

(1997) 03 DEL CK 0107

In the Delhi High Court

Case No : Civil Writ Petition No. 1549 of 1995

Ajit Singh

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 AD 1038 : (1997) 67 DLT 446 : (1997) 42 DRJ 13

Hon'ble Judges : S.N. Kapoor, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Arun Khosla, Kamal Nijhawan, Ravinder Sethi, Sumeet Bansal, G.L. Rawal and Kuljit Rawal, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) In this petition the members of the petitioner/Association claim to have entered into different agreements with respondent No. 2, M/s. Skipper Tower Pvt. Ltd. in respect of certain flats built on premises No. 22, Barakhamba Road, New Delhi. This plot of land was auctioned by the Dda for a sum of Rs. 84 lakhs in the year 1982-85. The Skipper Towers Pvt. Ltd. failed time and again to make the payment. Cheques were given which were dishonoured. Writ was filed. The orders of the Court were not honoured. Contempt application was moved and ultimately after the matter had gone up to the Supreme Court the allotment, which was earlier cancelled, was restored vide letter dated 22nd May, 1992.

(2) However, respondent No. 2 M/s. Skipper Towers Pvt. Ltd. failed to pay the ground rent and interest thereon at the rate of 12 per cent per annum despite notices dated 4th May, 1993, 4th October, 1993, 8th December, 1993 and 4th August, 1994. Consequently, allotment of plot was again cancelled vide letter dated 15th February, 1995 and the case had been referred to Estate officer for initiating proceedings under Public Premises (Eviction & Unauthorised Occupants) Act, 1971.

(3) In the meanwhile, the members of the petitioner/Association were given incomplete flats to complete the work at their own end without information, permission and approval of the DDA. Under the terms and conditions of the auction Dda has absolute discretion to grant the said permission and demand Rs. 100 per unit incase of the first sale and at the rate of Rs. 5.00 per square meter/unit in the case of subsequent sale. It appears that in violation of these terms and conditions, even after cancellation of the allotment and re-entry by the Dda, Respondent No. 2, M/s. Skipper transferred the floor space to some persons.

(4) Members of the petitioner/Association felt aggrieved by incomplete construction and the cancellation of the allotment for they claim to have paid the entire amount to respondent No. 2. It is contended by Mr. Arun Khosla, Learned counsel for the petitioners/Association that though entire amount had been taken by respondent No. 2 neither any water connection nor electric connection has been provided . It is also contended that builders have been exploiting the persons like members of the petitioner Association and having invested their hard earned savings, there is virtually no effective legal remedy available to each member of fight single handedly a long-drawn litigation with respondent No. 2 and DDA. It is also contended that it is the duty of the Dda to protect the flat buyers who have acted on the representation of the Dda made in public auction and others.

(5) Learned counsel for the petitioner/Association has relied upon Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, in support of his contention that the Dda is as bound by its representation as an ordinary person. He also contends that while the Dda wants ground rent from M/s. Skipper Towers Pvt. Ltd., respondent No. 2, M/s. Skipper Towers Pvt. Ltd. want more and more money from the flat buyers and neither the Dda nor M/s. Skipper Towers Pvt. Ltd. are interested in completing the building. It is contended by the learned counsel for the petitioner/ Association, Mr. Arun Khosla that ground rent should be payable only from the date of taking possession by individual members in the circumstances and situation as is obtained. The construction should be completed by either Dda or the petitioner/Association be allowed to complete the building since out of 47 buyers 30 have taken possession. It is also pointed out that some of the flats were sold twice by M/s. Skipper Towers Pvt. Ltd. However, it appears that 12 persons of the petitioner/Association were being paid back for they do not wish to take claimed flats.

(6) Learned counsel for the Dda, Mr. Ravinder Sethi contested the claim of the petitioner/Association inter alias on the ground that since the allotment of the plot had been cancelled for non-payment of ground rent and the interest due thereon, the property for all practical purposes vests with the Dda and they should be deemed to be in possession, and so long as the ground rent along with interest is not paid, the question of restoration of cancellation does not arise and neither the petitioner/Association nor M/s. Skipper Towers Pvt. Ltd. have any

right, title or interest in the property in question. There is no privity of contract between the petitioner and the DDA. Accordingly, the writ was not maintainable.

