

(2008) 01 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4632 of 2005

Shri Sarvjit Singh

APPELLANT

Vs

NDMC and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Citation : (2008) 2 ILR Delhi 212

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : B.L. Wali, Adv Meera Bhatia, for the Appellant;

Final Decision : Allowed

Judgement

Gita Mittal, J.—This writ petition has been filed assailing a notice dated 23rd February, 2005 issued by the New Delhi Municipal Council? respondent No. 1 herein directing the petitioner to remove his taxi stand from the site near the Safdarjung Hospital and handing over vacant possession of the piece of land to the respondent No. 1 herein. The petitioner has also prayed for directions to the respondents to allot an alternative suitable site for his taxi stand to the petitioner in case he is required to vacate the site.

2. There is no dispute to the material facts giving rise to this petition. According to the writ petitioner, Shri Joga Singh fought with freedom fighters including late Shri Baba Kharak Singh and late Shri Mota Singh for the freedom of the country. Shri Sarvjit Singh is the son of Shri Joga Singh who was discharged from the military (MT Branch) in January, 1941.

3. The New Delhi Municipal Corporation as respondent No. 1 was known then informed the general secretary, taxi union vide a communication dated 15th January, 1955 about the approval of a taxi stand at the Safdarjung Hospital and its allotment in the name of Shri Joga Singh. The respondent No. 1 also granted permission to Shri Joga Singh for putting up a wooden taxi booth of the standard size 4 ft x 4 ft for running a taxi stand at the Safdarjung Hospital with effect from

16th January, 1956. By a subsequent communication dated 24th February, 1967, the respondent No. 1 regularised the taxi stand which was being run by Shri Joga Singh in the name and style of Kartar Taxi Service and he was permitted to occupy a booth subject to his paying the booth charges in the first week of every month.

4. It appears that in terms of the communication dated 24th February, 2007, Shri Joga Singh executed the agreement and started paying the booth charges to the respondent No. 1. By another letter of 24th February, 1967 the respondent No. 1 informed Shri Joga Singh to execute an agreement on nonjudicial paper of Rs. 2.50 paise in respect of the telephone booth at the Kartar Taxi Service opposite the Safdarjung Hospital. Such agreement was also executed by Shri Joga Singh.

5. The petitioner has placed before this Court a certificate dated 12th July, 1986 issued by various doctors acknowledging and affirming not only the necessity of the taxi stand run by Shri Joga Singh but also recommending its expansion by providing modern facilities and affirming the service being rendered by the taxi stand.

6. Further developments took place with passage of time. By a letter of 5th August, 1986, the New Delhi Municipal Committee (NDMC for brevity) informed Shri Joga Singh that it was proposed to shift the masonry taxi booth in his occupation in public interest. He was informed that the site on the Ring Road side had been approved by the ACP/Traffic as also by the NDMC which had been raised construction and a temporary taxi booth had been provided there. The NDMC also informed Shri Joga Singh that it was even taking action to provide a urinal at this site.

7. This communication was followed by an order dated 23rd December, 1987 issued by the Deputy Commissioner of Police (Traffic) in exercise of powers conferred u/s 2 of the Delhi Control of Vehicular Traffic and Traffic on Roads and Cities Regulations, 1980. As per this order, a general taxi stand for the parking of ten DLT taxies on the vacant land that near "gate No. 3" of Safdarjung Hospital on Ring Road, New Delhi was notified. The respondent No. 1 passed a resolution No. 40 dated 18th September, 1989 granting tehbazari permission to Shri Joga Singh for putting up a wooden booth of standard size of 4 ft x 4 ft near gate No. 3 Safdarjung Hospital, New Delhi who started plying his taxies from this place as per the orders of the respondents.

8. It appears however that Shri Joga Singh unfortunately expired on 30th July, 1992. The present petitioner, who is Shri Joga Singh's son, at that time was around 36 years of age and had been involved in the business of his father from the date of attaining majority. On 28th September, 2000 the petitioner submitted an application to the respondent No. 2 that is the Deputy Commissioner Police (Traffic) for shifting of the taxi stand from gate No. 3 where the taxi stand was originally located at the gate No. 2. It was pointed out that the site near the gate No. 3 was coming in the construction of the flyover and that doctors and patients

were finding it inconvenient to approach the taxi stand which had been shifted to gate No. 3 as per the letter dated 5th August, 1986 of the respondent No. 1. A reminder in this behalf was also addressed by the petitioner on 24th May, 2000.

