



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

Date of decision: 12th OCTOBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 82/2021 & CM APPLs. 263/2021, 4075/2022 & 41466/2022**

ALL INDIA BHRASHTACHAR VIRODHI MORCHA (REGD.) &
ANR Petitioners

Through: Mr. S. D. Windlesh, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Ms. Garima Prasad, Sr. Advocate with
Ms. Prabhsahay Kaur, Standing
Counsel for DDA with Ms. Parul
Parmar and Ms. Sharanya Sinha,
Advocate for R-1/DDA.

Mr. Rajiv Nayar, Sr. Advocate with
Ms. Meghna Mishra, Mr. Kartik
Nayar, Mr. Ankit Rajgarhia, Mr.
Tarun Sharma and Mr. Abhishek
Grover, Advocates for R-2

Mr. Sanjeev Sabharwal, Standing
Counsel for R-3/MCD.

Mr. Rishikesh Kumar, ASC for
GNCTD with Ms. Sheenu Priya, Mr.
Muhammad Zaid and Mr. Sudhir
Kumar Shukla, Advocates for R-4.

Mr. Kirtiman Singh, CGSC with Ms.



Vidhi Jain, Ms. Kunjala Bhardwaj and
Mr. Madhav Bajaj, Advocates for R-5.

Mr. Karunesh Tandon and Mr. Rahul
Chauhan, Advocate for R-7/Delhi Jal
Board.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

1. The instant Writ Petition has been filed by the Petitioners under Article 226 of the Constitution of India with the following prayers:-

“a. Issue a writ of mandamus or any other appropriate writ (s), order (s), direction (s) to respondent No.1/DDA to implement and compliance of the orders and judgment dated 10.05.1996, 28.04.2000, 01.03.2001, 25.03.2010 AND all other relevant orders in the I.A. NO.129 IN LA. 22 in W.P. (C) NO.4677 of 1985 by Hon'ble Supreme Court of India in;

b. Issue the order (s) or direction (s) to restrain the respondent No.1 and 2 to act in pursuance of the Memorandum of Understanding arrived between D.D.A. and the D.L.F. Home Developers Ltd. dated 08.07.2015 and quash the Memorandum of Understanding arrived between D.D.A. and the D.L.F. Home Developers Ltd. dated 08.07.2015 being illegal, arbitrary and against orders or directions issued on 10.05.1996 and 25.03.2010 by the Hon'ble Supreme Court of India:

c. Issue a writ of mandamus or any other appropriate writ (s), order (s), direction (s) to the respondent No.1 to develop the 129 acres of land as per landscape prepared by respondent No.1/DDA in 2011



within 3 months and open the place for general public for community use as is done by New Delhi Municipal Counsel in case of Lodi Garden, Tal Katora Garden, Nehru Park, Chanakyapuri etc. in Delhi;

d. Appoint an SIT consisting of officials of Surveyor General of India/respondent No.5 to identify 129 acres of land came within the jurisdiction of respondent No.1/DDA by the order of Hon'ble District and Session Judge, Tis Hazari Courts, Delhi and also to identify the exact quantum of land retained by all owners.

e. The three erstwhile closed industries such as DCM Sri Ram Consolidated Ltd., SIEL Ltd. and Hindustan Insecticides Ltd. As order by Hon'ble District and Session Judge, Tis Hazari Courts, Delhi in execution case filed by DDA/Resp.No.1 before District Judge, Tis Hazari, Delhi in 2000.

f. Appropriate penalty for the commercial exploitation of the said land meant for green be imposed on official of Resp.No.1 and Respondent No.1 and 2. The official of Resp. No. 1 and 2 are involved in the violation of Supreme Court's orders also be punished as this Hon'ble Court deem fit and proper;

g. Issue direction or order to respondent No.1/DDA & respondentNo.3/North MCD to restrain the respondent No.2 from further construction either flatted factories or residential flats I towers in any portion of retained land of 3 erstwhile closed industrial unit till the final disposal of the present case;

h. Respondent No.6/Central Ground Water Board and respondentNo.7/Delhi Jal Board be directed to place on record the permission related papers for five Tube wells, bore wells and other two Delhi Jal Board



connections with a K Numbers in the premises with its locations and revenue earned from DLF Home Developers by DJB since last 10 years.

i. Record of Dist. Judge HQ Tis Hazari, Delhi/respondent No.4 be summoned in this Hon'ble Court containing relevant orders/map of demarcated land issued as warrant of possession in favour of DDA by the Dist. Judge in respect of execution case number 162/2000 titled DDA vs. Amrit Industries concerning three erstwhile closed units i.e. SB Mills/SIEL/HIL.

j. The DDA/Resp.No.1 be directed to utilize half of the amount of 24.42 crores received from DMRC for making this entire land of 129 acres as green/open park for the use of larger public within 3 months by giving access from different directions of 129 acres land as per local demand.”

