Delhi Development Authority vs Skipper Construction Company(P) Ltd. & ... on 6 May, 1996

Equivalent citations: 1996 AIR 2005, 1996 SCC (4) 622, AIR 1996 SUPREME COURT 2005, 1996 AIR SCW 2401, 1996 (4) SCC 622, (1996) 4 JT 679 (SC), (1996) 2 CTC 557 (SC), (1996) 4 COMLJ 233, (1996) 2 APLJ 58, 1996 ALL CJ 2 1045, (1996) 2 GUJ LH 36, (1996) 21 CORLA 291, (1996) 4 SCJ 24, (1997) 89 COMCAS 362, (1996) 2 CURCC 241, (1996) 62 DLT 543

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Bench: B.P. Jeevan Reddy, K.S. Paripoornan

PETITIONER:
DELHI DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
SKIPPER CONSTRUCTION COMPANY(P) LTD. & ANOTHER

DATE OF JUDGMENT: 06/05/1996

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 2005 1996 SCC (4) 622
JT 1996 (4) 679 1996 SCALE (4)202

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY,J.

A plot of land was put to auction by the Delhi Development Authority [D.D.A.] in October 1980. Skipper Construction Company [Skipper] offered the highest bid in A sum of Rs. 9.82 crores. It was supposed to be a record bid at that time. According to the conditions of auction, twenty five percent of the amount was payable immediately and the rest within ninety days. Skipper deposited the twenty five percent but did not deposit the balance. It asked for extension repeatedly and it was granted repeatedly. As many as seven extensions were granted spread over the period January, 1981 to April, 1982. Since Skipper failed to deposit the balance consideration even within the last extended period, proceedings were taken for cancelling the bid. Skipper went to Court and on May 29, 1992 obtained stay of cancellation*. D.D.A. applied for vacating the stay. Nothing happened but usual adjournments. Skipper was simultaneously making representations to D.D.A. to give him further time. In January 1983, D.D.A. constituted a committee to consider the request of Skipper and other similar requests and to devise a formula for ensuring timely payments by such purchasers. The committee reported that cancellation of bids in such matters usually land D.D.A. in protracted litigation and

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*We are unable to see what jurisdiction or justification the court could have for passing such an order in an ordinary case of sale and purchase of property, more so when Skipper had failed to pay the balance consideration not only within the time stipulated but despite several extensions. suggested that to enable them to pay the monies due to D.D.A., the purchasers be given permission to commence development/construction on the plot [though possession as such be not delivered] subject to the condition that the property in the land would remain with the D.D.A. until the entire consideration is paid; if the entire consideration is not paid according to the revised schedule, the D.D.A. should be entitled to re-enter the plot and take it over along with the construction, if any, made thereon. [The idea was to enable the purchasers to undertake development and go on with the construction which would make it easy for them to sell the space in the building being constructed and thus raise funds for paying to D.D.A.] The committee recommended further that a revised agreement be obtained from such purchasers incorporating the above terms. When called upon to execute the revised agreement, in 1984, Skipper raised all sorts of objections and executed it only in the year 1987. Even before permission to enter upon the plot and to make construction thereon was granted under the revised agreement, Skipper appears to have been selling the place in the proposed building to various persons and receiving monies. Once it got the permission to enter upon the plot and to make construction thereon, it became all the more easy for it to sell the space in the proposed building. It did not pay the first instalment under the revised agreement in time but only after some delay. It did not pay the second instalment. Bank guarantees furnished by it in terms of revised agreement were also found to be defective. Every time the D.D.A. thought of cancelling the agreement on account of the said defaults, an argument was put forward that it would cause great hardship to hundreds of persons who have purchased space in the proposed building and that they would be deprived of their hard-earned monies. Skipper has been making some small token payments from time to time meanwhile. While the endless correspondence and discussions were going on between Skipper and D.D.A., Skipper went to Delhi High Court by way of a writ petition, C.W.No.2371 of 1989, asking for a writ of mandamus to the D.D.A. to sanction the building plans or in the alternative to grant permission to him to start construction at his risk. On March 19, 1990, the High Court passed an order permitting Skipper to commence construction in accordance with the sanctioned plans subject to deposit of a

sum of Rupees twenty lakhs in two instalments and Rs.1,94,40,000/- within one month. Against the said order, D.D.A. came to this Court by way of Special Leave Petitions (C) Nos. 6338 and 6339 of 1990. Meanwhile, Writ Petition (C) No.2871 of 1989 came up for final hearing on December 21,1990. The Delhi High Court made an order on that day directing Skipper to pay to D.D.A. a sum of Rs. 8,12,88,798/- within thirty days and to stop all further construction with effect from January 9, 1991 till the said payment was made. It was provided that in default of such payment, the licence [revised agreement dated August 11, 1987] would stand determined and D.D.A. would be entitled to re-enter the plot. Reasons for the order were given on January 14, 1991. Skipper failed to deposit the amount as per the direction of the High Court. It approached this Court by way of Special Leave Petition (C) No.196 of 1991. On January 29, 1991, this Court grantee an interim order subject to Skipper depositing Rs.2.5 crores within one month and another sum of Rs.2.5 crores before April 8, 1991. Skipper was expressly prohibited from inducting any person in the building and from creating any rights in favour of third parties. Inspite of the said prohibitory orders from this Courts Skipper-issued an advertisement on February 4, 1991 in the leading newspapers of Delhi insisting persons to purchase the space in the proposed building. It published such, advertisements repeatedly. Special Leave Petition (C) No. 196 of 1991 was ultimately dismissed on January 25, 1993, whereafter, D.D.A. re-entered the plot and took physical possession of property on February 10, 1993 along with the building thereon free from all encumbrances in terms of the revised agreement/licence and as provided in the orders of the Delhi High Court dated December 21, 1990/January 14, 1991. It also forfeited the amounts paid till then by Skipper in terms of the revised agreement and the said Judgment.