(7) The learned counsel for respondent No. 2, Sh.G.L. Rawal contends that the present writ petition is not maintainable on two grounds; firstly, it has been filed by an Association and secondly, relief was being sought against M/s. Skipper Tower Pvt. Ltd. apart from the DDA. Learned counsel for the respondent No. 2 relied upon *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, in support of his contention that a petitioner would not be entitled to relief in extraordinary jurisdiction of High Court unless he establishes that his fundamental right has been violated or immediately threatened and no such fundamental right flows from a contract. A contract can not be enforced in writ petition as has been held in *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, , *Civil Miscellaneous Mancat Ram Vs. Delhi Development Authority and Others*, , *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, , *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, .

(8) After having heard the parties counsel and going through the record apparently there can be no doubt that the respondent No. 2 either to raise funds or to inflate price and in order to pressurise the flat buyers sold some of the flats twice as is clear from the affidavit dated 18th July, 1996. But now it appears that 12 persons apart from the members of the petitioner/Association were being paid back the amount and were not claiming flats and in some cases amount has been paid back under the orders of Consumer Forum.

(9.1) It is also apparent that the members of the petitioner/Association after having paid the entire amount find themselves in an unenviable situation in which they neither have the flats nor they are likely to get back the money they paid. In the aforesaid situation we might have been inclined to intervene by treating it as a Public Interest Litigation but for the following reasons: (a) that the rights of the members of the petitioner/Association arise out of a contract; (b) that the ground rent has not been paid; (c) that the transfers have not been got approved from the DDA; (d) that there are numerous disputed questions of fact relating to: (i) the amount payable as rent, period thereof, the interest thereon; the liability to pay the ground rent; (ii) the amount claimed by M/s. Skipper Towers Pvt. Ltd.; (iii) the question of cancellation of allotment and re-entry by the DDA; (iv) the interests of the DDA. M/s. Skipper towers Pvt. Ltd. and the flat buyers (the Association).

(9.2) In order to decide the disputed questions of fact relating to each and every flat buyer one would be required to hear each and every flat buyer separately in the light of the agreements in between respondent No. 2 and the concerned members of the Association the payments made, the conditions complied with or non-compliance of the terms and conditions thereof to judge whether the contract could be specially enforced or not. Virtually a Commission would be required to be instituted in case the entire disputed questions of fact are required to be decided. The allegations that some of the flats were sold twice, may call for

criminal investigation.

(9.3) Besides, the petitioner/Association have not disclosed that they have sufficient funds to complete the construction in all respects nor they have come forward with any appropriate plan which could be acceptable to Dda, if not to M/s. Skipper Towers Pvt. Ltd. An additional hurdle in this respect is that there is no privity of contract between Dda and the members of the petitioner/Association. This Court would either be confiscating the property of Dda or the interest of M/s. Skipper Towers Pvt. Ltd. if the work of completing the task is entrusted to the petitioner/Association. It would be too radical an approach to do so. Though in appropriate case if the exploitation of the flat buyers continues Court may be required and also may be inclined to go to such an extent to protect the

(9.4) Moreover, there are two other facets of the matter. One is that whether the petitioner Association could not allowed to pursue and protect the interest of respondent/Skipper Towers who themselves do not want to pursue the matter by making payment by seeking restoration of the property, and by seeking cancellation of order of re-entry. It is notable that Respondent No. 2 have defaulted not only once in making timely payments to Dda but several times in this matter, leave apart such defaults in other matters.

(10.1) In so far as the contention of the learned counsel for petitioner that the Dda stood by M/s Skipper Towers and allowed them to defraud the people by issuing advertisements is concerned, in Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, in a similar situation, the Supreme Court took the view that Dda is not responsible to reimburse the purchasers. Consequently, this contention cannot be sustained. However, it further appears that a commission was appointed to ensure that Skipper Towers made payments to pay back the amount recovered by Skipper Towers with interest.