9. It appears that the respondent No. 2 examined the position as also the documents placed by the petitioner before it. A considered order was made by the Deputy Commissioner of Police (Traffic) on 25th June, 2001, again in exercise of powers u/s 3 of the Delhi Control of Vehicular and Other Traffic at Road and Streets Regulation, 1980. The Deputy Commissioner of Police directed shifting of the taxi stand located at the vacant land near gate No. 3 of the Safdarjung Hospital tentatively "to between the wall of Safdarjung Hospital and existing subway on Aurobindo Marg, New Delhi" as a halt and go stand during the construction phase of the flyover. It was further directed that after completion of construction work of flyover the taxi stand would be reshifted to its previous location. The provision of parking space of 5 DLT taxies at a time was given at the halt and go site. The DCP (Traffic) had also ordered that the taxi waiting for passengers may remain parked at the site and if one or more of them move away, any other taxi or taxies may occupy the vacant place. The Deputy Commissioner Police (Traffic) had directed the NDMC to transfer the booth at the "halt and go" site. There is no dispute that the NDMC/respondent No. 1 acted on this order of the Deputy Commissioner Police (Traffic) and issued an order dated 9th November, 2001 informing the petitioner of the order passed by the chairman of the NDMC for shifting the aforesaid taxi stand at gate No. 3 with effect from 29th October, 2001 to the site at gate No. 2 Safdarjung Hospital, New Delhi. These orders of the respondents were duly acted upon and implemented.

10. Having regard to the fact that the allottee Shri Joga Singh had expired, it appears that the petitioner also addressed a communication dated 25th October, 2000 to the NDMC requesting that the allotment of the taxi stand be transferred in the records in his name. This petitioner who was one of the sons of the deceased Shir Joga Singh enclosed no objection certificates from other heirs of the deceased allottee with the communication to transfer of the allotment to his name. Reminders in this behalf were sent by the petitioner, including a communication dated 16th September, 2003 and 27th January, 2005.

11. Instead of considering these requests of the petitioner in accordance with its policy, the NDMC/respondent No. 1 herein issued a show cause notice dated 23rd February, 2005 to the petitioner pointing out that tehbazari permission had been given to Shri Joga Singh by the resolution No. 40 dated 18th September, 1989 for putting up a wooden taxi booth of standard size of 4 ft x 6 ft with effect from 16th January, 1956 on the approved terms and conditions of allotment. However it was stated that, in view of the demise of late Shri Joga Singh, the tehbazari permission ipso facto determines from the date of expiry of the permission holder and that the Chairperson, NDMC had been pleased to withdraw the tehbazari permission from the name of Shri Joga Singh on the above account including his having obtained an electric connection in the booth unauthorisedly.

It was further stated that the existing site of the taxi booth was coming between the wall of the Safdarjung Hospital and existing subway and could not be allowed to exist any longer in the larger public interest. On these contentions, the respondent No. 1, through its director enforcement, called upon the petitioner to remove the taxi booth from the site and hand over vacant possession of the piece of land to the NDMC within seven days of the date of issue of the notice.

12. As the petitioner's representation to the NDMC which was served on 2nd March, 2005 had not received any consideration, the petitioner was constrained to file the present writ petition challenging the order dated 23rd February, 2005 on grounds of arbitrariness, illegality and discrimination. It has further been contended that the order has been passed without issuance of any notice to show cause and without grant of any hearing to the petitioner. The argument is that consequently the order is violative of the principles of natural justice. The petitioner has also contended that the order is contrary to the policy of the NDMC which directs and mandates that tehbazari would be transferable to legal heirs and that respondents have also failed to consider the fact that the NDMC has been receiving amounts from the petitioner without any objection.

13. Mr. B.L. Wali, learned Counsel for the petitioner, has pointed out the stand taken by the NDMC/respondent No. 1 in the counter affidavit which was filed on 15th December, 2005. In this affidavit the NDMC has stated that the sites of the taxi stand/booth were identified by the Deputy Commissioner of Police, Traffic and allotted by the NDMC. It was however submitted that one of the conditions of allotment of the tehbazari was that the same was for temporary and exclusive use and occupation of the bonafide permission holder and was not transferable. For this reason, it was submitted that the tehbazari could not be transferred in favor of the petitioner the respondent No. 1 had stated that the permission holder had expired on 30th July, 1992 and the tehbazari site was being misused by some unauthorised persons.