January 29, 1991 marks the watershed in these proceedings. Before the said date, Skipper had collected about Rupees fourteen crores from various parties agreeing to sell the space in the proposed building. Even after January 29, 1991, Skipper issued several advertisements and collected substantial amounts - Rupees eleven crores, according to its own version from various parties agreeing to sell the space in the said building. It appears that same space was sold to more than one person and monies collected. Not only did Skipper brazenly violate the orders of this Court dated January 29, 1991 by issuing advertisements, it also filed a suit in the Delhi High Court being Suit No.770 of 1993 seeking an injunction restraining the D.D.A. from interfering with its alleged title and possession over the plot and for a declaration that the re-entry by D.D.A. was illegal and void ! It also sought for a declaration that it has discharged all the amounts due to D.D.A. and that nothing was due from it. It obtained interim orders staying re-auction of the plot.

Against the interim order of the High Court staying the re-auction of the plot, D.D.A. approached this Court by way of Special Leave Petition (C) No.21000 of 1993. Noticing the conduct of Skipper, this Court initiated suo motu contempt proceedings against Tejwant Singh and his wife, Surinder Kaur, directors of Skipper. They were asked to explain (1) why did they institute Suit No.770 of 1993 in respect of the very same subject matter which was already adjudicated by this Court on January 23, 1993, i.e., by affirming the orders of the High Court dated December 21, 1990 and January 14, 1991 and (2) why did they enter into agreements for sale and create interest in the third parties in defiance of the orders of this Court dated January 29, 1991. After hearing the contemnors, this Court found them guilty of contempt of this Court in the following words:

"We, therefore, invoke our power under Article 129 read with Article 142 of the Constitution and order as follows: We sentence contemner-

Respondent is Tejwant Singh to undergo simple imprisonment for six months and to pay a fine of Rs.50,000 (Rupees fifty thousand only). We further sentence contemner respondent 2, Surinder Kaur to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000 (Rupees fifty thousand only). In default of payment of fine, the contemners shall further undergo simple imprisonment for one month. The payment of fine shall be made within one month from today.

All the properties and the bank accounts standing in the names of the contemners and the Directors of M/S. Skipper Construction Co.(Pvt.) Ltd. and their wives, sons and unmarried daughters will stand attached."

At that stag Sri C.Ramaswamys learned council appearing for the contemnors, requested for deferment of the sentence of imprisonment subject to conditions indicated by him. On the basis of the said offer, this Court deferred the sentence of imprisonment subject to the following conditions:

"(1). The contemners shall furnish bank guarantee in favour of the Registrar General of this Court in the amount of Rs.11 crores (Rupees eleven crores only) on or before 31-3-1995. The guarantee will be of a nationalized bank or any foreign bank operating in India The bank guarantee will be given for a period of one year from the date of furnishing the bank guarantee.

(2) The contemners shall deposit the entire account of Rs.11 crores by a bank draft in the Registry of this court on or before 30-11-1995.

If they fail to do so the bank guarantee will become encashable and will be encashed forthwith after 30-11-1995.

(3) If the contemners fail to give the bank guarantee by 31-3-1995 as aforesaid, the sentence of imprisonment will become enforceable at once.

(4) No application for extension of time either to furnish the bank guarantee or to make the payment as aforesaid, will be entertained by this Court.

(5) The contemners shall not leave the country without the express permission of this Court.

(6) List of properties given by the contemners is taken on record. The contemners will also file a list of properties held by their sons and unmarried daughters within one week from today.

(7) If and when any property that is attached under this order is sought to be alienated or encumbered to raise money to pay the liability of Rs.11 crores stated aboves the contemners will be

at liberty to approach the Court for permission to do so.

(8) The attachment of the properties and the bank accounts shall stand raised on the contemners furnishing the bank guarantee as aforesaid.

(9) The order with regard to the disbursal of the amount deposited will be passed after the amounts are deposited as aforesaid."

The contemnors deposited a sum of Rupees two crores but failed to deposit the balance. They also failed to furnish the Bank guarantee. As a result of the said failure, they were committed to prison. Both the contemnors have served out their sentence.

