



2024:DHC:4420-DE



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

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Date of Decision: 29.05.2024

+ **LPA 325/2020 & CM APPL. 27744/2020**

DELHI DEVELOPMENT AUTHORITY

..... Appellant

versus

KIRAN KAUR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Neeraj Malhotra, Sr. Adv. with
Ms. Shahana Farah, Ms. Sanna Harta
& Mr. Nimish, Advs.

For the Respondents : Ms. Hemlata Rawat, Adv. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Appeal has been filed by the Appellant/DDA [hereinafter referred to as "DDA"] impugning orders dated 26.02.2020 and 28.09.2020 (corrected and released on 05.10.2020) passed by the learned Single Judge [hereinafter referred to as "the Impugned Orders"]. By way of Impugned Orders, directions were passed to refund amounts paid in excess by Respondent Nos. 1 and 2 [hereinafter referred to as "the Respondents"]].



2. On 26.02.2020, a learned Single Judge of this Court had disposed of Writ Petition (W.P.(C) 13475/2019) filed by the Respondents *inter alia* directing the DDA to remit a sum of Rs.39,82,000/- to the Respondents equally, *via* bank draft, within three weeks from the date of receipt of copy of the order.
3. The relevant factual matrix is that the Plot No. 89, Pocket No. 07, Sector 23B, Dwarka, admeasuring 209 sq. mtr. [hereinafter referred to as “subject plot”] was allotted to the Respondents jointly by the DDA. Subsequently, an Agreement to Sell was executed between one Mr. Vikas Shokeen [hereinafter referred to as “Vikas”] Respondent No.3 herein, and the Respondents for the sale of subject plot.
 - 3.1 In the meantime, the Respondents deposited an amount of Rs.39,31,291/- towards the allotment of the subject plot, while Vikas also made payment totalling to a sum of Rs.39,31,500/- with the DDA, with respect to the subject plot as well.
 - 3.2 Since disputes had arisen between Vikas and the Respondents, a Police complaint was filed which resulted in an FIR being registered. Ultimately a settlement was reached between Vikas and the Respondents. Initially it is stated that an MoU was entered into between the parties on 03.08.2016. Thereafter, a settlement agreement dated 26.03.2019 was executed in the Delhi Mediation Centre, Rohini District Courts wherein it was held that the parties have settled all their disputes as per the



Memorandum of Settlement dated 03.08.2016, and will move an appropriate Petition for quashing of the abovementioned FIR.

- 3.3 The Petitioners (Respondents herein) thereafter, filed a Petition *inter alia* praying that DDA release the excess amounts paid to the DDA against the cost of the subject plot, in favour of the Respondents.
4. Notice in this Petition was issued by the learned Single Judge on 20.12.2019, when directions were passed to ascertain whether any excess amount was lying with the DDA in respect of the subject plot and what was its quantum.
5. On 26.02.2020, learned Counsel appearing for DDA informed the Court that a sum of Rs. 39,82,000/- was the excess amount available with DDA. On that day, learned Counsel who was appearing for Vikas stated that Vikas would have no objection if the excess amount was released by the DDA to the Respondents.
6. In view thereof, the Impugned Order dated 26.02.2020 was passed, directing release of Rs. 39,82,000/- in favour of the Respondents in equal proportions. It was also directed that the release be made within a period of three weeks.
7. Since the payment was not made, an Application was filed by the Respondents highlighting the non-compliance. The



Application was listed on 14.08.2020, when the learned Single Judge observed that DDA had failed to comply with the orders of this Court despite the lapse of six months and a show-cause notice as to why contempt proceedings be not initiated against Principal Commissioner, Land Disposal, DDA was issued.

- 7.1 Subsequently, the DDA filed an Application seeking recall of order dated 26.02.2020. The learned Single Judge by his order dated 28.09.2020 (corrected and released on 05.10.2020) passed directions dismissing the said Application. Aggrieved by this dismissal and the Impugned Orders passed by the learned Single Judge, the DDA has filed the present Appeal.
8. A Coordinate Bench of this Court had by its order dated 03.11.2020 passed interim directions staying the implementation of the Impugned Orders.
9. Learned Senior Counsel appearing for the DDA has submitted that the Impugned Orders were passed without taking into consideration the fact that there was some fraud in the matter. It was further contended that Vikas had deposited money with DDA without any locus in the matter. Initially, the Respondents had submitted that the money was deposited by Vikas on their behalf and later on, the stand of the Respondents changed to submit that Vikas has no right in the subject Plot.
- 9.1 Learned Senior Counsel for DDA further contended that since DDA was unable to file a Counter-Affidavit, the fraud could not



be brought to the notice of the Court and DDA was not given an adequate opportunity in the matter to do so.

