

(1992) 11 DEL CK 0038

In the Delhi High Court

Case No : Contempt Civil Petition No. 175 of 1991

B.N. Khanna

APPELLANT

Vs

Geeta Sagar and Others

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Contempt of Courts Act, 1971 — Section 14

Citation : (1992) 48 DLT 696

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : R.K. Anand, Inderjeet Sharma, J.M. Sabarwal, Ravinder Sethi, V.R. Seth, S.K. Mahajan and Rajiv Nayar, for the Appellant;

Judgement

P.N. Nag, J.

(1) The petitioner is one of the founder members of the respondent No. 2, Diplomatic Enclave Extension, Co-operative House Building Society, Ltd. (hereinafter referred to as "the Society") and is about 80 years old. There has been a long drawn out litigation between the petitioner and respondent No. 2, for several years for allotment of plot, the details of which may not be necessary to be referred to here. Suffice it to say, that although according to the petitioner, he was entitled to a plot of 1200 sq. years, he was allotted only 800 sq. years plot by respondent No. 2, which also was not actually given to him. Ultimately, the matter was referred to the Arbitration u/s 61 of the Delhi Co-operative Societies Act and respondent No. 1 or his nominee was appointed as the sole arbitrator to adjudicate upon the disputes between the petitioner, and the respondent No. 2.

(2) Originally, the claim of the petitioner was against plot No. A-27, which claim was withdrawn by him in the arbitration proceedings and the consent award dated 30th June, 1980 was given by the arbitrator. The relevant portion of the award is reproduced below :-

"THE parties to the dispute have compromised among themselves. The Secretary

of defendant No. 2 Co-operative House Building Society have filed certified copy of the Managing Committee resolution dated 7th June, 1990, and certified copies of Col. B.N. Khanna letter's dated 31st May, 1980 (two no. addressed to defendant No. 2). which have been placed on record. It is very clear from these two letters of Col. B.N. Khanna that he has finally and completely closed all cases/disputes with the society and other parties to the arbitration proceedings and Col. Khanna has further taken solemn promise that he will not file and other legal proceedings in Court of law against the parties to the committee of Diplomatic Enclave, Extension, Co-operative House Building Society, New Delhi, passed a resolution on 7th June, 1980 recommending for carving out an additional plot of 400 sq. yards and then allotting the same to Col. B.N. Khanna, defendant No. 2 or his nominee. Since claimant Col. Khanna, defendant No. 2 have mutually agreed. In this case and accordingly defendant No. 2. The Diplomatic Enclave Extension Co-operative House Building Society, West End Road New Delhi, hereby ordered to carve out an additional plot of 400 sq. yards and allot the same to Col. B.N. Khanna or his nominee, subject to approval of concerned authorities in the matter."

(3) Since the award was not implemented, the petitioner filed an application dated 20th August, 1982, Exhibit PA/I before the Registrar for execution of the award dated 30th June, 1980 and the relief claimed in the said application was that attachment of land measuring 400 sq. yards in the West End Colony may be ordered. This application was allowed and the Registrar passed the following order on 12th December, 1984 :-

"THE society should, Therefore, honour the award announced on 30.6.80 by Arbitration Code No. ARB/4/H/79-80 Between Col. v. Diplomatic Enclave Co-operative House Building Society Ltd."

(4) However, the Lt. Governor vide order dated 16th April, 1985, set aside the order passed by the Registrar Co-operative Societies in a petition filed by the Society. It appears, in that earlier order dated 15th July, 1982, passed by the Lt. Governor also, such award was not approved by him.

(5) Being aggrieved against the order of the Lt. Governor dated 16th April, 1985, and other order dated 15th July, 1982, the petitioner filed a writ petition No. 2059/89, which was allowed by Sapra, J. on 28th February, 1991, whereby the order passed by the Registrar was upheld and a direction was given to implement the award by carving out an additional plot of 400 sq. yards for allotment to the petitioner. The operative part of the order is reproduced below:-

"THE orders dated July 15, 1982, passed by the then Lt. Governor, Delhi and the order dated April 16, 1985 passed by respondent No. 4, are hereby quashed. The order dated July 12, 1984, passed by respondent No. 1, is upheld. Writ of mandamus is also issued, whereby the society, respondent No. 2 herein, is directed to implement the award, by submitting a revised lay-out plan, thereby carving out an additional plot of 400 sq. yards for allotment to the petitioner, and

submit the same to the concerned authority or authorities, for its or their approval. It is further directed that the revised lay-out plan, in terms of the award, shall be submitted within 2 month from today, by the Society, to the concerned authorities. In case, the concerned authority is the Municipal Corporation of Delhi, then, it is hoped that the Municipal Corporation of Delhi shall take the decision, with regard to the approval, within 2 months from the date of receipt of the revised lay-out plan, from the Society."

(6) It appears that against this order of Sapra, J., Letters Patent Appeal and SLP filed by the respondents, both were dismissed and this order became final. In spite of the finality of the order, no steps have been taken by the respondents to implement the order of Supra. J. Therefore, the petitioner has filed this contempt petition for punishing the respondents in accordance with law.

