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

% ***Date of Decision:* 18.11.2019**

+ W.P.(C) 12141/2019

SMT. RAM KAUR

..... Petitioner

Through

Dr.Harshvir Pratap Sharma, Sr. Adv.
with Mr.Tejas Patel, Adv.

versus

CENTRAL INFORMATION
COMMISSION AND ORS.

..... Respondents

Through

Mr.Gaurang Kanth, Standing Counsel
with Mr.Amar S. Bakshi and
Ms.Aarti Mehta, Advs.
Mr.Arjun Pant, Adv. for DDA.
Ms.Hetu Arora Sethi, ASC, GNCTD
with Mr.Siddharth Agarwal, Adv. for
R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM APPL. 49691/2019 (exemption)

Allowed, subject to all just exceptions.

W.P.(C) 12141/2019

1. This writ petition is filed seeking to impugn the order of the Central Information Commission dated 18.01.2019 whereby the appeal filed by the petitioner was dismissed.
2. The case of the petitioner is that she and her late husband purchased a property bearing Plots No.17 & 19, Block 27, Shakti Nagar, Delhi from

previous owners who got the plot in accordance with law. One Sh.Beli Ram complained stating that he being the auction purchaser has not been allotted the land. A joint meeting of the officers of DDA and MCD took place on 16.08.2015 and 19.08.2005. A decision was taken to lodge an FIR on 19.08.2005. The Minutes also record that two prime pieces of public land have been grabbed using forged documents and DDA should take action to retrieve the same. It was also noted that a fraud was perpetuated by an individual who was an MCD employee by forging some old documents and using these to stake a false claim on the said plots No. 17 and 18.

3. It is also noteworthy that the petitioner had filed two suits before the district court being 158/2002 for stay and 159/2002 for damages against DDA for demolition of structure on plot bearing Nos.17 and 18, Block 27, Shakti Nagar, Delhi. It had been claimed by the petitioner that plot No. 17/27, Shakti Nagar was purchased from Ms.Amna Bi by a registered sale deed dated 24.11.1981. To purchase some more portions, the petitioner entered into an agreement to sell. Following a suit for specific performance and a decree, a sale deed was executed in her favour on 10.11.1982. The petitioner further claims that plot No.18/27, Shakti Nagar, New Delhi was purchased from one R.P. Sharma vide sale deed dated 07.03.1981. The suits were decreed.

4. A Division Bench of this court heard the RFA filed against the aforementioned decrees in the suits being RFA No. 409/2004 and dismissed the case of the petitioner. A Special Leave Petition filed was also dismissed on 29.11.2017. RFA 409/2004 was heard with LPA 58/2005.

5. The petitioner thereafter filed an application under the Right to Information Act, 2005 on 20.08.2018 seeking various information as

follows:-

“1. Please provide the First Information Number of the said FIR mentioned in the minutes of meeting, it's certified photocopy, it's outcome/result and it's present status.

2. Please provide the photocopy of resolution /Documents in which forgery has been committed.

3. That if any DDA employee or an outsider commits any forgery in DDA documents then what is in house enquiry system in DDA to investigate that and which department does the same.

(*) In this case is any enquiry was conducted or not by DDA or any other department?

(**) If yes, then please provide the certified copy of all relevant documents.

(***) If not, then what is the criteria adopted and on what basis the allegation of forgery has been levelled upon us? Please provide the copy of all the relevant documents and also the name and rank of the officers/officials upon whom directions it was prepared.

4. Please provide the copy of full file related to this minutes of meeting by mentioning page No. on each page.”

6. The CPIO on 20.09.2018 dismissed the said application stating that the petitioner had lost her legal case and was now a third party to the case. Hence, the information was declined under Section 8(1)(j) of the RTI Act. The First Appellant Authority also dismissed the appeal of the petitioner on 26.10.2018.

7. The CIC by the impugned order dated 18.01.2019 has noted that no further intervention of the Commission is required and the appeal was also dismissed.

8. I have heard learned senior counsel for the petitioner. He strenuously

argued that a false allegation has been made against the petitioner and an FIR was wrongly registered against her. It has been urged that the Division Bench in its judgment dated 20.04.2017 in RFA No.409/2004 has clearly noted the submission of the learned counsel for DDA that an FIR was lodged against the petitioner. It is urged that it is the petitioner's right to get a copy of this FIR and other connected documents on the basis of which the conduct of the petitioner has been doubted and false allegations have been made against her.

9. On the claim of the petitioner that an FIR was registered against her and she has a right to receive a copy of the same, I may note that on 02.09.2019, the petitioner also filed an RTI application with DCP (North)-cum-PIO. The police had replied as follows:-

“A(I) & (II). The requisite information asked at these points can not be provided as the old record upto 2013 was destroyed under the provision of PPR 11.30 to 11.36 and Standing Order No.64/07 vide order No. 4480-84/HAR/North District dated 28.06.2017.

B. As per available record, no such case has been registered in P.S Roop Nagar, Delhi.”

10. It is quite evident from the reply of the aforesaid RTI Application given by the police that the records have been destroyed being old records. In response to the query as to whether an FIR was registered by the police, the answer is categorical, namely, that no case has been registered in the concerned police station.

11. Regarding the plea of the petitioner that the judgment of the Division Bench states that an FIR was lodged against the petitioner is concerned, the same is misplaced. The petitioner is merely trying to latch on some words

used by the Division Bench in its judgment dated 20.04.2017 to claim that an FIR was lodged against her. In the judgment no such fact is stated i.e. that an FIR has been registered against the petitioner. Accordingly, the insistence of the learned senior counsel for the petitioner that the petitioner is entitled to a copy of the FIR registered against the petitioner is misplaced as there is no FIR in existence.

