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

Reserved on : 28th March, 2019

Date of decision: 8th April, 2019

+ W.P.(C) 10988/2017

KULWANT SINGH

..... Petitioner

Through: Mr. Bhagat Singh and Mr. Vedit
Gupta, Advs.

versus

DDA

..... Respondent

Through: Mr. Anuj Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. The present writ petition avers thus.
2. Towards the end of 2014 or the beginning of 2015, a residential plot, admeasuring 32 sq. mtr., was allotted, to the petitioner, by the respondent-Delhi Development Authority ("the DDA"), in Sector 34, Rohini, under the well-known 'Rohini Residential Scheme-1981'. This was followed by a second letter, dated 14th July, 2016, from the DDA, requiring the petitioner to make payment, for the said allotment, along with interest, as a "last and final opportunity" by 25th July, 2016. On being informed by the officials of the DDA, that the amount payable by him was ₹ 5,22,300/-, the petitioner deposited the said amount with the DDA, by National Electronic Funds Transfer

(NEFT). Further documents were also sought by the DDA which, too, the petitioner provided. In these circumstances, avers the writ petition, the petitioner was “shocked” to receive a letter, dated 28th April, 2017, addressed to him by the DDA, which read thus:

**“DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (ROHINI)**

ROOM NO. 111, 1ST FLOOR, C-3,
VIKAS SADAN, NEW DELHI-23

No. F. 16 (11962) 2012/RHN/DDA/351 Dated: 28-04-17

To

Shri Kulwant Singh,
S/o Shri Balbir Singh,
R/o B-5/224, Ground Floor, Sector-3,
Rohini, Delhi – 110085

Sub: Regarding cancellation of registration/allotment of plot bearing No. 1466, Pocket C-1, Sector-34, measuring 32 sq. mtr under Rohini Residential Scheme-1981 vide application No. 26343 and priority No. 20227

Sir,

Please refer to your letter dated 15.09.2016 on the subject cited above. I am to inform you that the registration/allotment of Plot bearing No. 1466, Pocket C-1, Sector 34, measuring 32 sq mtr under Rohini Residential Scheme-1981 has been cancelled by Competent Authority as a sum of ₹ 4815 had already been refunded to you vide cheque No. 303000 dated 26.06.2001 against application No. 26343 & FDR No. 15928.

The Competent Authority has also viewed the case as deliberate defrauding of DDA by fraud payment.

Yours faithfully,

Sd./-
Dy. Director, LSB (Rohini)”

Vide letter dated 29th June, 2017, the petitioner responded, requesting the DDA either to finalize the allotment or refund the money deposited by him. According to the writ petition, the DDA required the petitioner to submit an indemnity bond, foregoing interest on the deposited amount, in order to secure refund thereof, which, too, he did, under cover of a letter dated 9th August, 2017, which stated that the indemnity bond was being submitted as per the conversation, dated 3rd August, 2017, of the petitioner, with the Vice-Chairman, DDA.

3. All that the DDA condescended to issue to him, however, avers the apparently chagrined petitioner, was the following missive, dated 21st September 2017:

“DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (ROHINI)

ROOM NO. 111, 1ST FLOOR, C-3,
VIKAS SADAN, NEW DELHI-23

No. F.16 (11962) 2012/RHN/DDA/684 Dated: 21-09-17

To

Shri Kulwant Singh,
S/o Shri Balbir Singh,
R/o B-5/224, Ground Floor, Sector-3,
Rohini, Delhi – 110085

Sub: Regarding refund of full amount deposited towards allotment-cum-demand letter of plot bearing No. 1466, Pocket C-1, Sector-34, measuring 32 sq. mtr under Rohini Residential Scheme-1981 vide application No. 26343 and priority No. 20227.

Sir,

Please refer to your letter dated 09.08.2017 on the subject cited above. In this regard I am to inform you that your request for refund of full amount deposited towards allotment-cum-demand letter of plot bearing No. 1466, Pocket C-1, Sector-34, measuring 32 sq. mtr. under Rohini Residential Scheme-1981 vide application No. 26343 and priority No. 20227 was examined by the Competent Authority. However, it is regretted that the same could not be acceded to. The entire amount of premium of plot has been forfeited by the Competent Authority as viewed the case as deliberate defrauding of DDA by fraud payment, even after taking the refund of registration money in year 2001 against application No. 26343 & FDR No. 15928.

Yours faithfully,

Sd./-
Dy Director, LSB (Rohini)"

4. Contending that he was not guilty of perpetuating any fraud, inasmuch as he had only responded to the DDA's communication, dated 14th July, 2016 *supra*, and made payment in accordance therewith, the petitioner contends that there was no justification, whatsoever, for the DDA to retain the said money, once it was unable to allot a flat to him. Having accepted the payment made by him

without demur, the petitioner would submit that the DDA could not, very well, allege fraud on his part. The mistake, on the part of the DDA, contends the petitioner, could not be laid at his door. Without prejudice, the petitioner has further contended that forfeiture of a citizen's money, by the DDA, was impermissible, in the absence of statutory or contractual sanction therefor.

