

East End Apartments Cooperative vs D.D.A. & Anr. on 21 May, 2009

Author: Neeraj Kishan Kaul

Bench: Chief Justice, Neeraj Kishan Kaul

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No.3326/06 & C.M. Nos.6496-6497/09

EAST END APARTMENTS COOPERATIVE Petitioner
Through: Mr. Aseem Mehrotra,
Advocate.

Versus

D.D.A. & ANR. Respondents
Through: Mr. Ajay Verma, Advocate for
DDA.
Mr. Dalip Kumar and Mr. K.S.
Kashyap, Advocates for
Respondent No. 2/Contemnor.
Mr. Vibhu Shankar, Advocate
for Respondent DMRC.
Mr. J.K. Sethi, Advocate for the
Intervenors.

AND

+ W.P.(C) 311/2008

ASHOK NAGAR WELFARE ASSOCIATION REGD. Petitioner
Through: Mr.Vikas Gautam and Mr. K. S.
Kashyap, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through: Mr.Ajay Verma, Advocate for
DDA.
Mr.Vibhu Shankar, Advocate for
DMRC.

AND

+ CM(M) 1558/2007

DELHI DEVELOPMENT AUTHORITY Petitioner
Through: Mr. Ajay Verma, Advocate.

versus

ASHOK NAGAR WELFARE ASSOCIATION REGD.& ORS

..... Respondents

Through: Mr.Vikas Gautam, Advocate
for Respondent/Ashok Nagar
Welfare Association.
Mr.Vibhu Shankar, Advocate for
DMRC.
Mr.Varun Mehlawat, Adv.for R-3.

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AND

+ RFA Nos. 200-01/2006 & CM No.4170/2009

DELHI DEVELOPMENT AUTHORITY & ANR. Appellants
Through: Mr. Pawan Mathur, Advocate.
versus

ASHOK NAGAR WELFARE ASSOCIATION (REGD.)& ORS
..... Respondents
Through: Mr.Vikas Gautam, Advocate
for Respondent/Ashok Nagar
Welfare Association.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

1. Whether reporters of the local papers be allowed to see the judgment ? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

JUDGMENT

% 21.05.2009

1. On 27th November, 2008, this Court directed the Registry to issue notice to Mr. Mohan Singh to show-cause as to why he should not be punished for contempt of Court for the following acts:-

"(a) procuring a decree in Suit No.222/1998 (Suit No.1066/1990) by suppressing the fact that the writ petition of the plaintiff Association was dismissed and status quo was vacated, and

(b) repeatedly filing suits and proceedings in respect of Khasra No.391/263, 392/264, 393/264 and 402/268 in spite of the fact that possession of the said land was taken

pursuant to the award No.39/82-83 and the land stood vested in the State Government and the petitions filed by the plaintiff Association were dismissed by the High Court and orders of the High Court were confirmed by the Supreme Court."