Meanwhile, D.D.A. invited tenders for the sale of the said plot of land along with the construction raised thereupon. The highest offer received was in the sum of Rupees seventy crores from M/s. Banganga Investments. It was accepted with the permission of this Court. The consideration has been deposited with the D.D.A. and the property transferred in favour of the said purchaser. At this stage, the question arose as to what should be done with the hundreds of persons who have been duped and defrauded by Skipper and who had parted with substantial amounts on the basis of the fraudulent and false representations made by Skipper. This Court made a distinction between persons who purchased the space before January 29, 1991 and the persons who purchased the space thereafter. The first concern of this Court was to reimburse the persons who purchased space in the said building prior to January 29, 1991. Their claims were said to be in the region of Rupees fourteen crores. Accordingly, this Court directed D.D.A. to set apart a sum of Rupees sixteen crores [out of the said amount of Rupees seventy crores] and to make it available to such purchasers in accordance with the orders of this Court. This Court also requested Justice R.S.Lahoti of the Delhi High Court to act as a one-man Commission to prepare a list of persons who had paid the amounts prior to January 29, 1991 and to determine the amount paid by each of them. After an elaborate enquiry, Justice Lahoti Commission submitted a Report dated February 2, 1996 according to which a sum of Rupees 13,27,37,561.59 crores was paid by more than seven hundred persons. The Commission asked for directions of this Court whether the said persons should also be paid the interest in addition to the principal, as claimed by them. When the report of the Commission came up for orders before this Court, Be directed that for the time being only principal amount shall be paid to the said purchasers and that the balance amount along with interest accruing thereon shall be kept apart. This was done keeping in view the interests of post-January 29, 1991 purchasers. It is true that these persons did purchase notwithstanding the warning notice of D.D.A. but it is equally possible that many of them may have seen only the subsequent advertisements of Skipper and not the warning notice of D.D.A. published on February 13, 1991.

We may clarify that our order dated February 12, 1996 does not mean that the pre-January 29, 1991 are not entitled to interest on the amounts paid by them for which they have a legitimate claim. We have only kept that claim under consideration pending further developments in the matter.

We may also mention that this Court had appointed another Commission headed by Justice O.Chinndppa Reddy, a former Judge of this Courts to enquire into the role played by the officials of

the D . in the matter and to recommend appropriate action against them. Justice Chinnappa Reddy Commission submitted a Report promptly on July 7, 1995, after conducting a pain-staking and elaborate enquiry, on the basis of which this Court had directed disciplinary action to be taken against certain officers of the D.D.A. At this stages several applications have been filed by the post-January 29 purchasers to sell the properties of Tejwant Singh, his wife and children, which were attached by this Court under its Order dated February 8, 1995 [in suo motu contempt proceedings] and utilise the proceeds so realised to reimburse them along with interest and damages. Notice of the said applications was given to Tejwant Singh and Surinder Kaur and to the sons of the said persons whose properties were attached under the aforesaid orders. We have heard the parties at length on April 18, 1994.

S/Sri V.A.Bobde and Dushyant Dave, appearing for the claimants [post-January 29, 1991 purchasers] and Sri Arun Jaitley for the D.D.A. submitted that undergoing the sentence of imprisonment by Tejwant Singh and his wife Surinder Kaur does not erase their obligation to pay back the amounts to the said claimants whom they had deliberately and fraudulently induced into parting with substantial amounts in clear and direct violation of the orders of this Court. They submitted that the order of attachment of the properties of Tejwant Singh and his wife and children was an order independent from the order of punishment imposing sentence of imprisonment and that the attachment was meant for realizing amounts necessary for reimbursing the persons defrauded. The attached properties should now be sold and the proceedings therefrom utilised for paying the post- January 29, 1991 claimants, it is submitted. Sri Arun Jaitley further submitted that the claim of the pre-January 29, 1991 purchasers for interest on the amounts paid by them is still there and has to be kept in mind while passing orders in these applications. It is submitted that the contemnors should not be allowed to keep or enjoy the fruits of their contempt and that until all the persons defrauded by Skipper are fully re-compensated, the contemnor's liability does not cease.

S/Sri Harish Salve and Rajeev Dhavan, appearing for Tejwant Singh and Surinder Kaur respectively, took the stand that while all the purchasers, whether pre- or post-January 29, 1991 should undoubtedly be duly reimbursed, the monies for that purpose should come out of the monies collected by the D.D.A. on account of the said plot. Interests of justice and considerations of equity, which are the guiding factors for this Court while acting under Article 142 of the Constitution call for such a direction. They submitted that as against Rs.9.82 crores payable to D.D.A., Skipper has paid more than Rupees fifteen crores in all to D.D.A. The amounts received from the purchasers has actually been utilised for raising the construction which has now vested in the D.D.A. in terms of the orders of the Delhi High Court dated December 21, 1990/January 14, 1991. D.D.A. thus not only got back the plot of the land but also the construction made by Skipper free of any encumbrances. They have realised a sum of Rupees seventy crores by selling the same. In other words, D.D.A. has realised a total of Rupees eighty five crores on account of the said plot. It is true that they have set apart Rupees sixteen crores out of that but yet they are in possession of about Rupees sixty nine crores of the said money. The claim of post-January 29, 1991 purchasers is in a sum of about Rupees eleven crores. An amount of Rupees five crores is lying with the Court. Whatever balance amount is required to pay interest to pre- January 29, 1991 purchasers and to pay off the post-January 29, 1991 purchasers should come out of the said amount of Rupees sixty nine crores now with D.D.A. Learned counsel submitted that on account of various proceedings taken against Skipper and their

