, their agents, employees, associates, workers, official/officials and the persons working on their behalf from further allotment of the suit property to any other third person; the defendants be further restrained from interfering into the peaceful use and enjoyment of the plaintiff in his property bearing No.7/13, IInd Floor, Old Rajinder Nagar, New Delhi in any manner whatsoever, in the interest of justice.

(C) Any other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case Cost of the suit/proceedings be also awarded in favour of the plaintiff and against the defendants.

Such other or further orders as this Hon'ble Court may deems fit and proper in the facts and circumstances of the case be also passed in favour of the plaintiff and against the defendant to meet the ends of justice.

34. Learned counsel for the respondent has drawn my attention to paras 14 to 16 of the judgment dated 2nd June, 2016, of the learned Senior Civil Judge, which read thus:

“14. DW-1 has further admitted that DDA has received the entire payment by way of demand draft with respect to the suit property and except the reply of letters issued by DDA, plaintiff has complied, with almost all other formalities which are required for the allotment and possession of the plot of DDA.

15. Plaintiff- has proved that Ram Ashrey Dayal and Ram Parkash is the same person and that he neither owned/ possessed any plot or residential accommodation of DDA at the time of allotment of suit property in the year 2004. Hence, he is entitled for possession of MIG Plot of DDA under the Rohini Residential Scheme 1981.

16. Defendant in its WS has taken the plea that the suit property has already been allotted to some other person. Even DW-1 during her cross examination deposed that the suit property has already been allotted to some other person. She admitted that as per rules of DDA, if the plot is allotted to some other person instead of the original allottee for non compliance of any of the condition, his case can be considered for allotment of alternative plot in nearby vicinity as per rules of DDA.

17. Since the suit property has already been allotted to some other persons, hence as per the rules of DDA and on the basis of above discussion, plaintiff is entitled for possession of alternative plot of similar size, similar area and locality from DDA. Both the issues are accordingly, decided in favour of plaintiff and against defendant.”

35. As the learned counsel for the respondent points out there is an admission, recorded in the above passages of the learned Senior Civil Judge, which, as already noted hereinabove, was never challenged and

has attained finality, to the effect that the entire payment, against the plot which was booked by the respondent-plaintiff, and allotted to him, was received by the DDA.

36. Learned counsel for the petitioner vociferously disputes this submission, asserting that this “concession” was only during the course of recording of evidence, and was contrary to the position as emerged from the documents.

37. On a query, put to him, as to whether there was any document, which indicated that complete payment had not been received by the DDA, the only document, to which learned counsel for the petitioner is able to refer, is the policy of the DDA itself.

38. I am of the view that the reference to the policy of the DDA cannot resile or dilute the effect of paras 14 to 16 of the judgment of the learned Senior Civil Judge.

39. Even on this ground, the contention that additional payment was required to be paid by the respondent-plaintiff, has no legs to stand on.

40. The judgment, as well as the decree, directed allotment either of a plot to which the respondent-plaintiff was entitled as per draw of lots, or an alternate plot of equal size. That exercise ought to have taken place much before the respondent-plaintiff was forced to approach the court. Having failed to do so, the petitioner-DDA cannot

seek to capitalize on its own default by now submitting the respondent to additional payments.

41. The submissions of learned counsel for the petitioner are, therefore, summarily rejected.

42. The present petition is clearly an abuse of process of law and is completely bereft of any merit whatsoever.

43. The respondent-plaintiff has not been able to secure possession of the plot to which he was entitled, and the attitude of the DDA, in dragging the respondent-plaintiff to court time and time again, for the said purpose, deserves to be deprecated.

44. With the above observations, the present petition is dismissed with no order as to costs.

C. HARI SHANKAR, J.

NOVEMBER 19, 2018

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