2. These two writ petitions and CM(M) No. 1558/2007 are all concerning land measuring approximately 13 bighas comprising in Khasra No. 391/263 situated at Village Chilla Sardoa Bangar, Delhi. Since the matters involved a common question of law and fact, they were disposed of by a common judgment dated 27th November, 2008.
3. The land in question being Khasra No. 391/263 was acquired under Section 4 of the Land Acquisition Act, pursuant to a notification dated 17th November, 1980 and 29th September, 1981 respectively.
4. The acquisition proceedings culminated in separate awards passed in 1982. The entire area stood acquired and the possession of the acquired land was also taken over.
5. The Ashok Nagar Welfare Association (in short „Association ") through its President Sh. Mohan Singh filed Writ Petition (Civil) No. 1507/1984 challenging the notification and claimed that the land was sold to its members between 1972-78 by one Jawahar Lal, who was the owner of the land. The writ petition was dismissed by the Division Bench on 21st May, 1998. The Special Leave Petition against the said judgment was also dismissed in limni on 6th July, 1998.
6. The Association filed a second Writ Petition (Civil) No.1158/1996 seeking a writ of mandamus for regularization of the colony in the same khasra. The said writ petition was dismissed by learned single Judge. LPA No.354/1999 filed against the said dismissal was dismissed as well. Thereafter an SLP No.19499/2000 was filed, which was dismissed by the Supreme Court of India. With this, the plea for regularization of the unauthorized colony in the above khasra also came to be dismissed by this Court and was confirmed by the Supreme Court of India.
7. The Association then initiated a third round of litigation and filed Writ Petition (Civil) No.6268/1998 praying for quashing of the award dated 30th September, 1982. The writ petition was dismissed by learned single Judge. LPA No. 151/2001 filed against the said order of the learned single Judge was dismissed by the Division Bench. Thereafter an SLP (C) No.4072/2002 was filed in the Supreme Court, which was ultimately dismissed as withdrawn by the Supreme Court.
8. Thereafter the Association initiated the fourth round of litigation by filing Writ Petition (Civil) No.265/2001 praying for an inquiry as to how compensation was disbursed in respect of land in question. The writ petition was dismissed by Division Bench of this Court holding that there was no dispute that the possession of the land had been handed over to the appropriate authority. An SLP was filed against the said order in the Supreme Court of India. The same was dismissed as well.
9. It is pertinent to mention here that the Association filed a Suit No.1066/1990, wherein they claimed to be the owner and in possession of the land in question and had alleged that respondents had encroached upon the land by dispossessing the members of the Association. The defendants

including the Delhi Development Authority (in short „DDA), in the said matter, were proceeded ex parte. Ultimately, an ex parte decree was passed on 6th January, 1999. According to the DDA, it was never served with summons in the said suit. On 21st November, 2000, DDA moved the trial court for setting aside the ex parte decree. The trial court dismissed the application of the DDA on technical ground that the application was not accompanied by condonation of delay application.

10. The Association had also filed another suit being Suit No.649/1990, where again it had contended that it was the owner of the land and in actual physical possession of the land. Relief was claimed with respect to part of the land in question. DDA had raised objection that the suit was not maintainable as physical possession of the land had been taken over on 1st October, 1982 and no portion was owned/possessed by Association. Also as per the stand of the DDA, the site was lying vacant and a boundary wall had been constructed by DDA around it. Accordingly, the suit was dismissed by the Civil Judge and an appeal was filed by the Association being RCA No.3/2005 which was ultimately dismissed as withdrawn. The Association had also filed execution proceedings pursuant to the ex parte decree dated 6th January, 1999. It was contended by the Association that its land had been encroached upon by erecting boundary wall and police help was sought to take possession of the land. In October, 2005, the Association through the court bailiff broke the boundary wall of DDA and took possession of part of the land. As per the DDA, the possession of the land which was taken over by the Association also formed part of Suit No.649/1990 which was dismissed and the appeal filed by Association had also been dismissed as withdrawn wherein Association had stated that possession of the land had already been taken over by DDA. Thereafter DDA filed the CM(Main) No.1558/2007. WP(C) No.3326/2006 was filed by East End Apartments Cooperative Group Housing Society Ltd. alleging that despite property in question having been acquired as far back as in 1982 and an award having been passed, suit had been decreed ex parte and in execution proceedings, the Association had been put in possession of the land on which it had no right, title or interest as the land vested in the State Government and had been entrusted to the DDA. In the said writ petition, the counsel for the Association categorically stated that it was ready and willing to hand over the possession of whatsoever extent of land that was in its possession and the Court may direct proper inquiry into the matter. Mr. Mohan Singh was ready to make a solemn statement to that effect. On 14th November, 2007, Mr. Mohan Singh back tracked from his statement. He now stated that he needed to convene a meeting of the members of the Association to seek their approval for making a statement regarding surrendering possession of the land. Mr. Mohan Singh also failed to furnish, despite his solemn assurance, details of 85 proceedings instituted by him in various courts.