directors and the attachment of their properties and the adverse publicity in, that behalf, it has become impossible for them to generate any monies for depositing in this Court. They requested that a Commission be appointed to determine the value of the structure raised by Skipper on the said plot and also to determine the amount received by Skipper from post-January 29, 1991 purchasers and to direct that the amount required to pay them should come out of the funds with the D.D.A. Sri K.Madhav Reddy, learned counsel appearing for the two sons of Tejwant Singh and Surinder Kour [Prabhjot Singh and Prabhjit Singh], submitted that the businesses of the sons are independent and distinct from their parents and that none of the monies received by their parents from the aforesaid purchasers has been diverted to them or to the companies of which they are directors. In facts the case of the third respondents Prabhjot Singh, is that he has separated from his father and that the company Technological Park (P) Limited, at NOIDA [of which he and his wife are directors] has nothing to do with the funds or activities of their parent.. The fourth respondent. Prabhjit Singh, also submitted that he and his wife are the directors of TeJ Properties Private Limited, of which his parents were directors earlier but that the affairs of Tej Properties are in no way connected with the affairs and funds of his parents. He is a director of Tej Properties as well as Skipper Properties Private Limited.

D.D.A. has filed a list of properties held by Tejwant Singh, his wife, Surinder Kaur and their sons and daughters which according to them really belong to and are the properties of Tejwant Singh and his wife. They submitted that the various companies created by Tejwant Singh, his wife and his children are merely fronts and devices to defraud and defeat the claims of the purchasers and that for doing complete Justice between the parties the corporate veil should be lifted and all the said properties which have already been attached, should be proceeded with to realise the amounts necessary for paying the pre-January 29, 1991 purchasers in full [i e., interest] and also the post-January 29, 1991 purchasers. In particular! Sri Jaitley has pointed out the transaction of lease relating to he property at No.3, Aurangzeb Road, New Delhi. The facts brought to our notice are the following on October 1,1993 Tej Properties (P) Limited through its Chairman and Managing Directors Tejwant Singh, executed a lease agreement in favour of "Maple Leaf Trading Company Limited, a company having its office at 111, Charemont Roads Dublin, Ireland" for a period of five years [with an option to the lease to have it extended for another four years] at a rent of Rupees one lakh per month. The lease agreement was to take effect from October 8, 1993. On October 8, 1993, Maple Leaf executed a lease deed in respect of the said property in favour of the Embassy of Israel in India, New Delhi for a period of nine years at the rate of Rs.8,78,360/- per month. It is pointed out that Tejwant Singh and his wife, Surinder Kaur, were the only two directors of Tej Properties and that in 1988 and 19 one H.S.Sarna and Prabhjit Singh [one of the sons of Tejwant Singh] were brought in as its directors. It is submitted that this property really belongs to the contemnors and that this property alone is sufficient to realise all the monies due to the persons defrauded by the said contemnors.

The issues arising from the contentions of the parties are considered hereinafter topic-wise.

The nature and ambit of this court's power under Article the 142 of the constitution.

Article 142(1) of the Constitution of India reads:

> "142 Enforcement of decrees and orders of Supreme Court and orders as to descovery, etc.---(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."

In re: Vinay Chandra Mishra [1995 (2) S.C.C.584], this Court dealt with the scope and width of the power of this Court under Article 142. After referring to the earlier decisions of the Court in extenso, it is held that "statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutary provision. [Para 48]". lt is also held that "the jurisdiction and powers of this Court under Article 142 are supplementary in nature and are provided to do complete justice in any matter....". In other words, the power under Article 142 is meant to supplement the existing legal framework - to do complete justice between the parties - and not to supplant it. It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties. Now, coming to the facts of the case before us, the question is not what can be done, but what should be done? We are of the opinion that even while acting under Article 142 of the Constitution of India, we ought not to re-open the orders and decisions Sf the Courts which have become final. We do not think that for doing complete justice between the parties before us, it is necessary to resort to this extra-ordinary step. We are saying this in view of the contention urged by S/Sri Salve and Dhavan that since the D.D.A. has taken over not only the plot but also the construction raised by Skipper thereon [free from all encumbrances] in addition to the sum of Rs.15.89 crores [said to have been paid by Skipper towards the sale consideration of the said plot], the monies required for paying the persons defrauded should come out of the kitty of D.D.A. It must be remembered that the plot, the construction raised thereon and the monies already paid towards the sale consideration of the said plot have all vested absolutely in the D.D.A. free from all encumbrances under and by virtue of the decision of the Delhi High Court dated December 21, 1990/January 14, 1991, which decision has indeed been affirmed by this Court by dismissing the Special Leave Petition preferred against it. It may not be open to us to ignore the said decisions and orders, including the orders of this Court, and/or to go behind those decisions/orders and say that the amount received by D.D.A. toward, sale consideration from Skipper or the value of the construction raised by Skipper on the said plot should be made available for paying out the persons defrauded by Skipper. We must treat those decisions and orders as final and yet devise ways and means of doing complete justice between the parties before us.

> "The contemnor should not be allowed to enjoy or retain the fruits of his contempt":

> The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt is well-settled. In Mohd.Idris v. R.J. Babuji [1985 (1) S.C.R.598], this Court held clearly that undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its Orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions to in additing to punishing the petitioners for contempt of court. The argument was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach [of undertaking]".