14. The other stand taken by the respondent in this affidavit was that in the public interest litigation titled The Courts on its Own Motion v. Safdarjung Hospital and Ors. it was registered as W.P.(C) No. 10697/2004 by order passed on 23rd February, 2005 the court had directed thus:

The other aspect on which directions are necessary is the encroachment by vendors in the periphery of the hospital. It is the NDMC which is required to take action to remove any unauthorised construction forthwith. In so far as eligible squatters, if any, are concerned they should be re-located within a period of two months from today. Mr. R.K. Beri, Assistant Director (Enf.) who is present in Court undertakes to carry out the exercise within the aforesaid stipulated time.

On these grounds, the respondent No. 1 had stated that the occupation of the petitioner being unauthorised he was challaned u/s 225 of the New Delhi Municipal Council Act, 1994 and that the respondents was bound to remove the encroachment u/s 226 of the said Act. On these grounds, it was urged that the

removal by the respondent was in compliance of the statutory mandate.

15. The petitioner thereafter placed before this Court the resolution No. 55 dated 7th July, 1998 and the information received on an application made by the petitioner the respondent No. 1 under the Right to Information Act, 2005 wherein the NDMC had taken a considered decision to transfer allotment of the taxi stand even in the case of subletting and partnerships. Reliance was also placed on the resolution No. 3(iii) dated 14th June, 1996 wherein the council had decided as under:

resolved by the council that open tehbazari is regularised on legal heir basis without harassment of the tehbazari fee but subject to the condition that he/she would clear the site after sunset and completion of other formalities in this regard.

This resolution refers to a resolution No. 14 dated 28th September, 1989 which approved the policy of enhancement of licensing of building up units and imposition of transfer fee on subletting/partnership basis. It notes that the then Administrator had decided to regularise in case of legal heirs and not others.

16. The petitioner had made an application to the respondent No. 1 under the Right to Information Act, 2005 which was responded by the respondent No. 1 by its communication of 21st February, 2006 wherein it was stated that the NDMC had a policy to transfer the allotment of taxi booth in the names of legal heirs in the event of original allottee. The respondent No. 1 had also informed the petitioner that the allotment of the taxi booth to M/s Foreign Travels at 36, Janpath was transferred in the name of Mrs. Harnam Kaur W/o late Shri Kartar Singh after the death Shri Kartar Singh.

17. The petitioner has also placed a copy of a letter dated 27th January, 2006 issued by the respondent No. 1 to one Shri Daljit Singh answering his request for information wherein it was admitted that the Agra Aerial Taxi Service site was also transferred to Shri Hardaljit Singh S/o late Shri Harchand Singh Subedar on 21st November, 2005; that a taxi stand allotted to Shri C.S. Yadav at Nyaya Marg, Chanakya Puri was transferred by the respondent No. 1 in the name of his son Shri Mohinder Singh Yadav.

18. Reliance is also placed the Resolution No. 55 dated 7th July, 1998 of the NDMC wherein the legal heirs are defined to include the first line of succession such as (i) father; (ii) mother; (iii) son/s; (iv) daughter/s" unmarried; (v) sister/s" unmarried; (vi) wife/husband; brother/s. The policy notes that since the grandson/s i.e. son of the pre-deceased son and in case of an allottee having no male issue, the daughter"s son as well fall within the definition of legal heirs, it was decided that for purpose of transfer of allotment to the legal heirs, in the case of death of the allottee/s these two relations be also defined to be included as legal heirs.

19. Upon the petitioner placing these resolutions and decisions on record, the

NDMC thereafter completely turned its stand and filed a second affidavit dated 26th May, 2003 taking a completely new stand against the petitioner. It was now submitted that the taxi booth allotted to Shri Joga Singh was transferable only to the legal heirs as per the existing policy and that, as per terms and conditions of allotment, there should not be any violation and outstanding arrears against the taxi booth for regularisation/transfer. According to the respondent in the instant case, in September, 2000 an amount of Rs. 65,775/- was due against the allottee Shri Joga Singh. It was further contended that other violations also existed inasmuch as the area of the booth was extended; and that one private and one DLY vehicle were found parked at the time of the inspection. According to the NDMC it had issued notices for arrears and other violations on 4th September, 2000 and reminders thereof on 3rd October, 2000.