12. Regarding the balance questions that have been raised in the application dated 20.08.2018, it is manifest that it is nothing but an attempt to reopen and re-agitate the issues that were raised in the suit filed by the petitioner and before the Division Bench. The said contentions of the petitioner were rejected by the Division Bench in RFA No. 409/2004 by its judgment dated 20.04.2017.

13. I may note the conduct of the petitioner. The Division Bench in RFA No. 409/2004 vide its decision dated 20.04.2017 noted that the petitioner herein (plaintiff in the suits) failed to prove that they are the owners of the suit properties No. 17 and 18, Block 27, Shakti Nagar. Regarding Plot No. 17/27. It was noted that the said plot was auctioned but its vacant possession could not be handed over to the bidder's heir as it was unauthorisedly occupied by certain persons. Regarding plot No. 18/27 it was noted that it was never allotted to anyone. The plaintiffs were held to be unauthorised occupants of the said properties and were directed to vacate the said properties within four weeks.

Thereafter, the SLP filed by the petitioner against the said judgment before the Supreme Court was dismissed on 29.11.2017.

14. The petitioner thereafter filed a W.P. (Crl.) 753/2018 where a direction was sought to the respondent to conduct an enquiry with regard to

the Resolution dated 28.01.1943. A direction was also sought to initiate action against the guilty officers for forging the Resolution dated 28.01.1943. The court dismissed the writ petition on 13.03.2018 stating as follows:-

“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 how 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.”

15. Thereafter the petitioner filed the present application under the RTI Act on 20.08.2018.

16. This is yet another attempt by the petitioner to try and overreach the judicial orders and to re-agitate her case.

17. Reference in this context may be had to the judgment of the Coordinate Bench of this Court in the case ***The Registrar, Supreme court of India vs. R.S. Mishra, 2017(244) DLT 179***. This is also a case where the RTI applicant had sought information pertaining to a judicial matter in which the applicant himself was a party. The Court held as follows:

“45. Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. However, Section 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

46. In fact, it contemplates harmonious existence with the other enactments which, like the RTI Act, also provides for dissemination of information. In *Namit Sharma Vs. Union of India, (2013) 1 SCC 745*, the Supreme Court has held as under:-

“79. Let us now examine some other prerequisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise.”

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THE JUDICIAL FUNCTIONING OF THE SUPREME COURT OF INDIA IS SEPARATE/ INDEPENDENT FROM ITS ADMINISTRATIVE FUNCTIONING. THE DISSEMINATION OF INFORMATION UNDER THE SCR IS A PART OF JUDICIAL FUNCTION, EXERCISE OF WHICH CANNOT BE TAKEN AWAY BY ANY STATUTE. THE SCR WOULD BE APPLICABLE WITH REGARD TO THE JUDICIAL FUNCTIONING OF THE SUPREME COURT; WHEREAS FOR THE ADMINISTRATIVE FUNCTIONING OF THE SUPREME COURT, THE RTI ACT WOULD BE APPLICABLE.

62. Also, the judicial functioning of the Supreme Court of India is separate/independent from its administrative functioning. In the opinion of this Court, the RTI Act cannot be resorted to in case the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.

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71. Consequently, the decision to allow or deny inspection or to

give copies of the judicial file is clearly a part of and/or in the course of discharge of judicial function.

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73. Consequently, the SCR would be applicable with regard to the judicial functioning of the Supreme Court; whereas for the administrative functioning of the Supreme Court, the RTI Act would be applicable and information could be provided under it. The dissemination of information under the SCR is a part of judicial function, exercise of which cannot be taken away by any statute. It is settled legal position that the legislature is not competent to take away the judicial powers of the court by statutory prohibition. The legislature cannot make law to deprive the courts of their legitimate judicial functions conferred under the procedure established by law.”

18. As per the above judgment, the RTI Act cannot be resorted to where information relates to a judicial function. In this case the petitioner had filed two suits. The suits were consolidated. One suit was filed for injunction against DDA in respect of Plots No.17 and 18, Block-27, Shakti Nagar, Delhi and in the other suit the plaintiff claimed damages against DDA for demolition of structures of those plots. Trial court decreed the suits in favour of the petitioner by judgment/decreed dated 03.03.2003. The Division Bench in RFA vide judgment dated 20.04.2017 *set aside* the said decree and directed to vacate the properties. The SLP against the said judgment by the petitioner was dismissed. The petitioner thereafter filed a criminal writ seeking to make an enquiry regarding the steps taken by DDA and MCD. The said criminal writ was also dismissed.

19. Now the petitioner wants to only improve her case by seeking documents like copy of FIR said to have been filed on the complaint of

DDA; copy of resolution/document of which forgery have been committed; copies of enquiry said to have been conducted by DDA; copies of minutes of meeting etc. Clearly, it was for the petitioner to have summoned all these documents when the suits were pending from DDA. Instead of taking those appropriate steps now after the suits and appeals have been dismissed, the petitioner is again now trying to re-open the issue by seeking details of those documents. Allowing such an application would tantamount to interference in the judicial functioning of the court which are regulated by appropriate procedure including the Civil Procedure Code; the Evidence Act etc. Clearly, the same is not permissible.

20. There is no merit in the present petition and the same is accordingly dismissed.

NOVEMBER 18, 2019

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corrected & released on 05.12.2019

JAYANT NATH, J.

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