11. The land in question had been handed over to the Delhi Metro Railway Corporation (in short „DMRC) to construct a metro station. Pursuant to the orders of the Division Bench in WP(C) No.3326/2006, the Association now filed yet another writ petition bearing No.311/2008 claiming itself to be the legal owner of the land. It sought a mandamus to direct DDA and DMRC not to interfere with peaceful possession of the Association. Mr. Mohan Singh produced a photocopy of the letter dated 21st November, 2007, allegedly written by DMRC. According to DMRC, the said photocopy of the letter was a fabricated one and no such letter was ever issued by the DMRC and an affidavit to that effect was filed by DMRC on 27th February, 2008. In view of the affidavit filed by DMRC, Mr. Mohan Singh was directed to file the affidavit along with the original letter received by

him from DMRC. The said letter was directed to be kept in a sealed cover with the Registrar General of this Court.

12. In the judgment dated 27th November, 2008, this Court took note of the submissions of the counsel for the DDA that Suit No.222/1998 filed by the Association was an abuse of the process of the Court. The land in question was acquired and possession was taken over in 1982. Writ petition challenging acquisition was dismissed by the Division Bench of this Court and the SLP filed against the same had also been dismissed by the Supreme Court. Yet a suit under Section 6 of the Specific Relief Act, 1963, was filed on the ground of alleged dispossession. As per the DDA, the land stood vested in the Government and under Section 6 (2) (b) of the Specific Relief Act, 1963, the suit against the Government could not have been filed.

13. This Court came to a conclusion after considering the stand of all the parties and the documents placed on record that Mr. Mohan Singh had been perpetrating a fraud on various courts by filing suits showing himself as President of the Association registered under the Societies Registration Act, 1860. However, it was pointed out by the DDA that there was no such registered Association by the name of Ashok Nagar Welfare Association. As per the DDA, the land in question had been acquired and physical possession taken, as per the rules and procedure way back in 1982. Due process of law was followed and the land stood vested in the Government in 1982 itself. According to the DDA, Mr. Mohan Singh along with members of the Association encroached upon these lands which had been acquired by the Government and made unauthorized constructions on the said lands and were thus, unauthorized occupants of the Government land and had no right of any kind whatsoever to remain on the said land. Mr. Mohan Singh and the members of the Association were, as per the DDA, encroachers upon the acquired land and had played a fraud on the Court. Further it was argued that Suit No.222/1998 was clearly an abuse of the process of law and a decree had been obtained by practicing a fraud. In the said suit, it had been alleged that the Association had been in possession of the land in dispute since 1980. The Association made a mention about the status quo order passed in its favour in WP(C) No.1507/1984. However, it did not disclose that the said writ petition had been dismissed by the High Court on 21st May, 1998 and the order of status quo was vacated. The trial court had proceeded on the basis that the order of status quo passed in writ petition was still in force on the date of passing of the decree. The factum of dismissal of writ petition and vacation of status quo order was not disclosed even in written submissions filed on 19th December, 1998. When the Association made a claim in the suit, it neither had any title nor any valid possession of the land. Most vital facts were suppressed and the claim was founded on non-existent facts. It was done intentionally and deliberately with the intention to deceive the Court and the Association clearly procured a decree by practicing a fraud on the Court. A person whose case is based on falsehood had no right to approach the Court. He can summarily be thrown out at any stage of litigation. Further a party which withholds vital documents in order to gain advantage in the suit would be clearly guilty of playing fraud on the Court.

14. Accordingly, in this background, the Court was constrained to issue notice of contempt to Mr. Mohan Singh for procuring a decree in Suit No. 222/1998 (Suit No. 1066/1999) by suppressing the fact that the writ petition of the Association had been dismissed and status quo vacated and also on the ground of repeatedly filing suits and proceedings in respect of Khasra Nos. 391/263, 392/264,

393/264 and 402/268 despite the fact that possession of the land had been taken over pursuant to an award and the land stood vested in the State Government and the petitions filed by the Association had been dismissed by the High Court and the orders of the High Court were confirmed by the Supreme Court.

