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

+ **CM (M) 1067/2019 & CM APPL. 31932/2019**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Ms. Prabhsahay Kaur, Standing
Counsel with Ms. Shruti Gala,
Advocate. (M:9810158581)

Versus

PREM PRAKASH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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15.01.2020

1. The present petition arises out of judgement/decreed dated 25th January, 2007 which was passed by the Id. Civil Judge in Suit No.438/2004 titled *Prem Prakash Tyagi v. Delhi Development Authority*. The same was a suit for declaration and permanent injunction wherein several issues were framed and the suit was finally decreed on 25th January, 2007. The operative portion of the said judgment/decreed reads as under:

“In view of my findings on the aforesaid issues, suit of the plaintiff is decreed. The letter dated 27.03.2001 regarding the cancellation of lease deed is declared as null, void and illegal. Plaintiff is also entitled for the relief of injunction. Accordingly, defendants are restrained from implementing the cancellation order dated 07.03.2001 and 18.05.2001 in respect of property no.9/246, Yamuna Vihar, Delhi.

No order as to cost.

Decree Sheet be prepared accordingly.”

2. The said judgment/decreed was carried in appeal by the Delhi

Development Authority ('DDA') and the Id. ADJ vide judgment dated 27th April, 2011 upheld the judgment of the Civil Judge and arrived at the following conclusions:

“32. For the reasons recorded, above findings of the Ld. Trial Court in the impugned order dated 25.1.2007 that running of type and shorthand college was a permissible activity in terms of judgment in the case of O. N. Gupta Vs. DDA cannot be sustained in view of the judgment of the Hon'ble High Court Division Bench in case of DDA Vs. National Tonnage Club of Farmers and is hereby set aside.

33. However since more than 12 years had passed between the date of show cause notice and cancellation of lease by the DDA no.7.03.2001 and DDA had DDA failed to take into account its own policy by levying misuser charges instead of cancelling the lease, the order dt. 7.3.2001 canceling the lease stood vitiated and is set aside. The DDA is restrained from taking any action against the plaintiff on the basis of the order dt.7.3.2001. Appellant DDA is further directed to consider the application of the plaintiff for conversion of lease of premises bearing plot no.246, Block C-9, Yamuna Vihar in Ghonda from lease hold to free hold in the light of its policy regarding compounding of misuser of premises by levying misuser charges in accordance with law.”

3. As it can be seen from the extract of the Appellate Court's order, the Id. ADJ has held that the running of a typing and shorthand institute from the premises of the Respondent/Plaintiff (*hereinafter, "Plaintiff"*) is not permissible activity and the said finding of the Civil Judge was set aside. However, the DDA was directed to, levy the misuser charges and also to consider the application for conversion of the property from lease-hold to

freehold as per its policy.

4. The Plaintiff, then, filed an application for contempt sometime in 2017. In the said contempt, the allegation of the Plaintiff was that the Plaintiff approached the DDA several times for completing the process of conversion from lease-hold to free-hold, however, the DDA continued to delay the same. Accordingly, the Plaintiff sought action under Section 12 read with Section 2(b) of the Contempt of Courts Act, 1971 (*hereinafter, “the Act”*) against the alleged erring officials of the DDA. In the said contempt petition, notice was issued on 9th January, 2018 and orders dated 10th May 2019, 17th May 2019, 1st June 2019, 3rd June 2019 and 11th July, 2019 were passed summoning various officials of the DDA at different points of time. The DDA, being aggrieved by the orders passed in the contempt petition repeatedly summoning various high ranking officials of the DDA, who have also left the DDA, has preferred the present petition.

5. In the present petition, on 19th July, 2019 notice was issued to the Plaintiff and the direction of the Trial Court, issuing notice of the contempt against Mr. Chander Shekhar Prashad, former director (RL) of the DDA, currently Under Secretary to the Government of India, Department of Personnel and Training, was stayed. Notice was thereafter, issued to the Respondent, who has been served as per the report of the Registry, however, there is no appearance on behalf of the Respondent.

6. Ms. Prabhsahay Kaur, Id. counsel appearing for the DDA submits that the Id. District Judge has no jurisdiction to entertain the application under the Act. At best, the only order that could have been passed by the Id. ADJ was to refer the matter to the High Court, if the Court found *prima facie* that the allegations of contempt were made out.