5. The counter-affidavit, by the DDA, filed in response to the writ petition, submits that the petitioner has, as it were, commenced the recital of facts from the epilogue. It is averred, therein, that the petitioner had, in fact, registered himself, for allotment of a plot, under the 'Rohini Residential Scheme', in 1981 and had, in pursuance thereof, paid the earnest money of ₹ 2,000/- *vide* FDR dated 22nd April, 1981, but that the said registration was cancelled at the instance of the petitioner himself, and the earnest money deposit of ₹ 2,000/-, paid by him, refunded in consequence. Unfortunately, however, the DDA would aver, owing to an error in its system, the name of the petitioner was not deleted, and continued to subsist in its records as a subscriber, to the 'Rohini Residential Scheme', awaiting allotment of a flat. This error, submits the DDA, led to the petitioner being erroneously allotted a plot in the draw of lots held on 12th June, 2012, and to his being issued the letter dated 14th July, 2016 *supra*, by the DDA, consequent thereto. The DDA emphasizes the fact that, taking advantage of the error that had occurred at its end, the petitioner contended, falsely, that he had "lost" the FDR submitted by him towards payment of earnest money of ₹ 2,000/-, and went to the extent of lodging a First Information Report (FIR), with the P. S.

Crime Branch, Delhi Police, for the said purpose. The DDA avers that it was only because it chose, by way of abundant caution, to verify the said fact, that it came to light that the petitioner had actually had his application, under the 'Rohini Residential Scheme', cancelled at his own volition, and that his earnest money was refunded to him.

6. Apart from contending that, in these circumstances, the decision of the DDA to withhold the amount of ₹ 5,22,300/-, paid by the petitioner, was not vitiated on account of any error, of fact or law, Mr. Anuj Chaturvedi, appearing for the DDA, further submits that, all these facts having been concealed in the writ petition, the petitioner cannot seek to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

7. Detailed arguments were advanced by Mr. Bhagat Singh and Mr. Anuj Chaturvedi, arguing for the petitioner and the respondent respectively. They ventilated the respective stands pleaded by them, which already stand set out hereinabove. Mr. Bhagat Singh fairly did not dispute the facts, as stated by Mr. Anuj Chaturvedi and as set out in the counter-affidavit, but contended, nevertheless, that the DDA could not, in any event, retain the amount of ₹ 5,22,300/- paid by his client. Mr. Anuj Chaturvedi, arguing for the respondent, on the other hand, placed reliance, during arguments, on the judgement of the Constitution Bench of the Supreme Court in *Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf*, AIR 1959 SC 135 and on the decisions in *Kedar Nath Motani v. Prahlad Rai*, AIR 1960 SC 213 and *K. D. Sharma v. S.A.I.L.*, (2008) 12 SCC 481.

Analysis and Findings

8. It appears almost axiomatic, in my view, that the perception, of the DDA, of fraud having been perpetrated on it by the petitioner, howsoever justified, cannot justify withholding, by it, of the moneys of the petitioner. Money, indisputably, is “property”, constitutionally comprehended. The right to property may stand relegated, with the 44th amendment to the Constitution in 1977, from a fundamental to a constitutional right, but constitutional rights are nevertheless solemn, and not to be trifled with, save and except in accordance with the law that subsists in that regard. Learned Counsel for the respondent has not been able to produce, before this Court, any law, empowering the DDA to withhold the moneys of a citizen, deposited with it, for whatsoever purpose or reason, on the ground that a fraud had been perpetrated, on it, by the said citizen. Neither is vigilantism the forte, nor is moral policing any part of the duties, in law, of the DDA. Fraud, by a citizen, on a public authority, may expose the citizen to action, but any such action has to be sanctified by the law, and cannot be in the nature of punishment born out of pique. The manner in which the DDA has, in the present case, decided to forfeit the amount of ₹ 5,22,300/-, deposited with it by the petitioner, indicates that such forfeiture partakes of the character of a punishment, without a scintilla of material, forthcoming in the law, empowering the DDA to mete out such punishment.

9. Forfeiture of the moneys of a citizen, by a public authority, is an extremely serious matter. Sans authority of law, such forfeiture partakes of the character of misappropriation of the property of one, by another, and teeters on the perilous edge of the criminal precipice.

10. That forfeiture of the property, or the money, of a citizen, sans legal sanction, is completely proscribed in law, is sanctified by several authorities. In *Bishambhar Dayal Chandra Mohan v. State of U.P.*, (1982) 1 SCC 39, in the context of Article 300-A of the Constitution of India, vis-à-vis the power of the executive to deprive a citizen of his property, it was held thus:

“The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. *Such power can be exercised only by authority of law and not by a mere executive fiat or order. The word “law” in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.* All illegal seizure amounts to deprivation of property without the authority of law.”