- 9.2 It was further contended that there were multiple agreements to sell and also there was no explanation as to why both parties were depositing money at around the same time. Thus, it was averred that directions passed by the learned Single Judge could not be sustained in view of the fraud played by the Vikas and the Respondents in the matter.
10. Learned Counsel appearing for the Respondents, on the other hand, contended that there were some *inter se* disputes between Vikas and Respondents, however, the same were sorted out and not one but two settlement agreements were entered between the parties. Criminal proceedings were also initiated in the matter and it was agreed that the parties would file Petitions for quashing of the FIR, since a settlement was arrived at between the Respondents and Vikas. It was only, thereafter, and in view of the fact that money had been paid twice over for the subject plot, that the Petition was filed.
- 10.1 Learned Counsel for the Respondents further draws the attention of the Court to the Order dated 28.09.2020, more specifically to paragraphs 3, 4, 5 and 6, to submit that DDA had no intention of complying with the order passed by the learned Single Judge and it was only after the lapse of six months when an Application was filed for compliance of the Impugned Order



by the Respondent, that the issue of fraud was raised for the first time.

10.2 It was further contended that the learned Single Judge had examined the issue on merits as well and had found no infirmity with the order dated 26.02.2020. Hence, the Application for recall was rightly dismissed by the learned Single Judge on 28.09.2020.

11. As stated above, the Impugned Orders were stayed by an order of a Coordinate Bench of this Court on 03.11.2020. Thereafter, by its order dated 12.07.2022, the Court had directed that the amount of Rs. 39,82,000/- along with the interest, be computed and deposited by DDA before the Registry of this Court.

11.1 Subsequently, Rs. 39,82,000/- was deposited by DDA with the Registry and a sum of Rs. 15,42,406/- was also deposited as interest.

12. Directions were also passed by a Coordinate Bench of this Court on 10.03.2023 wherein, in view of the submissions made, DDA was directed to file a personal Affidavit of the Counsel representing it before the learned Single Judge, indicating whether any request for filing Counter-Affidavit was made before the learned Single Judge.

13. An affidavit dated 05.04.2023 was filed by the learned Counsel for DDA [hereinafter referred to as the “Affidavit of



05.04.2023”]. It is stated therein that the order dated 26.02.2020 was not passed on merits. Extracts of orders passed by the learned Single Judge were also set out. There is however no reference in the Affidavit of 05.04.2023 to a request for the filing of a Counter-Affidavit made before the learned Single Judge.

14. Upon an examination of the record, we find that the matter was initially listed before learned Single Judge on 20.12.2019. The order passed by the learned Single Judge, on that day, records that an excess amount was paid for the subject plot in view of a dispute between two parties and a refund of the same is sought by the Petitioners [Respondents herein]. In view of the submissions on that date, the learned Single Judge directed the learned Counsel appearing for DDA to ascertain whether or not the payment with respect to the subject plot has been made in excess. The matter was thereafter adjourned for hearing to 26.02.2020. Learned Counsel for DDA on 26.02.2020 informed the Court that there is an amount of Rs.39,82,000/- available with DDA, as an excess amount paid for the subject plot. It was based on these submissions that the order dated 26.02.2020 was passed by the learned Single Judge.

14.1 Quite clearly, DDA had a period of more than two months to respond to the Petition filed by the Respondents before the learned Single Judge. Instead, during the hearing of 26.02.2020 it was confirmed by DDA that excess payments are available. It



was based on this confirmation, that the order dated 26.02.2020 was passed disposing of the Petition with a direction to pay the Respondents.

14.2 The matter, however, did not end there. Since, the order dated 26.02.2020 was not complied with by DDA, the Petitioners [Respondents herein] filed an application *inter-alia* seeking its compliance.

14.3 It was in reply to this application that for the first time on 14.08.2020, DDA submitted that they had discovered a fraud in the matter and they sought time to file an appropriate application seeking modification/recall of the order dated 26.02.2020. The application seeking recall of the order dated 26.02.2020 was subsequently filed by DDA on 15.09.2020. The learned Single Judge after examining the matter including the allegations made by DDA on the fraud, passed a detailed order on 28.09.2020 *inter-alia* stating that there did exist a dispute between Vikas and the Respondents which was subsequently resolved. The learned Single Judge while relying on an MOU entered into between Vikas and the Respondents on 03.08.2016 set out in detail, the reasons for excess deposit and the fact that there was a settlement between the parties, pursuant to which the Respondents received possession of the subject plot and a lease deed was executed in favour of the Respondents on 09.02.2017 by the DDA. Subsequently, the subject plot was converted into freehold and a conveyance deed was also



executed in favour of the Respondents on 29.02.2017 by DDA. The Respondents also sold the subject plot on 28.05.2018. It was only thereafter, when DDA failed to refund the excess monies deposited, that the Petition was filed.