15. The Association filed its reply and relied on a letter dated 3rd November, 1993, issued by Mr. D.P.S. Nagpal on behalf of the DDA. The DDA filed its affidavit to say that the said letter was not part of the record of the DDA. No file bearing the number as stated in the letter had been found. Also there was no officer of the name of Mr. D.P.S. Nagpal working with the DDA at the relevant time. The name of the officer, as per the DDA, was actually "D.P.S. Nangal" who was working as Director (LM) at the relevant time. The contemnor has sought to rely on the said letter dated 3rd November, 1993 to urge that DDA itself had admitted in the letter that only symbolic possession of the entire acquired land was taken by the DDA on 30th September, 1982 from Land Acquisition Collector. Further, it was contended on behalf of the Association and Mr. Mohan Singh that it was admitted by DDA that the possession of the entire acquired land was under occupation of the trespassers/encroachers. Reliance was placed on the said letter to urge that it was specifically stated by the DDA that the DDA would have no objection in any manner if the contemnor gets vacant possession of the land from the trespassers and it further reiterated that Government has taken a decision to regularize all colonies in existence prior to 1977.

16. When the contemnor was asked to explain his stand on this issue, he filed an affidavit to say that the original of this letter dated 3rd November, 1993 was filed by the Association in WP(C) No.1507/1984 and the DDA did not deny the letter in the said proceedings. He also stated that the copy of the same letter was also filed by the Association in CM(Main) No.1558/2007 and the Association had even relied on the said letter. As per them, the DDA nowhere in its rejoinder filed in the said CM(Main) 1558/2007 ever alleged that the said document had not been executed by DDA or was not part of its record.

17. Thereafter an affidavit dated 20th May, 2009, was filed in Court by Mr. Mohan Singh stating that he unconditionally tendered his apology to this Court for abusing the process of law. It was also stated by Mr. Mohan Singh that he will withdraw all the cases pending in any Court including criminal cases filed by him on behalf of the Association as well as in individual capacity. It was also stated that cases filed in the name of Mahakaleshwar Welfare Association will also be withdrawn. He further undertook that in future he would not file cases against DDA or DMRC and would not be instrumental in filing cases against DDA, DMRC or anyone else with regard to the land falling in Khasra Nos. 391/263, 392/264, 393/264 and 402/268 situated in revenue estate of New Ashok Nagar in Village Chilla Saroda Bangar, Delhi. He further undertook that the Association which he was representing and was authorized to represent would also not file any case against DDA or DMRC. He also withdrew his allegations made against the Court. Mr. Mohan Singh tendered his apology for the fabricated letters filed by him which were allegedly written by DDA and DMRC. As per him, the said letters were filed inadvertently and they were fabricated.

18. From the narration of events, as stated hereinabove and the findings contained in the judgment dated 27th November, 2008, we have no doubt that Mr. Mohan Singh is prima facie guilty of

contempt. He and the Association which he represents have deliberately made incorrect statements in their pleadings, affidavits, depositions with an intention to mislead the Court and were clearly guilty of perjury and were liable to be prosecuted for the same.

19. As held by the Supreme Court in *Mahender Pratap vs. Krishan Pal*, (2003) 1 SCC 390 that normally appropriate action for prosecution for perjury or initiation of contempt proceedings should be taken by the court in such cases lest the judicial process would continue to be polluted and misused by undeserving parties who have no real grievance or cause for seeking aid of judicial forums. Such false cases not only contribute to the work-load of the court and kill its precious time but create hurdles in the way of genuine litigants who sincerely need assistance of the court for obtaining justice.

20. In *Dhananjay Sharma vs. State of Haryana*, (1995) 3 SCC 757, the Supreme Court observed that any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone, who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits, evidence or making false statements on oath in Courts aims at striking a blow at the Rule of Law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements, and fabricating false evidence in a court of law.