7. It is further submitted by ld. counsel for the DDA that the grievance of the Plaintiff has already been resolved, inasmuch as the conversion of the property from lease-hold to freehold has been effected on 28th May, 2019. In August, 2019 the final conveyance deed has also been executed by the DDA in favour of the Plaintiff. She, thus, submits that despite this being informed to the ld. ADJ, in the contempt application, the Court continued to issue summons and notices to the ex-officials of the DDA.

8. It is further submitted that even in the execution proceedings, the Plaintiff has stopped appearing and it is her understanding that the Plaintiff has, after conversion of property from lease-hold to freehold, lost interest in the matter. She places reliance on the order dated 28th August, 2019 showing that even the execution proceedings in respect of the same very judgment/decreed have been disposed of. She also places reliance on the judgments titled *Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307* and *Ranveer Yadav v. State of Bihar, (2010) 11 SCC 493*.

9. After hearing the ld. counsel for the DDA and having perused the impugned orders as also the document which shows that conversion from lease-hold to free-hold has also been effected, it is clear that the final judgment/decreed passed by the Civil Judge and the Appellate Court's order dated 27th April 2011 have been given effect to. At the time when the Plaintiff himself has filed the contempt petition, since the conversion was pending and was facing hurdles, the Court may have entertained the contempt.

10. It is, however, important to note that the settled legal position is that the District Judge would not have power to initiate any contempt action under Section 10 & 12 of the Contempt of Courts Act, inasmuch as the said

power would vest with the High Court. The settled legal position has been set out in **Kanwar Singh Saini** (*supra*) as under:

“18. In case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order 21 Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order 39 Rule 2-A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the 1971 Act when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order 39 Rule 2-A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.”

11. In **Ranveer Yadav** (*supra*), the following has been held.

“19. This Court, therefore, holds that Section 2(c)(ii) has been enacted to protect apart from sanctity, the regularity and purity of a judicial proceeding. This, we repeat, is based on the principles of high public policy.

That is why contempt power is said to be an inherent attribute of a superior court of record. This power has not been given to the subordinate judiciary, but in an appropriate case, the subordinate judiciary can make a reference to the High Court under Section 15(2) of the Act, as has been done in this case.

20. Thus when the High Court exercises its power on a reference under Section 15(2) of the Act, it is virtually exercising the same as a guardian of the subordinate judiciary to protect its proceedings against an outrage and affront. In exercising such power, the High Court being a “court of record” and the highest judicial authority in the State is discharging its jurisdiction in loco parentis over the subordinate judiciary in that State. Therefore, there is something in the nature of the High Court's power under Section 15(2) of the Act which couples it with a duty. The duty is obviously to uphold the rule of law. Here we may remember the views of Lord Chancellor Earl Cairns, who gave the concept of power coupled with duty, the most graceful articulation and which I quote:

“... But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.”

These words resonate with a strange poignancy even today. But there is a rider. Contempt power has to be exercised with utmost caution and in an appropriate case and that is why the High Court has been entrusted with it.”

12. The Court has also perused the order dated 28th August, 2019 passed by the Executing Court in Ex.P.277/2018. The said order reads as under:

“28.08.2019

*Present : None for the DH
Ms. Jyoti Sharma, Counsel for the
JD/DDA.*

Heard.

It is submitted by the counsel for the JD/DDA that all that was required to be done by the DDA has been done in this case and lease stands renewed in favour of DH. None is appearing on behalf of DH. Even on the last date of hearing, none has appeared on behalf of DH.

Be put up at 12:30 PM.

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At: 12:20 PM:-

Present : None.

No one is appearing on behalf of DH since morning despite matter called twice. Perusal of record shows that none appeared on behalf of DH on the last date of hearing also. Therefore, in view of the submissions made on behalf of the DDA by the counsel regarding renewal of the lease in favour of the DH, this execution petition is disposed of as satisfied.

*File be consigned to **Record-Room.**”*

13. As per the above order, it is clear that the Plaintiff does not intend to pursue the contempt and in any event, the property has also been converted from lease-hold to free-hold. The DDA has, since, also executed the conveyance deed in favour of the Plaintiff.

14. There is no gainsaying that whenever such requests are entertained by the DDA, especially in cases wherein effect to orders of the Court have to be given, the same ought to be dealt with diligently and delay can result in

complications, as has happened in the present case.

15. The present petition is, accordingly, allowed. The contempt proceedings against the DDA and its officials are dropped. No further orders are called for. The pending application is also disposed of. This order be communicated to the Vice-Chairman, DDA by Ld. Counsel appearing for the DDA. *Dasti.*

PRATHIBA M. SINGH, J.

JANUARY 15, 2020/dk