14.4 The order dated 28.09.2020 further directs that since it was not disputed that an excess payment was made and the entire facts and documents were available before the Court, there was no ground for recall of the order dated 26.02.2020. The relevant extract of the order dated 28.09.2020 is set out below:

*“10. The petitioner has filed a reply to the affidavit that was filed by DDA in response to the show cause notice issued as to why contempt proceedings be not initiated against respondent No.1/DDA. The petitioner has adopted the said reply as response to the present application. The case of the petitioner is that she was allotted the plot in question vide allotment letter dated 15-28.06.2010. The petitioner deposited the entire cost of the plot with DDA. Further respondent No.2 also deposited the entire cost of the plot i.e. Rs.39.82 lakhs with respondent No.1/DDA. Thereafter, respondent No.2 Sh. Vikas Shokeen filed an FIR No.423/2010 dated 01.11.2010 for the offence of cheating against the petitioners. Respondent No.2 also filed a suit being CS(OS) No.1892/2010 for specific performance of the alleged agreement to sell dated 10.08.2010 against the petitioners. **It is stated by the petitioners that on account of the disputes, respondent No.1/DDA did not execute the perpetual lease deed and did not issue possession letter to the petitioners. It is only when the petitioners and respondent No.2 entered into a settlement vide MOU dated 03.08.2016 that things moved.** The settlement was also filed in the suit which was pending in the court of Sh. Mohd. Farrukh, learned ADJ-V, Dwarka Courts. To complete the narration of facts, it is also pointed out that the petitioner had filed an application for anticipatory bail of petitioner No.2 which was declined by this court. The petitioner approached the Supreme Court and the Supreme Court was pleased to grant interim protection vide order dated 29.04.2011. Subsequently, on 05.08.2011 the Supreme Court allowed the anticipatory bail application of*



petitioner No.2. It is further stated that the petitioners entered into a settlement with respondent No.2. A settlement order dated 31.08.2016 was also passed by concerned court, namely the court of learned ADJ, Dwarka Court. All these documents, it is pleaded, were sent to respondent No.1/DDA to enable DDA to execute a perpetual lease deed and issue a possession letter and execute conveyance deed in favour of the petitioner. It is only after the settlement that in January, 2017 the petitioner received possession of the property and the lease deed was executed in favour of the petitioner on 09.02.2017. The plot was converted into freehold and on 29.06.2017 a conveyance deed was executed in favour of the petitioner. Thereafter, on 28.05.2018 by a registered sale deed the petitioner is said to have sold the plot.

11. What follows from the above is that it is pleaded by the petitioner that he had duly informed respondent No.1/DDA about the settlement with respondent No.2 and the subsequent orders of the court passed pursuant to the settlement agreement with respondent No.2 i.e. 31.08.2016.

12. I need not go into the controversy as to whether the petitioner had filed the compromise documents before DDA. This is so as when the writ petition was filed by the petitioner all the documents have been placed on record by the petitioner and have been attached with the writ petition, i.e. a copy of the FIR as Annexure P-5 and a copy of the settlement agreement as Annexure P-6. It is manifest that when this court disposed of the writ petition and issued appropriate directions in favour of the petitioner to pay the excess amount of Rs.39.82 Lacs on 26.02.2020, the entire facts were available with the court and were also obviously available with DDA and learned counsel for respondent No.1/DDA. As the order of this court dated 26.02.2020 has been passed being fully aware of all these facts, in my opinion, there are no grounds made out to recall the order dated 26.02.2020.

13. Further from the facts as stated in this application, it appears that respondent No.1/DDA pleads that this court had passed an incorrect order on 26.02.2020 inasmuch as it is claimed by respondent No.1/DDA that the petitioner was entitled to no relief. In that eventuality, the remedy of respondent No.1/DDA was to have challenged the order as per law. Instead, respondent No.1/DDA has sat on the order of this court dated 26.02.2020 for seven months in disobedience



of the order of this court. Now when an explanation was sought from respondent No.1/DDA for their inaction, respondent No.1/DDA has chosen to move the present application after seven months from the order of this court dated 26.02.2020.

14. In any case, as noted above, it is not denied by respondent No.1/DDA that the cost of the plot in question namely Rs.39,31,291/- has been paid twice by both, namely, the petitioner and respondent No.2. As the amount of Rs.39.82[sic 39.82 lacs] has been received by respondent No.1/DDA twice, this court on 26.02.2020 directed respondent No.1/DDA to refund to the petitioners the said amount of Rs.39.82[sic 39.82 lacs]. The consent of respondent No.2 who had entered appearance through counsel was also clearly noted.”

