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

+ W.P.(C) 2870/2019

SURESH GARG

..... Petitioner

Through Mr.R.K. Saini and Mr.Sunil Magon,
Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. ... Respondents

Through Ms.Prabhsahay Kaur, Standing
Counsel for R-1/DDA.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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17.03.2020

CM APPL. 10110/2020

1. This application is filed seeking following reliefs:

i) pass an ad-interim order staying the operation of the impugned order dated 26.02.2020 (Annexure P-11 colly) 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.”

2. I may note that earlier a stay application was filed being CM APPL. No.13331/2019, which had the following prayers:

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.”

3. The above application being CM No.13331/2019 came up before this court on 20.03.2019. The same was dismissed holding as follows:

“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.”

4. Against the said order dated 20.03.2019, the petitioner filed an LPA before the Division Bench of this court being LPA No.254/2019. This appeal was on 12.04.2019 dismissed as withdrawn with liberty to move a review petition before the learned Single Judge.

5. The review petition was filed. The controversy raised in the review petition was that the physical possession of the property is with the petitioner and at best the respondent has symbolic possession as has been stated by DDA. The court, however, dismissed the review petition concluding as follows:

“3. Inasmuch as, in para 8 of the order under review, I have specifically noted that the petitioner’s allotment has been cancelled and symbolic possession of the plot has been taken over by the DDA, I am of the view that no case, meriting review, has been made out.”

6. Now, the present application has been filed.

7. Learned counsel appearing for the respondent at the outset objects to the present application stating that on account of the decision of this court only urgent matters are to be heard. She submits that there is no urgency in the matter but the same has been mentioned and has been kept for hearing on the same date.

8. Be that as it may, I may only note that it was put to the learned counsel for the petitioner as to how the second application for stay would be maintainable when earlier application filed, namely, CM APPL. No.13331/2019 has already been dismissed. Learned counsel for the petitioner states that subsequent to the dismissal of the interim application on 20.03.2019, DDA has issued a fresh notice on 26.02.2020 directing the petitioner to vacate the property. He submits that fresh notice dated 26.02.2020 is a fresh cause of action and hence permits the petitioner to move the present application. He also states that all that he seeks is that any step that would be taken by the DDA should be as per due process of law.

9. In my opinion, the submission of the learned counsel for petitioner is without merits. The communication dated 26.02.2020 is not addressed to the petitioner as it is an internal communication addressed by the Lease Administration Branch (Residential) to the Executive Engineer, Southern Division, DDA, Sarita Vihar, New Delhi giving instructions to the said Executive Engineer. It has nothing to do with the petitioner. In fact, as pointed out by the learned counsel for the respondent, notices have already been issued to the petitioner to vacate the property in question on

09.08.2019 and 03.10.2019.

10. It is a settled legal position that a petitioner cannot repeatedly file interim injunction applications based on the same facts. All such applications would be barred. Reference in this context may be had to the judgment of the Full Bench of Supreme Court in the case of **Arjun Singh vs. Mohindra Kumar & Ors., AIR 1964 SC 993**. The court held as follows:

“14. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages so as to preclude its being reconsidered. Even if the rule of *res judicata* does not apply it would not follow that on every subsequent day which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of *res judicata*. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of *res judicata*, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of *res judicata* and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of *res judicata* is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the Other case, on proof of fresh facts, the court would be competent, may would be bound to take those into account and make an order conformably to the facts freshly brought before the Court.”

11. There is no merit in the application. The same is dismissed.
12. A copy of this order be given *dasti* under the signatures of the court master.

JAYANT NATH, J.

MARCH 17, 2020/v