(Emphasis supplied)

11. The sentiment stands echoed in *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596.

12. Mr. Anuj Chaturvedi has, despite being granted repeated opportunities to do so, been unable to invite my attention to any Act of Parliament, or of any State legislature, or to any Rule or statutory order, having force of law, which would empower the DDA to forfeit

the amount of ₹ 5,22,300/-, paid by the petitioner, as it has chosen to do.

13. I proceed, now, to examine the authorities on which Mr. Anuj Chaturvedi, learned Counsel for the respondent, has sought to place reliance.

14. ***Kanhaiya Lal Makund Saraf (supra)*** revolved around Section 72 of the Indian Contract Act, 1872 (hereinafter referred to as “the Contract Act”), which reads thus:

“A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.”

15. Mr. Chaturvedi took me through various passages in this decision to impress, on me, that Section 72 of the Contract Act would not apply in circumstances such as the present. I agree. It is nobody’s case that any money was paid, by the petitioner to the DDA, or *vice versa*, by way of mistake or coercion. The petitioner’s case does not need the crutch of Section 72 to succeed. ₹ 5,22,300/- was paid, by the petitioner to the DDA, for allotment of a flat. No such flat was allotted. The money had, therefore, to be returned to the petitioner, in the absence of any statutory dispensation permitting DDA to retain it. ***Kanhaiya Lal Makund Saraf (supra)*** does not militate, in any manner, against this legal position.

16. The reliance, by Mr. Chaturvedi, on the decision in ***Kedar Nath Motani (supra)*** is, in my view, equally misplaced.

Mr.Chaturvedi places particular reliance on the extract, in the said decision, from the passage, extracted from the decision of House of Lords in ***Holman v. Johnson, 98 ER 1120***, which deals with the *ex dolo malo non oritur actio* principle, viz., that no Court would lend its aid to a man who founds his cause of action upon an immoral or illegal act. Again, it is difficult to discern how Mr. Chaturvedi would seek to capitalize on this decision. The claim of the petitioner, before this Court, is not for allotment of a flat. Had it been so, perhaps, it might have been open to the respondent to contend that, the claim being founded on a non-existent right, to espouse which the petitioner had taken a false stand of having lost the FDR deposited by him and having even lodged a misleading FIR to support the same, the petitioner could not succeed in his claim. The petitioner does not, however, seek allotment of a flat, but only seeks return of the money paid by him, which is his right, the DDA having done nothing which entitles it to retain the said amount. ***Kedar Nath Motani (supra)***, too, therefore, does not assist the case of the respondent.

17. *K. D. Sharma (supra)* is sought to be pressed into service, to support the submission that the petitioner, being guilty of suppression of facts, has disentitled himself to relief from the court. As an empirical proposition, it brooks no cavil. Can it, however, be said that the petitioner is, strictly speaking, guilty of suppression of the facts *on which he bases his claim to return of the amount of ₹ 5,22,300/- deposited by him?* In my opinion, the answer has definitively to be in the negative. All that was required to be pleaded, by the petitioner, to base his claim for return of the said money, was the fact that he had

paid it against the DDA's offer for allotment of a flat to him in lieu thereof, and the fact that no such flat had been allotted. The petitioner cannot, therefore, be said to have been economical with the truth, so far as the facts, material to sustenance of his claim, are concerned.

18. This Court is convinced that, howsoever contemptible the petitioner's attitude, or actions, may otherwise have been, they cannot disentitle him to his right to be returned his money. Else, it would lead to a situation of complete anarchy, in which public authorities could forfeit moneys of citizens, on the ground that the citizens had committed fraud, as they perceive it, even without any statutory or other sanction supporting such forfeiture. Such a situation is not tolerable in any civilized society, governed by the rule of law. It completely emasculates Article 300-A of the Constitution of India, by permitting forfeiture of the property of a citizen *sans* authority of law.

19. While this Court cannot, therefore, approve of the manner in which the petitioner has acted, and entirely agrees with the submission of learned counsel for the respondent that the petitioner tried to unfairly capitalize on the mistake of the DDA, that cannot, in law, entitle the DDA to retain the amount of ₹ 5,22,300/- paid by the petitioner. The petitioner is, therefore, entitled, in law, to restitution for the illegal deprivation of the said amount, along with the interest earned thereon.

Conclusion

20. The writ petition, therefore, succeeds and is allowed.

21. As the principal amount of ₹ 5,22,300/- stands deposited with this Court, during the pendency of the writ petition, the Registry is directed to release the said amount to the petitioner, alongwith the interest accrued thereon, on an application being made by the petitioner for the said purpose.

22. Costs on parties.

APRIL 08, 2019
HJ

C. HARI SHANKAR, J



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