The third plea taken by the respondent No. 1 for the first time in this counter affidavit filed on 26th May, 2006 was that the Deputy Commissioner of Police had requested the NDMC not to issue the tehbazari at the site to any individual as the general taxi booth was converted into a "halt and go" provision. According to the respondent for these reasons the petitioner's request for regularisation of the taxi booth in his name could not be considered. The respondent No. 1 had admitted in this affidavit that no formal intimation was sent to the petitioner.

20. In the instant case, despite the several resolutions or policy of the NDMC laying down the manner in which tehbazari and other allotments would be transferred, not only in favor of legal heirs of deceased allottees, but also recognising sublettees and partners of partnership firms, the same have not been placed before this court. In view of such policies and resolutions, the NDMC could not have passed the order dated 23rd February, 2005 based on the demise of the allottee Shri Joga Singh.

21. In any case on the petitioner having assailed the same by way of the present writ petition, it was highly improper of the NDMC to have filed an affidavit on 15th December, 2005 of a senior officer of the rank of Director (Enforcement) concealing its policy and resolutions and taking a totally incorrect stand that the tehbazari permission could not be transferred to a legal heir of the allottee.

22. The benefits available to the citizens by virtue of the Right to Information Act, 2005 are underlined by the stand taken by the respondent in the instant case. But for the application made by the petitioner to the NDMC seeking information under the Right to Information Act and the reply sent by the Assistant Secretary (Enforcement) dated 21st February, 2006, grave injustice may have resulted to the petitioner. It is only in answer to the queries by the petitioner in such application that the NDMC admitted that it had a policy to transfer the allotment of a taxi booth in the name of the legal heir in the event of the death of the original allottee. It has further been admitted that transfers had been effected.

This Court would have been justified in taking strict punitive action against the

deponent of the affidavit dated 15th December, 2005 as well as against respondent No. 1 in these circumstances.

23. Even thereafter, instead of correcting its decisions and acting fairly so far as the petitioner was concerned, a totally obdurate stand has been taken. An affidavit dated 26th May, 2006 was filed now urging other reasons on an alleged inspection as to why the allotment could not be transferred in the name of the petitioner. This affidavit discloses no date of inspection.

24. It is noteworthy that the letter of the NDMC bearing No. 1632/DAI/OS/Enf dated 5th August, 1986 refers to a masonry taxi booth. The respondent No. 1 has placed reliance on a notice dated 4th September, 2000 purportedly issued to the petitioner pointing out certain dues. The reply of the petitioner given on 12th September, 2000 to this notice has been favorably considered and the petitioner was permitted to deposit the amount of Rs. 65,670/- in two Installments. There is no dispute that the petitioner has deposited the said amount as directed. I find that so far as the other plea taken in the affidavit is concerned, there are no details or basis for the alleged subletting of the premises to support the same. There is also no material placed before this Court that the petitioner did not restore area of the booth from the alleged size of 4.7ft x 4 ft before this court.

It is also noteworthy that the very fact that no objection was raised after September, 2000, would manifest that the respondents were satisfied with the removal of their earlier objections by the petitioner and that there was no illegality in the conduct of the business of the petitioner at the site in question.

25. In any event, none of the reasons set out in the affidavit dated 26th May, 2006 were the reasons which weighed with the respondents or were the basis for the respondent to pass the impugned order dated 23rd February, 2005. The same are not even referred to therein.

26. At this stage it becomes necessary to notice the stand of the respondent No. 2 before this court. The respondent No. 2, that is the Commissioner of Police (Traffic) has filed an affidavit through the Asstt. Commissioner of Police, South West Distt. (Traffic). It has been clearly stated in the status report which has been filed on 13th October, 2007 on behalf of the respondent No. 2 that the general taxi stand at gate No. 2 outside the Safdarjung Hospital was a site which was suitable for running such a general taxi stand from the traffic point of view.

