

(2013) 03 DEL CK 0230

In the Delhi High Court

Case No : Cont. CAS (C) 212 of 2012 and CM. 5802 of 2012

Mansa Ram

APPELLANT

Vs

Sudhir Krishna Secy Union of India and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2013) 03 DEL CK 0230

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Arpan Sharma, for the Appellant; Sunil Kumar, Rajiv Ranjan Mishra, Advocate for respondent no. 1/UOI, Mr. Sanjay Kumar Pathak, Ms. Lekha Mriga, Advs for respondent no. 2 and 3, Ms. Reeta Kaul, for the R=6, Mr. Ashwani Kumar, J.E. Flood Control Department, Mr. Sangram Patnaik and Mr. Umesh Yadav, Advocate for the respondent/DDA, Sanjay Kumar, CLA, Mr. Brijesh Kumar Mishra, Commissioner (Land Management), DDA, Mr. Rahul Gupta, Shekhar Gupta for the applicant in CM. No. 6526-27/2012 and Mr. Nalin Tripathi, for respondent/MCD, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.—Counsel for the petitioner submits that initially the petitioner was in possession of 11 bighas, 4 biswas of agricultural land comprised in Khasra No. 296/112/1 situated in revenue estate of Village Khajuri Khas, NCT of Delhi; and out of the aforesaid area, 5 bighas, 4 biswas of the land was acquired by a notification dated 26.8.1967 u/s 4 of the Land Acquisition Act. A declaration u/s 6 was made on 22.1.1968 and an award was announced on 19.9.1986. According to the petitioner 6 bighas of the land comprised in Khasra No. 296/112/1 was declared to be free from acquisition by the order dated 31.3.2006 passed in WP(C) No. 2118/1989 which was filed by the petitioner, challenging the impugned acquisition of the said 6 bighas of land comprised in Khasra No. 296/112/1. According to the petition, the petitioner has been in continuous physical and peaceful possession of the said land and his possession was never

disturbed, which fact was also established by the proceedings in the aforesaid writ petition.

2. It is also the case of the petitioner that the officers of the DDA and the Irrigation and Flood Control Department approached the said land of the petitioner on 22.11.2011 with the purpose to dump construction material on the said land. Thereafter on 23.11.2011 and 24.11.2011 the said officers started dumping stones/debris and construction material on the said land.

3. Aggrieved by the action of the respondent, the petitioner filed WP(C) No. 8388/2011 on 25.11.2011 seeking a writ of Mandamus against the respondent, so as to protect his peaceful physical possession and occupation over the said land, and supporting photographs, showing the activities of the respondents in dumping the stones, debris and construction material on the said land, were placed on record. The said WP(C) No. 8388/2011 was disposed of by an order dated 29.11.2011 with a direction to the petitioner to make a representation to the DDA within three days and that the DDA would consider the representation after giving a hearing to the petitioner and will decide the same by a speaking order within four weeks.

4. It is the case of the petitioner that in compliance of the order dated 29.11.2011 a representation along with the necessary documents, was filed on 2.12.2011 however, neither the petitioner was called for hearing nor DDA has passed a speaking order till date. According to the petitioner, the officers, agents and servants of the Delhi Development Authority and Irrigation and Flood Control Department under administrative and supervisory control of respondent no. 5 and 6 again started dumping soil and sand on the said land on 12.12.2011. On 13.12.2011 a complaint was made by the petitioner to the local SHO against the aforesaid officials, who refused to receive the said complaint. Another representation dated 20.1.2012 was made by the petitioner to the DDA informing the DDA about the pendency of the earlier representation and of the order dated 29.11.2011 passed by the High Court in WP(C) No. 8388/2011.

5. Counsel for the petitioner submits that no response was received from the DDA with respect to the representations so made, and on 10.2.2012 officers from the DDA and Irrigation and Flood Control Department entered upon the said land of the petitioner with heavy machinery like road roller and started spreading and flattening the debris and stone deposited by them on the said land, the petitioner again filed a comprehensive reminder representation dated 16.2.2012 being aggrieved by the illegal acts of trespass, forceful and intimidatory presence on the land carrying out construction activity in violation of the order dated 29.11.2011 passed in WP(C) No. 8388/2011, which has led to filing of the present contempt petition.

6. The submission of counsel for the petitioner is two fold: firstly the DDA had been directed not to take any coercive step to dispossess the petitioner from the land in dispute, and secondly the DDA has failed to decide the representation of

the petitioner within four weeks and in fact till date.

7. It may be noticed that while issuing notice in this matter another Single Judge of this court vide order dated 28.3.2012 had restrained the respondents from carrying out any construction or dumping any construction material on earth on the portion of the land which belongs to the petitioner. Counsel for the Irrigation and Flood Control Department submits that the possession of the land was handed over to them by the DDA. However, counsel for the DDA submits that the building material etc. has been dumped on the land which has been acquired by them.

8. It may also be noticed that during the pendency of the present proceedings, an application (CM. No. 6526/2012) has been filed by one Sh. Sanjeev Kumar, who claims himself to be the owner and in possession of the land, which is the subject matter of this contempt petition. Applicant has placed reliance on a registered sale deed filed along with the application, the General Power of Attorney and the order of mutation dated 21.3.2007 and also a copy of Khatoni. Mr. Gupta, counsel for the applicant in CM. No. 6526-27/2012 submits that petitioner herein has participated in all these proceedings. Thus, the present proceedings are misconceived, mala fide and misleading.

9. Counsel for the petitioner disputes existence of these documents on the ground that the same are forged and fabricated documents and he has already filed a civil suit against Mr. Sanjeev Kumar on the original side of this court.