2. The Petitioner is before this Court alleging several transgressions of the order dated 10.05.1996 passed in WP(C) No. 4677/1985 titled MC Mehta v. Union of India & Ors., wherein the Hon'ble Supreme Court called for the creation of “lung space” in Delhi, and consequently directed the closure of 168 ‘H category’ i.e. hazardous, noxious, heavy and large industries in Delhi with effect from 20.11.1996.

3. Furthermore, it was directed to handover 68% to 57% of the land available with the industries to Respondent No. 1 for exclusive development of green pastures. Thereafter, it appears that, as none of the industries surrendered their land, MC Mehta was compelled to file another application, which resulted in the order dated 28.04.2000 which stated that the land should be surrendered to the DDA within 4 weeks’ time.



4. The Petitioner has stated that the transgressions are as follows:-
5. The Petitioner has stated that in 2011, Respondent No. 1 developed Phase-1 of the land for community purposes, and a park for opened for the general public near BR Ambedkar University and behind Campa Cola factory at Shivaji Marg, New Delhi-110015.
6. However, in 2015, a new iron gate and installed and the general public was barred from accessing the park. Since then, the entry is only allowed by DLF security personnel.
7. Thereafter, it has been stated that Respondent No. 1 in collusion with Respondent No. 2 entered into a Memorandum of Understanding (“MOU”) dated 08.07.2015. The following clauses assume importance and are being reproduced below:-

“That the voluntary agency shall develop and maintain the said DDA parks/greens belonging to DDA to the satisfaction of VC/DDA or any other officer empowered by him on his behalf as per the terms and conditions laid hereinunder.

That the said DDA park/green shall be open to the general public without any entry fee during specified timings and as per DDA standard Do's and Don'ts, The voluntary agency shall use the land of the DDA park/green only for development and maintenance of the park/green and shall not transfer the maintenance and development of the park/greens to any other person, society, company,, department, organization etc, and the agency shall not enter into sub-agreement for maintenance etc...”



8. It is the case of the Petitioner that the MOU is directly in teeth of the Order dated 25.03.2010 passed by the Hon'ble Supreme Court, which reads as under:-

*"Therefore, whenever such open/lung space is created, it shall be shown in the Municipal/DDA records as "DDA land-dedicated by *****. The DDA shall maintain a Trust Account of such surrendered lands. This would mean that DDA which holds the surrendered and dedicated land in Trust cannot use it for any purpose other than as green belt or other spaces for the benefit of the community. This will be necessary to identify if the land held by DDA in trust for the community is not lost and is not treated as DDA owned lands which can be dealt with by DDA as absolute owner."*

"But any such consolidation or exchange shall be only with the sanction of the District Court, Delhi, after notice to the land owners dedicators. Any change in use of such surrendered land held in Trust by DDA or any transfer by DDA shall be only after securing prior permission from the High Court of Delhi."

9. The Ld. Counsel for the Petitioner has argued that the MOU has been entered into in contempt of the above-mentioned Order and signifies an exploitation of the land which is meant for development of lung space and greenery. It has further been alleged by the Petitioner that Respondent No. 2 has developed a township for the construction of 23 High-rise Towers at the land.



10. It has further been alleged that Respondent No. 2 has been operating 5 bore wells for commercial purposes since 2010, without a meter and no revenue has been paid to the government.

11. *Per contra*, the counsel for Respondent No. 1 has argued that the Petitioner has come to this Court with unclean hands. It has been brought to the attention of this Court that the prayer pertaining to cancellation of MOU has already been adjudicated upon by the Hon'ble Supreme Court in IA No. 76602 in WP(C) No. 4677/1985, which dismissed the application *vide* Order dated 19.09.2018 on the ground that it was devoid of merits.

12. It is the contention of the Respondent that the Petitioner is guilty of forum shopping and hence, does not deserve any indulgence of this Court.

13. Furthermore, it has been contended that there is an undue delay of about 6 years in challenging the MOU as it had been entered into back on 08.07.2015.

14. The counsel for Respondent No. 2 has raised grounds similar to Respondent No.1. The first contention of the Respondent No. 2 is regarding the maintainability of this Petition. The counsel has placed on record a detailed table which depicts the similarity of petitions and applications previously filed by the Petitioner, to the instant Petition to argue that the instant Petition is barred by *res judicata*.