The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In Clarke v. Chadburn [1985 (1) All.E.R. 211], Sir Robert Megarry V-C observed:

> "I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they ere liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach in law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought nat to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Limited v. S. Suppiah & Ors. [A.I.R.1975 Madras 270] and Sujit Pal v. Prabir Kumar Sun [A.I.R.1986 Calcutta 220]. In Century Flour Mill Limited, it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong-doing. The inherent power of the Court, it was held, is not only available in such a case, but it is bound to be exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognize that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

In Suraj Pal, a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the

aid of police. The Court observed that no technicality can prevent the Court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.

There is no doubt that this salutory rule has to be applied and given effect to by this Court, if necessary, by over-ruling any procedural or other- technical objections. Article 129- is a constitutional power and when exercised in tandem with Article 142, all such objections should give away. The Court must ensure full justice between the parties before it.

Claims of Prabhjot Singh and Prabhjit Singh [Sons of Tejwant Singh]:

> Prabhjot Singh Sabharwal, third respondent, stated in his counter-affidavit filed in Interlocutory Application No.29 of 1996 that he is in no way concerned with the several companies pointed out by the D.D.A. [as belonging to Tejwant Singh and members of his family] and that he is interested only in one company, Technological Park Private Limited, NOIDA. He stated that he and his wife are the directors of thif company and that it does not deal in any manner with Delhi Development Authority. He stated that his parents are in no way concerned with Technological Park Private Limited. He stated "I have separated from my father and I have no dealings with the Delhi Development Authority". It is significant to notice that this respondent does not say when was he separated from his father, whether the said 'separation' is evidenced by writing, nor has he stated that the said separation - or partition, as it may be called - was reported to the Income Tax Authorities and was accepted and recorded by them. The affidavit is quite vague in this respect.
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> Prabhjit Singh, fourth respondent, [another son of Tejwant Singh] has filed a separate counter-affidavit stating that he and his wife are the directors in two companies, Tej Properties Private Limited and Skipper Properties Private Limited. Tej Properties is said to be an investment company which is not carrying on any activity at present. Skipper properties is said to be running in a loss. He stated that he has no connection with the other companies pointed out by the D.D.A. He admitted the transaction relating to the property at No.3, Aurangzeb Road, New Delhi but submitted that he is in no way connected with the affairs of his father or with Skipper Construction Private Limited. It is significant to notice that this respondent does mot say that he is separated or divided from his father nor does he explain how he and his wife became directors of Tej Properties of which his parents were the sole directors at the time of grant of afore-mentiomed lease.
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> Lifting the corporate veil:
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> In Aron Salomon v. Salomon & Company Limited (1897 Appeal Cases 22), the House of Lords had observed, "the company is at law a different person altogether from the subscriber...; and though it may be that after incorporation the business is precisely

the same as it was before and the same persons are managers and the same hands received the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, on any shape or form, except to the extent and in the manner provided by that Act". Since then, however, the Courts have come to recognize several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". [Gower: Modern Company Law - 4th Edn. (1979) at P.137]. Pennington [Company Law - 5th Edn. 1985 at P.53] also states that "here the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A Professor of Law, S.Ottolenghi in his article "From Peeping Behind the Corporate Veil, to Ignoring it Completely" says "the concept of 'piercing the veil' in the United States is much More developed than in the UK. The motto, which was laid down by Sanborn,J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdictions". [(1990) 53 Modern Law Review 338]. Indeed, as far back 1912, another American Professor L.Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" [published in (1912) XII Columbia Las Review 496] and summarized their central holding in the following words:

"The various classes of cases where the concept of corporate entity should We ignored and the veil drawn aside have vow been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalization which the present state of the authorities would warrant is this:

When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons."

In Palmer's Company law, this topic discussed in Part- II of Vol-I. Several situations where the court will disregard the corporate veil are set out. It would be sufficient for our purposes to quote the eighth exception. It runs: "The courts have further shown themselves willing to 'lifting the veil' where the device of incorporation is used for some illegal or improper purpose....Where a vendor of land sought to avoid the action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere 'sham' and made an order for specific performance against both the vendor and the company". Similar views have been expressed by all the commentators on the Company Law which we do not think it necessary to refer.

The law as stated by Palmer and Gower has been approved by this Court in Tata Engineering and Locomotive Company Limited v. State of Bihar [1964 (6) S.C.R. 885]. The following passage form the decision is apposite:

"Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly, where fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decisions and the shareholders are held to be 'persons who actually work for the corporation ."

In DHN Food Distributors Ltd. & Ors. v. London Borough of Tower Hamlets [1976 (3) All.E.R. 462], the Court of Appeal dealt with a group of companies. Lord Denning quoted with approval the statement in Gower's Company Law that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group". The learned Master of Rolls observed that "this group is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three-in-one" - and, alternatively, as "one-in-three".

The concept of corporate entity was evolved to encourage and promote trade and commerce : but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a Ploy adopted for committing illegalities and/or to defraud people.

The concept of resulting trust and equity: In Attorney General for India v. Amratlal Prajivandas [1994 (5) S.C.C.54], a Constitution Bench of this Court comprising nine-Judges including one of us (B.P.Jeevan Reddy,J.) dealt with the challenge to the validity of the definition of "illegally acquired properties" in clause (c) of Section 3(1) of Smugglers and Foreign Exchange Manipulators [Forfeiture of Property] Act, 1976 [SAFEMA]. The said Act provided that where a person earned properties by smuggling or other illegal activities, all such properties, whether standing in his name or in the name of his relations or associates will be forfeited to the State. while dealing with the justification for such a radical provision, this Court held:

"So far as justification of such a provision is concerned. there is enough and more. After all, all these illegally acquired properties are earned and acquired in ways illegal and corrupt - at the cost of the people and the State. The State is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong to the State.