(10.2) Thus, it is apparent from the above that the Supreme Court thought it fit that in such circumstances, the payment of money alone could be the proper course and not the specific performance of the contracts between the members of the petitioner/Association and M/s Skipper Towers. Reasons are obvious. By cancellation of allotment and re-entry by Dda, the contracts between the flat buyers and M/s. Skipper Towers frustrates, and would remain frustrated so long as the allotment is not restored. We are unable to proceed to decide the question of restoration on the request of the petitioner Association for lack of privity of contract. There being no privity of contract in between the Dda and these purchasers in view of non-compliance of the provisions of the lease granted earlier, the Dda would not be bound by the terms of agreements between the purchasers and M/s Skipper Towers.

(10.3) In addition to the above, the Skippers are not ready not willing to pay the ground rent and interest thereon. The petitioners are also not in a position to pay the entire amount claimed nor are they having the requisite amount. A specific question was posed to the learned counsel for the petitioner but he sought 4 to 5

months time to arrange the amount to pay the ground rent. In such circumstances, question of restoration of allotment and cancellation of order of re-entry cannot be considered.

(11) In *M.C. Mehta and another Vs. Union of India and others*, , the Supreme Court laid down certain guidelines in context of the social action litigation relating to infringement of Article 21 and Article 32. In para 2 of the judgment, the Supreme Court observed in connection with applications made by Delhi Legal Aid and Advice Board and Delhi Bar Association for awarding compensation to oleum gas leak victims, as under:

"2.....These applications for compensation are for enforcement of the fundamental right to life enshrined in Art. 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice point out that whereupon of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the person affected by the oleum gas leak under Article 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form."

In this judgment, a Bench of 5 Judges also observed in para 31 as under:

"31....We, in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England."

(12) While we see that every new situation needs a new solution yet in our writ jurisdiction, we cannot afford to ignore certain norms laid down by the Supreme Court. We must keep in mind that the above said judgment was delivered in exercise of powers under Article 32.

(13.1) In *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another*, in similar circumstances, a direction was issued to ascertain the persons who had paid amount to M/s Skipper for purchasing the space in the

said building to exclude the claims of non-genuine persons. Justice Chinnappa Reddy, a former judge of the Supreme Court was appointed as a one man Commission to ascertain the number and identity of the persons who have purchased the space in the building being raised by M/s Skipper after January 29, 1991 and also to determine the amounts paid by each of them. The Commissioner was requested to submit its report within a period of six months as far as possible.

(13.2) We could adopt the same course but the above orders were passed by invoking Article 142 of the Constitution of India. This court does not possess those powers. Moreover in para 16 of the judgment, the Supreme Court, about invoking exercise of the powers under Article 142 of the Constitution observed as under:

16. In re: Vinay Chandra Mishra (the alleged contemner), , 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 statutory provision. [Para 48]". It 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 un catalogued 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.

In view of what has been said above, it is evident that this court cannot invoke the provisions of Article 142.

(13.3) It may further be mentioned that the rights of the members of the petitioner Association, which have been violated in this case arise on account of contracts. And where question of pure alleged breach of contracts are involved, it has been pointed out in Radhakrishna (supra), that no writ order can be issued under this Article to compel the authorities to remedy a pure and simple breach of a contract. In coming to this conclusion, the Supreme Court referred to its earlier decision in Lekhraj v. Deputy Custodian, Air 1966 S.C. 344, and Banchhanidhi Rath Vs. The State of Orissa and Others, . Mention was also made to Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, wherein a Constitution Bench had observed in para 21 as under:-

"THE appellants have displayed ingenuity in their search for invalidating

circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.

(13.4) The question was re-examined in Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., . There, a tea garden owner approached the High Court praying for a direction to the authorities that they had no legal right to realise royalty from it and to issue permits without royalty. Reference was made to certain statutory provisions. The Supreme Court held that in fact the provision relied on was a camouflage and once that was removed, it transpired that the petitioner was trying to claim the benefit under the term of a lease. By referring to Har Shankar (supra), it was held that the same could not be done through a writ petitioner.

(14) Though the petition is being dismissed, we do expect the Dda to find out a solution and devise a scheme to protect the interests of such hapless buyers as have unwittingly fallen prey to the circumstances created by the builder.

(15) For the foregoing reasons, we feel that there is no force in this writ petition and it is dismissed accordingly without any order as to costs.