[Emphasis is ours]

15. The learned Single Judge after examining the Application for recall filed by DDA, reached a conclusion that there was no fraud practised upon the Court nor was the Court mislead nor was a mistake made by the Court which would prejudice a party. Thus, it was held that there was no ground to recall the Impugned Order dated 26.02.2020 and the learned Single Judge dismissed the application filed as being without any merit. The learned Single Judge also took note of the fact that DDA did not comply with the directions of the Court dated 26.02.2020 and it was only thereafter, when an application was filed by the Respondents [Petitioners therein] alleging non-compliance, that, an application was filed by DDA, alleging a fraud.
16. We find no infirmity with the Impugned Orders. The facts as stated above are not disputed by DDA. The only plea taken by them is the plea of fraud and the inability of DDA to place their



stand before the learned Single Judge, in the first instance. However, the Order Impugned dated 28.09.2020 was passed by the learned Single Judge after DDA was given an adequate opportunity to do so and this order clearly sets out a discussion on all these contentions of DDA.

- 16.1 The Affidavit dated 05.04.2023 filed by the learned Counsel for the DDA, does not help the case of DDA either. Other than reproducing the order sheet extracts, and reasons for not filing any documents, the Affidavit does not address the issue whether any time was sought by DDA for filing a Counter-Affidavit before the learned Single Judge, as was directed by order dated 10.03.2023 passed by the Court. The Affidavit of 05.04.2023 only states that: *“there was no occasion to place any facts and submissions of DDA on 26.02.2020...”*. This contention is clearly without any merit. As stated above, the DDA had adequate time between the first hearing of the matter on 20.12.2019 and on 26.02.2020 when the Petition was disposed of by the learned Single Judge in the first instance. Even thereafter, it was not until the Respondents filed an Application on account of non-compliance of the Impugned Order that an application for modification or recall was made. At no point was any request made by DDA for filing of a Counter-Affidavit. In any event, as discussed above, all contentions of the DDA were examined and after giving DDA a detailed hearing in the matter and an opportunity to place their averments on record, by



the Impugned Order dated 28.09.2020, the Application for recall - CM APPL. 23628/2020 in W.P.(C) 13475/2019 - was dismissed by the learned Single Judge.

16.2 There is no dispute that payment had been made twice over for the subject plot. However, indisputably, DDA sought to appropriate monies from the Respondents despite the orders passed by the learned Single Judge and without following the process of law.

17. The Supreme Court in *Bishambhar Dayal Chandra Mohan and Others v. State of Uttar Pradesh and Others*¹ has held that the State cannot, while taking recourse to its powers, deprive a citizen of its property. Money indisputably will also be property and thus, to deprive a person of its property illegally, amounts to deprivation of property without the authority of law.

17.1 A similar situation had arisen before a learned Single Judge of this Court in the case of *Kulwant Singh v. DDA*², where a party had made payment for a flat which was subsequently not allotted to him and upon a request for refund, the party was informed that the amount has been forfeited by the competent authority in view of the application money being already refunded to such party. The Court held the perception of DDA of a fraud perpetrated on it by the Petitioner, howsoever, cannot

¹ (1982) 1 SCC 39

² AIR 2019 Del 129 : 2019 SCC OnLine Del 7946



justify withholding of monies of the Petitioner. It was further held that neither vigilantism nor moral policing, is the forte, nor part of the duty of the DDA. The relevant extract reads as follows:

"9. 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 Rs. 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."

[Emphasis supplied]

18. As stated above, from an examination of the documents filed, it is clear that DDA has received duplicate payment for the subject plot and despite orders of the Court, excess amount deposited was not returned. DDA being a statutory body is required to return excess any payment received by it. Once, the Court has passed an order directing refund, the stand of DDA that it is



permitted to hold on to monies deposited on account of an alleged fraud purported on it by the Respondents, cannot be justified. Any fraud by a citizen on a public authority may make such citizen liable for action by the public authority but these actions have to be sanctified by law. Concededly, DDA did not take any steps in accordance with law against the Respondents in relation to the alleged fraud played on it by the Respondents. It simply decided to withhold the money of the Respondents despite directions of the Court to pay the Respondents. It is not disputed that both Vikas and the Respondents have paid sale consideration for the same Plot. Admittedly, DDA had received money twice. Forfeiture of money without the authority of law is completely proscribed in law.

19. Learned Senior Counsel further submitted that the excess amounts should not have been refunded to the Respondents but instead should have been given to some charitable organisation like the PM Relief Fund. This submission is also without any basis. Concededly, DDA has no authority in law to appropriate monies deposited in excess for any property, much less suggest giving the misappropriated monies to charity.
20. In view of the foregoing submissions, the Appeal filed is unmerited and is accordingly dismissed. Pending Application(s) are also disposed of.
21. The Registry is directed to release the amount which stands



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deposited by DDA along with interest accrued thereon, to the Respondent Nos. 1 and 2 in equal proportion.

TARA VITASTA GANJU, J

VIBHU BAKHRU, J

MAY 29, 2024/SA