21. The contemnor was directed to appear before us in person. Unqualified apology was tendered by him. It was also contended on his behalf by his counsel that he was of frail health and was keeping extremely unwell. It was also stated that he had been recently admitted to the hospital and was undergoing medical treatment.

22. As stated above, though we have no doubt that the contemnor is *prima facie* guilty of contempt of this Court for making false statements on affidavits, filing false evidence, obtaining orders and decrees by playing a fraud as also repeatedly filing suits and proceedings with respect to the land which stood vested in the Government and despite knowing that various writs and appeals against the said acquisition also stood dismissed, yet given the fact that the contemnor is of frail health as also the factum of his tendering in unqualified apology and admitting to his illegal acts, we take a lenient view of the matter and discharge the contempt notice issued against the contemnor. However, it is made categorically clear that the contemnor and the Association which he represents i.e. Ashok Nagar Welfare Association are bound by the undertaking given in the affidavit filed in the

Court. All suits filed by the contemnor as well as the Association with regard to the land in question whether against individuals or Government authorities stand dismissed forthwith. The contemnor and the Association have also undertaken to withdraw the said suits. Further the contemnor and the Association undertook to withdraw the Suit No. 179/2004 for damages on account of defamation filed by them against the DDA. Accordingly, the said suit is dismissed and the decree passed in the said suit is set aside. In view of the same, RFA Nos. 200-01/2006 filed by the DDA against the judgment/decree in Suit No. 179/2004 has become infructuous and is disposed of accordingly. The decretal amount deposited in this Court shall stand released to the DDA. The Registry is directed to release the said decretal amount lying deposited with it to the DDA. The contemnor had also filed a criminal case being Criminal Case No. 1346/2006 against large number of persons and officials of DDA and DMRC under provisions of the Indian Penal Code and Prevention of Corruption Act. Further proceedings in the same were stayed by this Court and the contemnor has undertaken to withdraw the same as well. The said criminal proceedings are accordingly quashed. Vide judgment dated 27th November, 2008, the Registry was directed to ascertain the status of proceedings mentioned in paragraph-19 of the said judgment and it was ordered that all the proceedings which are pending as of date before the courts subordinate to this Court shall stand withdrawn to this Court and be placed before the Bench for passing further orders. The Registry has drawn up a list of 26 cases, the details of which are as follows:-

S.No. Case No. Parties name Name of Court Next date of hearing, if any.

1	Ex. No. 18/05 in Suit No. 222/98	Ashok Nagar Welfare Association v. Ravinder Kumar and ors	CJ/KKD, Delhi	Pending
2	Suit No. 164/03	Mahakaleshwar Welfare Association v. Urmila Devi	Sh. Vinod Kumar, ADJ, Delhi	Pending
3	Suit No. 163/05	Ashok Nagar Welfare Association v. Union of India	ACJ/ARC(NE)	Decided on 28.02.08

S.No.	Case No.	Parties name	Name of Court	Next date hearing, if
4	Suit No. 1704/90 New No. S.	Ashok Nagar Welfare Association v. Sunil Mistry	CJ, Delhi	Decided on 07.01.03
5	Suit No. 106/2004	Mahalakeshwar Welfare Association v. Keshav Devi & Ors.	ADJ, Delhi	Pending