(7) After hearing the parties, the petition was admitted, as I was of the view that the petition requires consideration as prima fade the order of this Court was not being implemented by the Registrar Co-operative Societies, who is the main functionary under the Delhi Co-operative Societies Act and respondent No. 2, Diplomatic Enclave Extension, Co-operative House Building Society Ltd. Much can be said about the non co-operative and negative attitude of the respondents in implementation of this order. However, at this stage, suffice it to say that both the aforesaid respondents were not helpful to the Court in the implementation of the judgment. Respondent No. 2 took the stand that all the plots carved out in the society area were allotted to the members in the mid sixties and sub lease, agreements registered and all open areas, i.e. parks, roads together with services were handed over to the Municipal Corporation of Delhi in 1972 and Municipal Corporation of Delhi is now in possession of all such land. In the circumstances when the Society has been left with neither any plot nor any land with it, it is unable to comply with the order of the Court. However, it may be noticed from the Judgment of Sapra, J. dated 28th February, 1991 that the Society has earlier agreed for carving out of plot of 400 sq. yards vide letter addressed to the Arbitrator by Shri H.D. Shorie, Vice President of the Society at page 14 of the judgment (page 24 of the paper book). This letter amongst other documents has been relied upon by Sapra, J. for deciding the matter in favor of the petitioner. The relevant submissions made by the Society in that letter are reproduced below:-

"(A)that taking into consideration of the fact that on a previous occasion the Dda and the Town Planner and the Municipal Corporation of Delhi had indicated their concurrence to the carving out of an additional plot, the same being in conformity with the permissible density and other related factors affecting this colony, the Society agrees to request the Arbitrator to give an award for carving out an additional plot of 400 sq. yards in the West End Colony. (b) that with the carving out of the said additional plot of 400 sq. yds. the Society would desire that it may be allotted to Col. B.N. Khanna or his nominee and that the Arbitrator may be kind enough to give the award accordingly."

(8) In the light of the stand taken by the Society earlier before the the Arbitrator, it does not lie in the mouth of the Society now to say that additional plot of 400 sq. yards can not be carved out for the petitioner, nor can it be permitted to take such a stand.

(9) The stand of respondent No. 1 that he has already made clear to the Society that the orders of the Hon"ble High Court are to be honoured and Society was directed to implement the orders.

(10) However, in pursuance to the orders of this Court, it appears that the revised lay out plan of the Society was submitted to the Delhi Development Authority off November 29, 1991, which was rejected by the aforesaid authority. The Registrar also with a view to comply with the order of the Court, issued as how cause notice dated 13th February, 1992 u/s 32 of the Delhi Co-operative Societies Act as to why the Managing Committee of the Society may not be removed and an Administrator be .not appointed to manage the affairs of the Society in accordance with the provisions contained in the Act and the Rules framed there under on account of the Society not implementing either the Award or the orders of this Hon"ble Court. No further development has been brought to the notice of this Court by the Registrar. It may be noticed here that the Registrar u/s 71(b) on 12th December, 1984, directed the Society to honour the award dated 30th June, 1980. The Lt. Governor, however, vide orders dated 16th April. 1985 set aside the order of the Registrar, Co-operative Societies in a Revision Petition filed by the Society. This Hon"ble Court vide judgment dated 28th February, 1991, set aside the orders of the Lt. Governor. The inevitable consequences as a result thereof would follow that the order of the Registrar dated 12th December, 1984, is revived which was passed on the execution application filed by the petitioner. Therefore, it was the duty of the Registrar to have taken further steps immediately for the implementation of the award and of- the order of the High Court after the quashing of the order of the Lt. Governor dated 16th April, 1985 by this Court. But nothing in this direction was done by the Registrar, rather he kept sleeping.

(11) It appears that the Municipal Corporation of Delhi on 24th February, 1992 on the revised lay out plan submitted to it by respondent No. 2 in pursuance of the order of this Court took a decision vide item No. 129 as under:-

"IN the light of the detailed report and facts brought out by the department in their letter No. F. 33/TP/49/C&C dated 22.4.1992, request of the Diplomatic Enclave Extension Co-operative House Building Society Ltd. and of Col. B.N. K.hanna for carving out an additional plot measuring 400 sq. yds. as mentioned in the letter aforesaid is rejected as proposed."

(12) This Court on 25th March, 1992, directed the Municipal Corporation of Delhi to took into the matter afresh and with an open mind and they were further directed to take into consideration (i) Annexure P/B at page 107 of the paper book to the effect that "there is no objection to the proposal of carving out an

additional plot of 800 sq.yds or 1200 sq. yards, and the same could be recommended for approval to the Standing Committee in case a proper lay out plan as required u/s 313 of the Delhi Municipal Corporation Act, 1957 is submitted"; (ii) Annexure .PX at page 138 of the paper book written by the Delhi Development Authority to the petitioner to the effect "".....we have no objection to the proposal in question. It is now for the society to submit a plan to the competent authority i.e., the Municipal Corporation of Delhi, for the sanction of the revised plan incorporating the additional plot", and (in) the additional affidavit of the petitioner dated 23rd March, 1992 filed in the matter in which the petitioner has pointed out that in similar circumstances this Municipal Corporation of Delhi has sanctioned to carve out the plots.