10. Counsel for the Irrigation and Flood Control Department submits that the interim order passed on 28.3.2012 may be vacated. Counsel for the DDA supports the case of the Irrigation and Flood Control Department on the ground that public money is involved and in case the development work is stayed, there is a likelihood of loss of revenue.

11. I have heard counsel for the parties. This court had expressed its displeasure as the order of the Single Judge has not been complied with by the DDA which order was passed as far back as on 29.11.2011 in WP(C) No. 8388/2011. Had this order been complied with within the time allowed, there would have been no occasion for the petitioner either to file the present contempt petition or to seek an injunction order, which has been passed on 28.3.2012. The operative portion of the order dated 29.11.2011 passed in the Writ Petition No. 8388/2011 reads as under:

5. When it was put to petitioner's counsel, as to why he had not made any representation to the respondent-DDA, it is said that no time was given to do so. Since the site plan of the spot indicate, which area has been acquired and which one has been left out, is not on record and the factual position is yet to be established, therefore, it is deemed appropriate to direct the petitioners to make a comprehensive representation alongwith duly certified copy of authentic site plan of the spot to the respondent-DDA to raise the grievance made in this petition.

6. Learned counsel for the petitioner states that the representation would be made to the respondent-DDA within three days. If it is so done, respondent-DDA shall consider it and if required give a hearing to the authorized representative of petitioner and thereupon pass a speaking order within four weeks thereafter.

7. Needless to say, that before a decision is taken on petitioner's representation by respondent-DDA, no coercive steps would be taken to dispossess the petitioner from the land in question. That is to say, if the petitioner establishes the possession over the land in question by producing certified copy of the Revenue Record, then petitioner would not be dispossessed except in accordance with law.

12. As far as the first submission of the counsel for the petitioner is concerned that the order dated 29.11.2011 with respect to the disposal of the representation is concerned, there is force in the submission made by counsel for the petitioner. The representation has not been decided despite the order dated 29.11.2011 and subsequent representations dated 2.12.2011, 20.1.2012 and 16.2.2012 made by the petitioner bringing to the notice of the DDA the order so passed.

13. Having regard to the submissions made and unconditional apology tendered by the Chief Legal Advisor, DDA and the Commissioner (Land Management), DDA, in court today, the DDA is granted two weeks time from today to decide the representation of the petitioner and the order to be passed will be communicated to the petitioner at the address mentioned in the contempt petition.

14. As far as the second submission of counsel for the petitioner is concerned that the DDA could not have taken any coercive step to dispossess the petitioner from the land in question, the same is without any force. The order dated 29.11.2011 passed in WP(C) 8388/2011 was a conditional order and in fact the learned Single Judge has clarified the issue while issuing directions. The learned Single Judge had directed the DDA not to take any coercive steps and dispossess the petitioner from the land in question, if the petitioner establishes possession over the land by producing certified copies of revenue record. What has been placed by the petitioner along with the representation are copies of Khatoni of the year 1995-96 and Khasra Girdawari of 2001-02, relevant revenue record for the period subsequent thereto has not been placed on record, and in the representation the petitioner has nowhere mentioned that Mr. Sanjeev Kumar had forged or fabricated the documents or that he had taken appropriate legal proceedings against Mr. Sanjeev Kumar. The documents placed on record prima facie show that petitioner is not in possession of the land and secondly the order was to come to force only in case the petitioner places certified copies of the revenue record to the DDA. The copies of documents placed on record by applicant in CM. No. 6526/2012 prima facie show that the land in question has been sold by the petitioner to Mr. Sanjeev Kumar, although the petitioner has filed a suit against Sh. Sanjeev Kumar and the matter is yet to be finally adjudicated. The supporting documents filed by Mr. Sanjeev Kumar shows the

name of Mr. Sanjeev Kumar in the revenue record. The Khasra girdawari pertained to the year 1995-96 and 2001-02, thus the DDA cannot be faulted, as the land has been handed over to the Irrigation and Flood Control Department, and there are no grounds made out to initiate contempt proceedings.

15. It has been repeatedly held that the power to punish for contempt is a special power, which is to be exercised with care and caution and should be used sparingly by the courts on being fully satisfied with regard to the contemptuous conduct of a party. It would be useful to reproduce the observations of the Supreme Court in the case of Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others, :

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the Court exercising the jurisdiction to punish for contempt does not function as an original or appellate Court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can

be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

16. Having regard to the facts of the present case, no grounds are made out to initiate the contempt proceedings against the respondents. However, the explanation rendered by the Chief Legal Adviser and the Commissioner (Land Management) DDA, who are also present in court today, that the order could not be complied with as relevant documents were not provided by the petitioner, is unacceptable, as the order is crystal clear that in case the representation was received, the DDA should have considered the same on the basis of whatever material was enclosed by the petitioner and take a decision in accordance with law.

17. It has repeatedly been noticed that the orders passed by this court are not complied with within the time allowed and even in those cases where the DDA has sought time in contempt proceedings to comply with the order. It is also noticed that wherever orders passed are to be assailed, appeals are also not filed expeditiously and time is sought in contempt proceedings to await the decision.

18. The CLA, DDA is directed to monitor receipt of the orders, which are passed from time to time by different courts and to devise a method so that the order should be complied with as expeditiously as possible and within the time allowed by the Courts. The non-compliance of orders not only leads to inconvenience to an ordinary citizen and a litigant besides valuable court time is wasted in monitoring and enforcement of its own orders.

19. It may however, be noticed that any observation made while disposing of the present contempt petition today, would not affect the rights of the parties on the merits in the civil proceedings, which are pending and would not be treated as an expression on the merits of the matter.

CM. Nos. 6526-27/2012 (filed by Mr. Sanjeev Kumar)

Dismissed as not pressed, in view of orders passed in the CONT. CAS(C) 212/2012.