27. It is noteworthy that even in the order dated 23rd February, 2005 passed by the Division Bench in the Public Interest Litigation titled, The Court On Its Own Motion v. The Safdarjung Hospital and Ors. being W.P. (C) No. 10697/2004, the court had been pleased to direct that so far as eligible squatters, if any, are concerned, they should be relocated within a period of two months from the said order. There is no dispute that the location of the taxi stand site was identified by the traffic police and Shri Joga Singh was relocated by the respondents at this site pursuant to the order dated 25th June, 2001 by the respondent No. 2 and 2nd November, 2001 of the NDMC. Therefore certainly the taxi stand in question

which was being run by the petitioner as a legal heir of Shri Joga Singh was a legitimate taxi stand site. Even if the taxi stand had to be removed for any purpose under the orders of the court, then in terms of the order dated 23rd February, 2005, the taxi stand was to be relocated at the site in question.

28. The only reason for passing the order, passed by the NDMC on 23rd February, 2005, was on the ground that the allottee had expired. Such order was passed in violation of the policy of the NDMC whereby it permits transfer of allotment of the taxi stand in favor of the legal heir. In any case, the contention of the petitioner that he has been subjected to hostile discrimination is adequately born out by the admission made by the respondent No. 1 in the communication dated 21st December, 2006. The order dated 23rd February, 2005 passed by the NDMC thus, is clearly violative of the rights of the petitioner under Article 14 of the Constitution of India.

29. There is yet another reason why this order cannot be sustained. Such order had impacted valuable rights of the petitioner. The allotment in favor of Shri Joga Singh relates back to the year 1967. Certainly such rights could not have been impacted without compliance of the principles of natural justice. The respondents have admittedly failed to give any notice to show cause before issuance of the orders noticed in the communication dated 23rd February, 2005. The petitioner has not been given an opportunity of hearing and consequently this order has to be set aside and quashed also on grounds of violation of principles of natural justice.

30. So far as the stand taken in the second affidavit of the NDMC is concerned, the same cannot support the illegal action taken by the NDMC as communicated in the order dated 23rd February, 2005 inasmuch as the grounds taken in court are not the basis thereof.

31. So far as the jurisdiction of the civic authorities with regard to the taxi sites are concerned, my attention has been drawn to a pronouncement of this Court rendered on 24th August, 2004 in W.P.(C) No. 6309/1999 New Delhi Taxi Operators Association v. NDMC wherein the court has held thus:

12. It is thus apparent that notification of a site as a taxi stand lies within the powers of the District Magistrate and it is the District Magistrate who has to determine the fee payable. As noted above, issue whether the kiosk erected at the site of a taxi stand by NDMC could be separately charged to a license fee is not being pressed by the petitioner, and hence requires no adjudication. However, whether NDMC officials or public officials, without any directive from the District Magistrate can exercise any power to check the taxis parked at a stand or take any action for violation of the terms under which the stand has been notified and sanction in the name of a person or a company needs adjudication.

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14. The answer is simple. It is the District Magistrate who notifies a place to be used as a stand, of course, in consultation with the local authorities. It is the District Magistrate who determines the fee payable. It is the District Magistrate who grants permit to a person i.e. It is the District Magistrate who allocates the stand in the name of a person. While so doing, the District Magistrate admits the number of vehicles permitted to be parked at the stand. Said vehicles are entitled to use the stand. It means that the number of vehicles to be parked at the stand are regulated by the District Magistrate.

15. The reason is obvious. The stand is determined by the District

Magistrate in consultation with the local authority concerned. Keeping in view the space available at the stand, the District Magistrate would sanction the number of vehicles which can be parked at the site.

16. Thus, it would be within the powers of the District Magistrate alone to enquire whether the terms of the permission under which a person in whose name a taxi stand stands sanctioned, are or are not being violated. This is the specific power of the District Magistrate conferred by Delhi Motor Vehicles Rules.

17. Before it is exercised, a statutory authority must show its power. Indeed, neither under the New Delhi Municipal Council Act, 1994 nor under the Motor Vehicles Act, 1988, nor under the Delhi Motor Vehicles Rules, 1993 any power exists in favor of the municipal authorities to either sanction a stand or take any action against a person for violation of the terms under which a stand has been created or sanctioned in the name of a person. As noted above, this violation has to be checked by the District Magistrate alone.

18. Of course, if any vehicle is parked on public street or in an area other than a notified taxi stand, the concerned municipal agency or the police authorities can take action. However, their domain and jurisdiction would not extend to the place notified as a taxi stand.