15. Heard the counsel for the Petitioner, and the Respondents and perused the material on record.

16. From a perusal of the facts, it is evident that the Petitioner has previously also filed several Writ Petitions and applications, seeking identical relief from this Court, and the Hon'ble Supreme Court. In the instant Writ Petition the Petitioner has inter alia, sought the following: -



- a. Implementation of the orders and judgment dated 10.05.1996, 28.04.2000, 01.03.2001, 25.03.2010 and all other relevant orders in the I.A. N0.129 IN LA. 22 in W.P. (C) N0.4677 of 1985 by Hon'ble Supreme Court;
- b. Quashing of the MOU dated 08.07.2015, and restraint Respondent No. 2 from constructing anything on Respondent No. 1;
- c. Development of 19 acres of land as per landscape prepared by the Respondent No. 1
- d. Appoint an SIT consisting of officials of Surveyor General of India/respondent No.5 to identify 129 acres of land came within the jurisdiction of respondent No.1/DDA
- e. Appropriate penalty for the commercial exploitation of the said land meant for green be imposed on official of Resp.No.1 and Respondent No.1 and 2.
- f. The DDA/Resp.No.1 be directed to utilize half of the amount of 24.42 crores received from DMRC for making this entire land of 129 acres as green/open park for the use of larger public.

17. Respondent No. 2 has filed a table regarding the petitions and the applications filed by the Petitioner to show that the reliefs sought for in this writ petition have been sought for before the Apex Court and this Court, which is reproduced as under: -

WRIT PETITION(CIVIL) NO.82 of 2021	EARLIER FILED PILS /WRIT PETITIONS /APPLICATIONS WITH SIMILAR RELIEFS
------------------------------------	---



i. Issue a writ of mandamus or any other appropriate writ (s), order (s), direction (s) to respondent No. 1/DDA to implement the orders dated <u>10.05.1996, 28.04.2000, 01.03.2001, 25.03.2010</u> AND all other relevant orders in the I.A. NO.129 IN I.A. 22 in <u>W.P. (C) NO.4677 of 1985</u> by Hon'ble Supreme Court of India in;	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016
ii. Issue the order (s) or direction (s) to restrain the respondent No.1 and 2 to act in pursuance of the Memorandum of Understanding arrived between D.D.A. and the D.L.F. Home Developers Ltd. dated <u>08.07.2015</u> and quash the Memorandum of Understanding arrived between D.D.A. and the D.L.F. Home Developers Ltd. dated <u>08.07.2015</u> being illegal, arbitrary and against orders or directions issued on <u>10.05.1996</u> and <u>25.03.2010</u> by the Hon'ble Supreme Court of India;	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016.
iii. Issue a writ of mandamus or any other (s), appropriate writ (s) order (s), direction (s) to the respondent No.1 to <u>develop the 129 acres of land as per landscape prepared by respondent No.1/DDA in 2011 within 3 months and open the place for general public for community use as is done by New Delhi Municipal Counsel in case of Lodi Garden, Tal Katora Garden, Nehru Park, Chanakyapuri etc. in Delhi;</u>	b. MC Mehta vs Union of India WP (C) 4677 of 1985 (Application of Mawana Sugars in I.A. 766602 of 2017); Decided vide order 19.09.2018.
iv. Appoint an SIT consisting of officials of Surveyor General of India to identify 129 acres of land came within the jurisdiction of respondent No.1/DDA by the order of Hon'ble District and Session Judge, Tis Hazari Courts, Delhi and also to identify the exact quantum of land retained by all the three erstwhile closed industries such as DCM Sri Ram Consolidated Ltd., SIEL Ltd. and Hindustan Insecticides Ltd. as order by Hon'ble District and Session Judge, Tis Hazari Courts, Delhi in execution case filed by DDA/Respondent No.1 before District Judge, Tis Hazari, Delhi in 2000.	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016



v. Appropriate penalty for the commercial exploitation of the said land meant for green be imposed on official of Respondent No. 1 and Respondent No.1 and 2. The official of Resp. No. 1 and 2 are involved in the violation of Supreme Court's orders also be punished as this Hon'ble Court deem fit and proper;	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016
vi. <u>Issue direction or order to respondent No. 1 /DDA & respondent No.3/North MCD to restrain the respondent No.2 from further construction either flatted factories or residential flats I towers in any portion of retained land of 3 erstwhile closed industrial unit till the final disposal of the present case;</u>	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016
vii. <u>Respondent No.6/Central Ground Water Board and respondent No.7/Delhi Jal Board</u>	