(13) Unfortunately, however, this proposal was again rejected on the ground that the Society is not the owner of the land proposed to be carved out being park and the permission of the change of use of land has also to be taken from the Competent Authority i.e. the Central Government.

(14) According to the stand of the Society, no land belongs to them and the plot of 400 sq. yards cannot be carved out and the judgment of the Court cannot be implemented and the Municipal Corporation of Delhi has insisted that for carving out of the plot. the Society must be the owner of the property and that further for change of user. permission of the Central Government should be required. On the other hand, it cannot be disputed that the Judgment of this Court has been upheld by a Division Bench of this Court and also by the Supreme Court and has become final and that. the Court is duty bound to implement the judgment with a view to hold the dignity and majesty of law subject of course, if there is no legal impediment otherwise. Therefore, some solution necessarily has to be found out and the matter has to be examined in this context.

(15) In para-6 of the execution application, the petitioner has sought the mode of execution by attachment of land measuring 400 sq. yards in the West End Colony, which may be reproduced below :-

"MODE of Execution : It is prayed that attachment of land measuring 400 sq. yards in the West End Colony may be ordered. The plot of land to be attached is a portion of larger plot on which it is proposed to construct a community hall and a club house. The particulars of the plot are : (a) To the North Plot Nos. B4 and B5 (b) To the South Plot Nos. All to A13 (c) To the West Plot Nos. A8 and A9 The total area of this plot is 0.5 acres i.e. 2420 sq. yards out of which an area of 400 sq. yards out of which an area of 400 sq. yards may be attached. The above mentioned land is part of the West End Colony and is in possession of the Society under the control of the Delhi Development Authority."

(16) No doubt on this application the order passed by the Registrar is only to the extent that the Society should honour the award announced on 30th June, 1990 by the Arbitrator. However, no mention was made in the order that the award should be honoured by attachment of 400 sq. yards in West End Colony out of

the proportion of the plot on which Community Hall and a Club were proposed to be constructed. But having read the application and particularly para-6 thereof and the order of the Registrar, it can be spelt out that the Registrar has ordered for the attachment of the land measuring 400 sq. yards out of the space meant for Community Hall and Club House, the particulars of which have been given in para-6 of the application as other mode of attachment was not prayed for and this was the only mode which was prayed for.

(17) The order of the Registrar for the honouring of the award, as already stated, was revived after the order of the Lt. Governor was quashed by this Court. It was the duty of the Registrar to implement the award and he should have ordered for carving out of the plot of 400 sq. yards out of the portion of the plot on which Community Hall and a Club House were to be constructed.

(18) Having regard to the contents of Annexure-PB dated 7th October, 1966 and Annexure Px, and other over all circumstances, there appears to be no objection for carving out additional plot if the Society makes out a proposal to the Municipal Corporation of Delhi, as directed hereinafter.

(19) No doubt the Municipal Corporation of Delhi has come out with the stand in their latest decisions that since the Society is not the owner of the property permission cannot be granted to the society for carving out plot between plot Nos. B-20 and B-21 or alternatively between plot Nos. A-13, and A-14. Although the stand taken by the Municipal Corporation of Delhi, to my mind prima facie is not legally tenable, as in the present case the question involved is not only about the implementation of the order of the Court, but is also not warranted in the facts and circumstances. However. I refrain from expressing an opinion on this aspect at this stage as it involves determination of disputed questions of fact and is also is not the subject matter of the contempt petition. However, there is no dispute that the area of 2420 sq. yards has been ear-marked for Community Hall and Club House and this has been mentioned in the execution application in para-6 of the Society and no club has so far been constructed although 24 years have lapsed. This area is in the ownership of the Society .In case a plot of 400 sq. yards is carved out from this 2420 sq. yards, still 2020 sq. yards will be left with the Society for the construction of Community Hall and Club House. Therefore, the permission of the Central Government would not be required for carving out such a plot as the predominant use of the land will continue to be for the construction of the Club House and Community Hall.

(20) Having regard to the over all circumstances in view, it would be expedient in the interests of justice to issue the following directions :-

1.The Society is directed to carve out an additional plot measuring 400 sq. yards out of the total area of 2420 sq. yards ear-marked for the construction of Community Hall and Club House in consultation with any Town Planner for allotment to the petitioner, and submit the revised lay out plan to the Municipal Corporation of Delhi within 15 days. 2. The Registrar Co-operative Societies, will

see to it that this direction is complied with by the Society. 3. The Municipal Corporation of Delhi will examine and consider the matter afresh immediately. If any, further information or clarification is required from the Society/respondent No. 2, that will be obtained within first 15 days and the matter will be considered as directed within one month.

(21) It will be appreciated that the Commissioner of Municipal Corporation of Delhi will personally look into the matter for according sanction for carving out the plot measuring 400 sq. yards after the respondent No. 2 submits the revised lay out plan, as directed above.

(22) The above directions are not only mandatory but preemptory and must be punctually observed.

(23) The case now to come up. on January 15, 1993. Petition adjourned.