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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2870/2019**

SURESH GARG

..... Petitioner

Through: Mr. Sunil Magon, Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Ms. Prabhsahay Kaur, SC-DDA
with Mr. Vinod Singh, Asst.
Director (DDA)

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **20.03.2019**

CM No. 13305/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 2870/2019

3. Issue notice to the respondents to show cause as to why *rule nisi* be not issued, returnable on 16th July, 2019.
4. Ms. Prabhsahay Kaur accepts notice on behalf of Respondent No.1. Notice be issued to the remaining respondents on the petitioner taking steps within one week.
5. Counter affidavits to the writ petition be filed within four weeks with advance copies to the petitioner who may file rejoinder thereto, if



any, within two weeks thereof.

6. Renotify on 16th July, 2019.

CM No. 13331/2019 (for interim directions)

7. The prayers in this application reads thus :

“i) pass an ad-interim order staying the operation of the impugned order dated 07.03.2019 (Annexure P-1) passed by Respondent No. 1/DDA;

ii) restrain the Respondent No. 1/ DDA by an ex-parte ad interim order from taking the possession of the plot in question bearing No. 85, Block M, Malviya Nagar Extension, (Saket), New Delhi;

iii) pass such other, further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

8. This writ petition assails an order, dated 7th March, 2019, whereby Plot No. 85, Block-M, measuring 208 sq. yards at Malviya Nagar at Saket, New Delhi in the name of the petitioner, has been cancelled by the DDA. This cancellation has been effected on three grounds, i.e. non-payment of 25% of land premium by the petitioner within the stipulated time, non-execution of lease deed and creating of third party interest without getting permission from the DDA. In these circumstances the petitioner's allotment has been cancelled and symbolic possession of the plot has been taken over by the DDA.

9. Though learned counsel emphatically refutes the aforesaid three allegations on the basis of which the impugned order has been passed,



in my opinion, at this stage, it is not possible to set the clock back and restore the *status quo ante*, prior to the passing of the impugned order dated 7th March, 2019.

10. Notice may also be taken in this regard of para 32 of the judgment dated 1st July, 2016, passed by the learned Additional District Judge (hereinafter referred to as the “learned ADJ”), which reads thus :

“32. Hence the question of rights of the defendant no.1 in the property in question and the subsequent rights of the plaintiff is left open to be decided by the competent authority/officer of the DDA after reconstruction of the main file. Till such time, the parties shall maintain status quo in respect of the possession of the property and no third party interest in the same shall be created.”

11. The aforesaid order was challenged by the DDA before this Court by way of RFA 919/2016, which was disposed of, *vide* an order dated 4th September, 2018, which reads thus :

“1. While disposing of the subject suit trial court issued the following directions and gave the reliefs as under:-

“Relief

(34) In view of my above discussion, the various issues are accordingly disposed off and the plaintiff is held entitled to Declaration as asked for in the plaint in terms of the findings as aforesaid.”



FINAL CONCLUSIONS:

(35) In view of my findings on the various issues, I hereby Declare the Cancellation of allotment of suit property i.e. M-85, Saket Residential Scheme, New Delhi as published in the Hindustan Times dated 02.10.1993, to be null and void and non-est in law, which is without prejudice to the rights of the defendant no.2 DDA to reconstruct the main file within a period of Six Months from today and proceed in accordance with law thereafter and nothing stated herein above shall be construed to be an opinion on the aspect of title of the parties before this Court, the main file not being available.

(36) The question of rights of the defendant no. 1 in the property in question and the subsequent rights of the plaintiff is left open to be decided by the competent authority/officer of the DDA after reconstruction of the main file. Till such time, the parties shall maintain status-quo in respect of the possession of the property and no third party interest in the same shall be created.”

2. Learned counsel for the respondent no. 1/plaintiff states that respondent no. 1/plaintiff does not claim any rights in terms of paragraph 34 of the impugned judgment and it is agreed that the only operative portion or a decree passed is in the terms of paragraphs 35 and 36 of the impugned judgment.

3. Once that is so, and paragraphs 35 and 36 clearly state that the appellant/ Delhi Development Authority (DDA) has only to reconstruct the file and as all rights are left open, hence there is no prejudice by the aforesaid directions to DDA.



4. Accordingly, counsel for the appellant in view of the aforesaid discussion states that appellant will act in terms of the directions contained in paragraphs 35 and 36 of the judgment and since paragraph 34 is not taken as final or such a decree passed in favour of the respondent no.1/plaintiff as per para 34, accordingly all rights are left open to be decided by the competent officer of the appellant/DDA.

5. Appellant will now act in terms of the directions contained in paragraphs 35 and 36 of the impugned judgment taking the period of six months as starting from today.

6. In case the appellant does not comply with the directions as contained in the impugned judgment within six months, the concerned officer(s) will be responsible and with respect to which a status report would have to be filed by the appellant in this court.

7. The appeal is accordingly disposed of.”

12. Learned counsel for the petitioner seeks to rely on para 32 of the judgment of the learned ADJ, to pray for continuation of the *status quo*.

13. In my view, the submission is misconceived, as para 32 of the judgment of the learned ADJ clearly dovetails into para 39 thereof and the order, dated 4th September, 2016 (*supra*) passed by this Court in RFA 919/2016 expressly states that para 34 of the judgment of the Id. ADJ has to be treated as final and that all rights are left open to be decided by the competent officer of the DDA.



14. The said possession now stands taken. The *status quo*, as granted by the learned ADJ, in any case, cannot continue beyond the taking of the impugned possession.

15. For all the above reasons, it is not possible to grant the reliefs prayed for in this application which is accordingly dismissed.

C.HARI SHANKAR, J

MARCH 20, 2019/kr