What we are saying is nothing new or heretical. Witness the facts and ratio of a recent decision of the Privy Council in Attorney General for Hang Kong v. Reid [1993 (3) WLR 1143]. The respondent, Reid, was a Crown-prosecutor in Hong Kong. He took bribes as an inducement to suppress certain criminal prosecutions and with those monies, acquired properties in New Zealand, two of which were held in the name of himself and his wife and the third in the name of his solicitor.

He was found guilty of the offence of bribe-taking and sentenced by a criminal court. The Administration of Hong Kong claimed that the said properties in New Zealand sere held by the owners thereof as constructive trustees for the Crown and must be made over to the Crown.

The Privy Council upheld this claim overruling the New Zealand Court of Appeals. Lord Templeman, delivering the opinion of the Judicial Committee, based his conclusion on the simple ground that any benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary. It is held that a gift accepted by a person in a fiduciary position as an incentive for his breach of duty constituted a bribe and, although in law it belonged to the fiduciary, in equity he not only became a debtor for the amount of the bribe to the person to whom the duty was owed but he also held the bribe and any property acquired therewith on constructive trust for that person. It is held further that if the value of the property representing the bribe depreciated the fiduciary had to pay to the injured person the difference between that value and the initial amount of the bribe, and if the property increased in value the fiduciary was not entitled to retain the excess since equity would not allow him to make any profit from his breach of duty. Accordingly, it is held that tn the extent that they represented bribes received by the first respondent, the New Zealand properties were held in trust for the Crown, and the Crown had an equitable interest therein. The learned Law Lord observed further that if the theory of constructive trust is not applied and properties interdicted when available, the properties 'can be sold and the proceeds whisked away to some Shangri La which hides bribes and other corrupt moneys in numbered bank accounts; - to which we are tempted to add - one can understand the immorality of the Bankers who maintained numbered accounts but it is difficult to understand the amorality of the Governments and their laws which sanction such practices - in effect encouraging them. The ratio of this decision applies equally where a person acquires properties by violating the law and at the expense of and to the detriment of the State and its revenues where an enactment provides for such a course, even if the fiduciary relationship referred to in Reid is not present. It may be seen that the concept employed in Reid was a common law concept, whereas

here is a case of an express statutory provision providing for such forfeiture. May we say in conclusion that 'the interests of society are paramount to individual interests and the two must be brought into just and harmonious relation. A mere property career is not the final destiny of mankind, if progress is to be the law of the future as it has been of the past'. (Lewis Henry Morgan : Ancient Society)"

In Reid, the Privy Council made the following observations which we find of crucial relevance to our present-day society:

"A bribe is a gift accepted by a fiduciary as an inducement to him to betray his trust. A secret benefit, which may or may not constitute a bribe is a benefit which the fiduciary derives from trust property or obtains from knowledge which he acquires in the course, of acting as a fiduciary ....Bribery is an evil practice which threatens the foundations of any civilised society..... Where bribes are accepted by a trustee, servant, agent or other fiduciary, loss and damage are caused to the beneficiaries, master or principal whose interests have been betrayed.....When a bribe is offered and accepted in money or in kind, the money or property constituting the bribe belongs in law to the recipient. Money paid to the false fiduciary belongs to him.

The legal estate in freehold property conveyed to the false fiduciary by way of bribe vests in him. Equity however which acts in personam insists that it is unconscionable for a fiduciary to obtain and retain a benefit in breach of duty. The provider of a bribe cannot recover it because he committed a criminal offence when he paid the bribe. The false fiduciary who received the bribe in breach of duty must pay and account for the bribe to the person to whom that duty was owed. In the present case as soon as Mr.Reid received a bribe in breach of the duties he owed to the Government of Hong Kong, he became a debtor in equity to the Crown for the amount of that bribe..... As soon as the bribe was received, whether in cash or in kind, the false fiduciary held the bribe on a constructive trust for the person injured..... If the property representing the bribe exceeds the original bridge value, the fiduciary cannot retain the benefit of the increase in value which he obtained solely as a result of his branch of duty..... When a bribe is accepted by a fiduciary in breach of his duty then he holds that bribe in trust for the person to whom the duty was owed. If the property representing the bribe decreases in value the fiduciary must pay the difference between that value and the initial amount of the bribe because he should not have accepted the bribe or incurred the risk of loss. If the property increases in vales, the fiduciary is not entitled to any surplus in excess of the initial value of the bribe because he is not allowed by any means to make a profit out of a breach of duty."

We respectfully agree with each and every statement contained in the above extract. MAY WE SAY IN PARENTHESES that a law providing for forfeiture of properties acquired by holders of 'public officer" [including the offices/posts in the public sector corporations] by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to - as does SAFEMA

- properties acquired in the name of the holder of such office but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property as does SAFEMA whose validity has already been upheld by this court in the aforesaid decision of the larger Constitution Bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-khell of this nation. According to several perceptive observers, indeed, it has already reached near-fatal dimensions. It is for the parliament to act in this matter, if they really mean business. It may be recalled that in this very case, Justice Chinnappa Reddy Commission [appointed to investigate into the conduct of the officials of the D.D.A. in handing over the possession of the plot to skipper without receiving the full consideration and also in conniving at the construction thereon] has reported that several top officials of the D.D.A. have indeed connived at and acted hand in glove with Skipper to confer illegitimate gain upon the latter. On the basis of the said report. disciplinary enquiries have been ordered against certain officials which are now pending. for the reason that the enquiries are pending. For the reason that the enquiries are pending. we desist form referring to the findings of the commission except to broadly mention its conclusion.