<u>be directed to place on record the permission related papers for five Tubewells, borewells and other two Delhi Jal Board connections with al K Numbers in the premises with its locations and revenue earned from DLF Home Developers by DJB since last 10 years.</u>	
viii. Record of Dist. Judge HQ Tis Hazari, Delhi be summoned in this Hon'ble Court containing relevant orders/map of demarcated land issued as warrant of possession in favour of DDA by the Dist. Judge in respect of execution case number 162/2000 titled DDA vs. Amrit Industries concerning three erstwhile closed units i.e. SB Mills/ SIEL/HIL.	a. Kamal Nayan Sharma vs State of NCT of Delhi, W.P (C) 5135 of 2016; Decided vide order dated 28.11.2016



ix. DDA/Respondent No. 1 be directed to utilize half of the amount of 24.42 crores received from DMRC for making this entire land of 129 acres as green/open park for the use of larger public within 3 months by giving access from different directions of 129 acres land as per local demand.	a. I.A. No. 153 was filed Petitioner 2 i.e. Rashtrawadi Janhit Sabha (Regd.) before the Hon'ble Supreme Court, however the same was dismissed vide order dated 19.02.2002 directing that "The present application essentially is for the purpose to treat the land which is required to be surrendered by the industry to the DDA and then framing a scheme bestowing ownership rights in respect of those premises which are alleged to have been occupied by the workers of the industries. Having considered the application as well as the additional affidavit, we are unable to accede to this prayer made by the Rashtravadi Janhit Sabha as in our opinion in the matter of surrender of land after the industry was shifted outside Delhi pursuant to the order of this Court, is a matter between the owner and the DDA and no right and/or public interest can be said to be involved to pass any order for framing a scheme and to confer any right or allow these people to continue in those quarters. IA No.153/97 accordingly stands rejected."
---	--

18. From a perusal of the foregoing table, it is evident that all the prayers sought before this Court have already been adjudicated upon by this Court and the Hon'ble Supreme Court.

19. Application bearing I.A. No.76602/2017 in W.P.(C) 4677/1985 was filed in the Apex Court with the following prayers:-

"a. Declare that the agreement dated 08.07.2015 entered into between Respondent No. 1 and Respondent No. 2 with respect to the land surrendered by the applicant is without authority, contrary to the judgments dated 10.05.1996 and 25.03.2010, passed by this Hon'ble Court and therefore illegal, null and void;

b. Direct the Respondent No. 1 to remit the possession of the land admeasuring 18.854 hectares situated at



15, Shivaji Marg, New Delhi to the applicant who is lawful owner of the said land;

c. Permit the applicant to put to use the land admeasuring 18.854 hectares situated at 15, Shivaji Marg, New Delhi as per the provisions of the Master Plan for Delhi-2021;

d. In the alternative to prayers (b) and (c) and in the event Respondent No. 1 wishes to acquire the entire surrendered land from the applicant, this Hon'ble Court may pass appropriate directions for acquisition of the surrendered land from the applicant, this Hon'ble Court may pass appropriate directions for acquisition of the surrendered land in accordance with law; and

e. Pass such other and further order or orders as this Hon'ble Court may be deemed fit in the facts and circumstances of the case and in the interests of justice;"

20. The prayers in the application and in the Writ Petition are similar in nature. The said application came up for hearing and was decided by an Order dated 19.09.2018 by the Apex Court and the application was rejected. Several other orders of the Apex Court have also been produced by the DDA to substantiate its contention. It is also stated that the Petitioner herein was also a party before the Apex Court and was, therefore, aware of this fact.

21. It is trite law that the writ remedy is an equitable one. A person approaching this Court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings repeatedly as the same amounts to abuse of the process of law. The Hon'ble Supreme Court has laid down this principle in a catena of



judgments, including K.D. Sharma v. SAIL, (2008) 12 SCC 481 wherein the following has been stated: -

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226



of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.” (emphasis supplied)



22. As already stated, similar reliefs have been sought before the Apex Court and this Court which have already been dealt with and decided. Since the issues have already been decided, the Petitioner cannot be permitted to come with the same issues again even though the Petitioners herein are not the Petitioner in those applications. In public interest, the same issues cannot be permitted to be raised again and again by different parties. It appears that the Petitioner is before this Court simply to try his luck again, and is evidently engaging in forum shopping by falsely presenting itself as a conscientious organisation out to fight the supposed corruption and nepotism

23. It is abundantly evident that the Petitioner has come to this Court with unclean hands, has approached the facts of the instant matter in a clandestine manner to mislead this Court. In light of this, this Court does not find any reason to consider the Petition, and finds it appropriate to dismiss it at the threshold.

24. Resultantly, the Petition is dismissed and any pending application(s) stands disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 12, 2022

Rahul