19. Mr. Arvind Sah, learned Counsel appearing for NDMC states that his clients do not take any action as long as taxis are parked in the area notified as a taxi stand. Action is taken only when taxis are parked outside the boundary of the notified area.

20. In view of the legal position noted above, it is declared that in respect of the areas notified as a taxi stand by the District Magistrate and as long as a person in whose name the stand is allotted continues to operate under the permission granted and as long as the permission continues to be renewed, NDMC or the police authorities would have no power to take any action against any person. If they notice violation of any term of the sanction, they would bring it to the notice of the District Magistrate who alone would determine whether the term of the permission in respect of the taxi stand has been violated by the person in whose name the stand has been sanctioned.

32. In the instant case, it has been held by this Court hereinabove, that after the

issuance of the notice on 4th September, 2000 the petitioner made the payment which had been demanded. The respondent was apparently satisfied with the action taken by the petitioner and has taken no action thereafter. There were no allegations against the petitioner even in the order dated 23rd February, 2005.

For all these reasons I find this writ petition has to be allowed.

33. It is noteworthy, that by the action of the respondents the petitioner has been deprived of his rights to livelihood under Article 19 of the Constitution of India. Furthermore, after the petitioner had brought these facts to the notice of the NDMC, it was statutorily bound to have acted in terms of its policy and to have rectified its action.

34. The Apex Court has repeatedly commented on suppression of material facts by any party.

35. It is trite that deliberate suppression of material fact or misrepresentation would disentitle a party to any discretionary relief. It is also a settled legal principle, that a person making a false statement exposes himself to the liability of a criminal prosecution. As to what would constitute such material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend on the facts and circumstances of each case. In *Arunima Baruah Vs. Union of India (UOI) and Others*, , it was held that:

Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction.

36. The suppressed fact thus must be a material one, in the sense that had it not been suppressed, it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken. Ref. *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*,

37. I find that the observations of the Apex Court in *S.R. Ramaraj Vs. Special Court, Bombay*, , throw further light on the issue as to what action or defense would mandate stringent action against the person so acting or pleading. In this case, the court had laid down the following principles which would guide adjudication even in the present case:

In order to expose a person to the liability of a prosecution of making false statement there must be a false statement of fact and not a mere pleading made on the basis of facts, which are themselves not false. Merely because an action or defense can be an abuse of process of the court those responsible for its formulation cannot be regarded as committing contempt, but an attempt to deceive the court by disguising the nature of a claim is contempt. If the facts leading to a claim or defense are set out, but an inference is drawn thereby

setting that the stand of the plaintiff or defendant is one way or the other it will not amount to contempt unless it be that the facts as pleaded themselves are false.

38. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the Apex Court has held that:

5. The High Court, in our view, fell into patent error. The short question before the High court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own violation, executed the registered release deed (Ex. B-15) in favor of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex.B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the oppose party.

39. On this aspect, in *Ram Chandra Singh Vs. Savitri Devi and Others*, , the court held that an act of fraud requires to be viewed extremely seriously. The court has

laid down the principle that a collusion or conspiracy with a view to deprive the rights of the other in relation to immovable property, would render the transaction void ab initio. The court categorically held that fraud and deception are synonymous:

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

40. In the instant case, the resolutions which are decisions of the respondents certainly have a bearing on the issues raised. It was imperative that they be placed before the court inasmuch as they laid down the policy and the manner in which the NDMC has to consider the application for transfer/change of allotment. The same would necessarily guide adjudication in the instant case. The consideration of these decisions was essential in order to test the validity and correctness of the orders passed against the petitioner. In the given facts, it has to be held that the NDMC has deliberately concealed material facts from this court.

If the concealment was by a petitioner/plaintiff, in accordance with the mandate of the pronouncements of the Apex Court, such a petitioner would require to be non-suited. However here the concealment is by the respondent which is a statutory authority.

41. Even after the petitioner contended that the NDMC had a policy for transfer of allotment not only in favor of legal heirs but even in favor of sublettees and partnerships, still the NDMC has not placed the correct and complete facts before this court.