We are of the opinion that the holding in Amratlal Prajivendas and in Reid should guide us while exercising the extra-ordinary powers of this Court while acting under the said Article form making appropriate orders for doing complete justice between the parties*. The fiduciary relationship may not exist in the present case nor is it as case of a holder of public office, yet if it is found that someone has acquired properties by defrauding the people and if it is found that the persons defrauded should be restored to the position in which they would have been but for the said fraud, the court can make all necessary orders. This is what equity means and in India the Courts are not only courts of law but also courts of equity.

D.D.A.s responsibility to reimuburse the purchasers: S/Shri Bobde and Dave, learned counsel for the purchasers, countended that inasmuch as several top officials of the D.D.A had colluded with Skipper and connived at their wrong doing, the D.D.A. must be held equally liable to reimburse the purchasers. Indeed, their submission is that D.D.A. stood by and took no action whatsoever while Skipper was issuing repeated

---------- *In other words, while action under Article 142 of the Constitution, this Court will respect a statue, the absence of a statue or statutory provision will not inhibit her to make orders necessary for doing complete justice between the parties.

advertisements [even after January 29, 1991, in open and brazen defiance of this Court's Orders] and, therefore, it must be made equally liable to reimburse the said purchasers in full. We find it difficult to agree. Firstly, the said contention is not factually correct. As has been pointed out hereinabove, son after the publication of an advertisement by Skipper in the newspapers inviting the citizens at large to come and purchase the space in the proposed building on February 4, 1991, the D.D.A. came forward with a warning notice published in all leading national dailies advising citizens not to purchase space in the building in view of the orders of this Court. It is true that even thereafter Skipper has been issuing similar advertisements but it cannot be said with any reasonableness that D.D.A. should have responded to each such advertisement by publishing a warning. It would have done that but it cannot be faulted for not doing it. It is, therefore, factually incorrect to say that D.D.A. stood by and allowed Skipper to defroud the people by issuing advertisements. Secondly, even if there is any collusion between the officials of the D.D.A. and Skipper as alleged by the learned counsel, the question still arises whether D.D.A. be held bound by such actions of its officials acting beyond their authority, indeed, acting adverse to the interests of D.D.A. intentionally. We are not suggesting nor are we laying down the proposition that the D.D.A. is not bound by the acts and deeds of its officials but are only saying that where the acts and deeds of the officials are not only beyond their authority but are done with a malafide intent, it may not be just end fair to bind D.D.A. with such malafide acts and deeds. Be that as it may, it is not necessary for the purpose of this case to pursue this line of enquiry further or to express any definite opinion thereon.

What are the directions called for in this matter? In the light of the factual and legal position adumbrated hereinabove, the question arises what are the appropriate directions to be made in the matter? In other words, the question is what directions and orders are called for by this Court acting under its contempt jurisdiction under Article 129 and its extraordinary jurisdiction under Article 142 to do complete justice between the parties before us? On one hand, the position is that the pre-January 29, 1991 purchasers have to be reimbursed in full which means that they should also be paid interest at the appropriate rate on the amounts advanced by them to Skipper. [They have only been paid the principal amount in the sum of Rs.13,27,37,561.59p pursuant to the Report of Justice Lahoti Commission.] Secondly, the post-January 29, 1991 purchasers have also to be reimbursed in full. According to Skipper, the amounts collected from post January 29, 1991 purchasers is in the region of Rupees eleven crores. The counsel for the petitioners, however, say that some of them are bogus purchasers set up by Skipper itself to defeat genuine claims. As against these claims, only an amount of about Rupees six crores is now available which is kept in fixed depositing in nationalized banks. The balance has to be realized. In our opinion, as at present advised, it would be enough for the above purpose if we proceed against one property, viz., No.30, Aurangzeb Road, New Delhi, which appears to us, on the facts and material placed before us, to belong wholly and exclusively to Tejwant Singh and his wife. We ignore the corporate veil and we ignore the fact that as