6	Suit No. 287/03 New No. S.980/08/03	Mahakaleshwar Welfare Association and ors v. Surendra Devi & ors.	Sh. B.R. Kedia, Pending ADJ, Delhi	
7	Suit No. 487/03 New No.233/08/03	Mahakaleshwar Welfare Association (Regd.) v. Mallika Chaudhary	ADJ, Delhi	Pending
8	Suit No. 151/04 New No. S.193/04	Mahakaleshwar Welfare Association v. Pramod Kumar	ADJ, Delhi	Decided on 24.09.08
9	Suit No. Nil New No.02/09 & Misc No.	Mahakaleshwar Welfare Association v. Surendra Singh and ors	Sh. N.K. Goel, Decided on ADJ-15 09.03.09 (Central Delhi)	
10	Suit No. 85/04 New No. M 54/06	Mahakaleshwar Welfare Association v. Rashmi Rekha Nath and ors	Sh. D.C. Anand, ADJ, Delhi.	Decided on 04.11.06
11	Suit No. 273/86 New No. M 86/02	Ashok Nagar Welfare Association v. Jawahar Lal and ors	CJ, Delhi	Decided on 20.12.2004
12.	Suit No. 154/2004	Mahakaleshwar Welfare Association v. Geeta Mishra and ors	Sh. K.S. Mohi, ADJ, Delhi	Decided on 29.01.07
13	Suit No. . 273/03 New No. 263/05/03	Mahakaleshwar Welfare Association v. Chander Shekhar and ors	Sh. K.S. Mohi, ADJ, Delhi	Decided on 29.01.07
14	Suit No. 239/04 New No. S.244/09	Mahakaleshear Welfare Association v. Rekha Chaudhary	Sh. Sanjiv Jain, Pending ADJ (Central) 20.07.2009 Delhi.	
	312/93, New No. M 116/06	Association v. Daroga Rai and ors		

S.No.	Case No.	Parties name	Name of Court	Next date hearing, if
16	Suit No. 169/03 New No. S 268/08	Mahakaleshwar Welfare Association and another v. V.N.G. Paul.	ADJ, Delhi	Pending
17	Suit No. 544/91 New No. S. 332/2008	Ashok Nagar Welfare Association v. Birenjan Dass Gupta	ADJ, Delhi	Pending

18	Suit No. 486/03 New No. S.232/08/03	Mahakaleshwar Welfare Association v. Sheela Dey and ors	ADJ/Delhi	Pending
19	Suit No. 543/03	Mahakaleshwar Welfare Association v. S.K. Bhola and ors	Sh. Chandra Bose, ADJ-05 (North) THC/ Delhi	Pending
20	Suit No. 676/04/03	Mahakaleshwar Welfare Association v. S.S. Gill and ors	Sh. Paramjit Singh, ADJ/Delhi	Decided on 15.10.07
21	Suit No. 205/04 New No. S.231/08	Mahakaleshwar Welfare Association v. Smt. Renu Singh	ADJ, Delhi	Pending
22	Suit No. 309/98 New No. 499/06	Ashok Nagar Welfare Association v. M.C . Malik	Ms. Kiran Gupta, CJ, Delhi	Pending
23	Suit No. 597/91 New No. CS 144/09/91	Mahakaleshwar Welfare Association v. Vinod Kumar	Mr. Sunil Rana, Pending ADJ-03, (West) Delhi	
24	CC No. 1346/08	Mohan Singh v. V.K. Aggarwal and ors.	2nd Link MM, KKD, Delhi	Pending
25	RFA No. 200- 201/06	DDA v. Ashok Nagar Welfare Association	High Court	Pending 28.07.09
26	Suit No. 1913/2000	Ashok Nagar Welfare Association through Mohan Singh v. Mangal Chakraborty	High Court	Pending 03.09.09

All these cases as also any other proceeding initiated by Mr. Mohan Singh or the Ashok Nagar Welfare Association stand dismissed forthwith. As stated hereinabove, the contemnor and the Association have also undertaken to withdraw all proceedings in various forums initiated by them.

23. Though we are discharging the notice of contempt, we must express our anguish at the attempt of the contemnor and the Ashok Nagar Welfare Association on soiling the purity of the stream of justice which has to be kept clear and pure at all times. No one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or administration of justice. The contemnor and the Association which he represents will be strictly bound by the undertaking/affidavit filed by them in this Court. Nothing further survives in the present proceedings and the same are accordingly disposed of in terms of what is stated hereinabove. All

pending applications stand disposed of as well. It is ordered accordingly.

CHIEF JUSTICE NEERAJ KISHAN KAUL, J.

MAY 21, 2009 sb