42. In another matter being W.P.(C) No. 7728/2007, South Delhi Medicos v. NDMC decided on 26th of December, 2007, the petitioner placed before this Court a copy of a resolution No. 6 of the meeting of the council held on 18th March, 1999 whereby the estate policies/guidelines for dealing with estate matters were formulated. As per the resolution passed so far as the policy on transfer was concerned, the NDMC had resolved thus:

3. Policy on transfers

i) to be freely allowed (except in case of reserved categories).

ii) On date of entry/deletion of partnership 30% enhancement in license fee. After amalgamation with the original amount annual enhancement @ 70%

This resolution has also been concealed from this court.

43. It is a well settled principle that a party in possession of the best evidence must necessarily place the same before the court irrespective of the onus and burden of proof. Re: AIR 1968 SC 1412 Gopal Mishraji Ketkar v. Mohd. Haji Latif and Ors. and National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, This Court is seized of this matter in exercise of writ jurisdiction. In

National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, the Apex Court had held that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State.

44. This would be more so when this Court is considering a matter in exercise of writ jurisdiction under Article 226 for the Constitution of India and the other side is a statutory authority as the NDMC which is even otherwise bound to make a complete and fair disclosure of facts. There can possibly be no justification for not placing these resolutions which bind the NDMC on record. These decisions were in the power and possession of the NDMC and it has given the benefit thereof admittedly to several persons. Even after the resolutions were brought on record by the petitioner, the NDMC has refused to act fairly and to consider the application of the petitioner herein. The present matter has been opposed on wholly untenable grounds as noted above. In these circumstances, the respondents were bound to consider the request of the petitioner in the light of their resolutions and decisions noticed hereinabove. Instead, new grounds which were not the basis of the order dated 23rd February, 2005 have been urged.

45. It is noteworthy, that though the communication of the NDMC dated 23rd February, 2005 has been titled as a show cause notice, however the same is in the nature of a decision taken by the NDMC and communicated to the petitioner.

46. It is a first principle of administrative jurisprudence that an order has to be tested on the grounds set out there Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . The various grounds detailed in the counter affidavit filed by the NDMC on 26th May, 2006 are not the basis of the order dated 23rd February, 2005. None of these grounds were urged by the NDMC in the affidavit which was filed by the NDMC on 15th December, 2005. The NDMC is a statutory authority exercising powers and performing functions under the provisions of the New Delhi Municipal Committee Act and is bound to act fairly and with transparency. The order dated 23rd February, 2005 was issued by the NDMC on the sole ground that as Shri Joga Singh having expired, the tehbazari in his favor ipso facto stood determined and consequently the NDMC had withdrawn the tehbazari permission in his name including the electricity connection. The other ground for the order passed on 23rd February, 2005 was that the existing tehbazari booth was coming between the wall of the Safdarjung Hospital and existing subway and could not be allowed to exist any longer in the larger public interest. None of the grounds taken in the affidavit dated 26th May, 2006 were the basis of the order passed on 23rd February, 2005 and consequently cannot be urged by the NDMC to support its action in passing the order. The traffic police authorities whose views would bind the NDMC have stated that there is no objection to the continuance of the petitioner's taxi stand.

47. In view of the above discussion, the notice/order dated 23rd February, 2005 issued by the Director (Enf.), Enforcement Department, New Delhi Municipal Council, Pragati Bhawan, Jai Singh Road, Delhi-110001 cannot be sustained and is hereby set aside and quashed. It is held that the petitioner is entitled to run his taxi stand at the site where he was running the taxi stand till the issuance of this order.

In case the taxi stand of the petitioner is required to be shifted, the petitioner shall be placed at a site in the vicinity.

48. The respondents shall also consider and process the application for transfer of the tehbazari rights and pass formal orders in respect thereof in accordance with their resolutions within a period of four weeks from today. The petitioner would be bound by the terms and conditions imposed by the respondents upon him.

49. In view of the above discussion, it is apparent that the present writ petition was wholly unnecessary and the respondents have failed to act in accordance with the resolutions and decisions of the council. Material facts, policies and decisions have been deliberately concealed. The petitioner has also been deprived of his business for this considerable period. Accordingly, the respondents are liable to be burdened with heavy costs which are quantified at Rs. 30,000/- which shall be apportioned between the petitioner and the Delhi High Court Legal Services Committee. The costs shall be deposited within a period of four weeks from today and proof of deposit shall be filed in court.

This writ petition is allowed in the above terms.