present their son, Prabhjit Singh, and his wife are the directors. [We have already held that Prabhjit Singh has not explained in his affidavit how did he and his wife became directors in the place of his parents.] Tej Properties private Limited, which is said to own the said property, was intially having only two directors, viz., Tejwant Singh and his wife, Surinder Kaur. It is Tejwant Singh who executed the lease deed in respect of the said property in favour of 'Maple Leaf' on October 1, 1993, effective from October 8, 1993. On October 8,]993 itself, Maple Leaf executed a lease deed in respect of the said property in favour of an Embassy of Israel in India, New Delhi for a period of nine years at a rent of Rs.8,38,360/- per month. It is crystal clear that the property belongs to Tejwant Singh and the corporate veil and the change of directorships are all mere devices to screen the said property and its income from their creditors including the purchasers aforesaid. Tej Properties Private Limited is nothing but a fig-leaf and that too an inadequate one - to cover up the reality. The reality is Tejwant Singh, the contemner, who is the author of all these deals and devices. The transfer of share-holding, if any, between the father and the son [and their respective wives] must also be treated as a sham transaction. The above course appears tastified and necessary looked at from any angle, viz., (a) that the contemnors should not be allowed to enjoy or retain the fruits pf their contempt; (b) the interests of justice, which call for the lifting of the corporate veil - the said-property is in truth and effect the property of Tejwant Singh and members of his family and must be available to satisfy the claims of the persons defrauded by him; (c) that while acting under Article 142 of the Constitution, this Court must do complete justice between the parties and for that purpose, it is necessary to ensure that a person who has defrauded a large number of persons by issuing advertisements in the leading newspapers published from the capital inviting people to come and purchase space in the said building in open and brazen violation of clear and specific orders of this Court should not be allowed to benefit from his fraud and/or contemptuous acts.

Accordingly, it is directed that:

(1) the property at No.3, Aurangzeb Road, New Delhi, shall be attached, if not already attached - and if it has already been attached, it shall continue to be under attachment; (2) the Embassy of Israel in India, New Delhi, the lessee of the said property, is requested to deposit the monthly rent payable in respect of the said building in this Court with effect from the date of receipt of a copy of this order and continue to deposit the same until further orders. Such deposit in Court shall discharge- the Embassy of its obligation to pay rent to 'Maple Leaf', its landlord. (3) Tejwant Singh and his wife, Surinder Kaur, are directed to deposit in this Court a sum of Rupees ten crores within two months from today. In default, steps will be taken to sell the property at No.3, Aurangzeb Road, New Delhi by inviting tenders from the public. The said amount of Rupees ten crores is tentatively arrived at as the amount required to reimburse the pre-January 29, 1991 purchasers in full, as explained hereinabove, and also to reimburse the post-

January 29, 1991 purchasers in full. [This shall not be treated as the final figure required in this behalf.] While fixing this amount, we have taken into account the fact that about Rupees six crores is now available with this Court as stated supra;

(4) the attachment of properties belonging to Tejwant Singh, his wife and children, already effected, including the properties mentioned in the application, I.A.No.29 of 1996, filed by the D.D.A. shall continue to be in force pending further orders. It is, however, open to any of them to come forward with a proposal to sell any of those properties and if this Court is satisfied about the bonafides of the deal, the attachment will be lifted on condition that the confederation so received is deposited into this Court. It is obvious that any such deposit will be treated as a deposit towards the direction regarding deposit of Rupees ten crores contained in Direction No.3 above; (5) since it is necessary to ascertain the persons who have paid amounts to Skipper after January 29, 1991 for purchasing the space in the said building, and to exclude the claims of non-genuine persons, we appoint Sri O.Chinnappa Reddy, a former Judge of this Court, as the one- man Commission to ascertain the number and identity of the persons who have purchased the space in the building being raised by Skipper after January 29, 1991 and also to determine the amounts paid by each of them. The Commission is requested to submit its Report within a period of six months, as far as possible. The remuneration and the expenses of Sri Justice O.Chinnappa Reddy will be borne entirely by the D.D.A. out of the funds now lying with it, as per his terms.

Ordered accordingly.

Before parting with this case, we feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some Persons in the upper strata [which means the rich and the influential class of the society] have made the 'property career' the sole aim of their life. The means have become irrelevant - in a land where its greatest son born in this century said "means are more important than the ends". A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes is to "tackle" or "manage" it in an appropriate manner. They have developed an utter disregard for law - nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, "what have we made of our country in less than fifty years"? Where has the respect and regard for lag gone? And who is responsible for it?

On this occasion, we must refer to the mechanical manner in which some of the courts have been granting interim orders - injunctions and stay orders without realizing the harm such mechanical orders cause to the other side and in some cases to public interest. It is no answer to say that "let us make the order and if the other side is aggrieved, let it come and apply for vacating it". With respect, this is not a correct attitude. Before making the order, the court must be satisfied that it is a case which calls for such an order. This obligation cannot be jettisoned and the onus placed upon the

respondents/defendants to apply for vacating it. Take this very case: a person purchases a property in auction. He does not pay as per the stipulated terms. He obtains a series of extensions. Still he doesn't deposit and when the vendor proposes to cancel the allotment, the court is approached and it stays the cancellation. The vendor [D.D.A.] applies for vacating it but nothing happens except repeated adjournments. This has happened more than once. We find that as and when Skipper was not able to manage the D.D.A., he approached the court and it provided him a breather. He then gets time to manage the D.D.A.. This went on upto the end of 1990 when fortunately the Delhi High Court came with a tonne of bricks upon Skipper and which order was affirmed two years' later by this Court.

Ultimately, no doubt, Skipper has met its nemesis but meanwhile hundreds of persons are cheated out of their hard earned monies; their dreams of owning a flat are shattered rudely.

All this means that each of us in this land should wake up to his duty and try to live up to it. We do not think we need say more.

List the matter for further orders on July 16, 1996. *A copy of this Judgment may be communicated to Mr.Justice O.Chinnappa Reddy, a former Judge of this Court, at the address, Plot No.209, Jubilee Hills Cooperative Housing Society, Jubilee Hills, Hyderabad - 500033 within three days.