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

+ W.P.(C) 14645/2006

NAMGYAL INSTITUTE FOR RESEARCH ON
LADAKHI ART & CULTURE & ANR. Petitioners

Through None

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through Mr. Rajiv Bansal, Sr. Standing
Counsel with Ms. Niharika
Ahluwalia, Advocates for DDA/
Applicant.
Mr. Lalit Gupta with Mr. Siddharth
Arora, Advocates for respondent
no. 5.
Mr. Anuj Aggarwal with Ms. Niti
Jain, Advocates for UOI.

% Date of Decision: 24th March, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 11495/2017

1. Present application has been filed for recall of the order dated 11th August, 2016. The relevant portion of the order dated 11th August, 2016 is reproduced hereinbelow:-

“CM Appl. 13722/2015 in W.P.(C) 14645/2006

Learned counsel for respondent No.5 confines his prayer to refund of Rs.10,34,06,259/- provided the refund is made in a time bound manner.

As DDA is not in a position to de-seal the property immediately and the learned counsel for petitioner has no objection to the amount being refunded by the DDA to the respondent No.5, DDA is directed to refund the said amount of Rs.10,34,06,259/- within a period of four weeks.

With the aforesaid direction, present application stands disposed of.”

2. In support of the present application, Mr. Rajiv Bansal, learned senior standing counsel for DDA relies upon the order dated 21st May 2015 passed in contempt petition being Cont. Cas.(C) 379/2015 filed by the writ petitioner. The order dated 21st May, 2015 is reproduced hereinbelow:-

“CM Nos. 8743/2015 & 8744/2015 (both for exemption)

*Exemptions allowed, subject to all just exceptions.
Accordingly, the applications are allowed.*

CONT.CAS(C) 379/2015

1. *Vide the present petition, the petitioner seeks directions thereby to initiate contempt proceedings under Section 11 of the Contempt of Courts Act, 1971, against the respondents for violation of the order dated 30.10.2012 passed in CM No.9932/2012 in WP(C) No.14645/2006.*

2. *Vide aforesaid order, the respondents No. 1 and 2/DDA were directed to pass an order on pending application seeking restoration of the Lease expeditiously, i.e., preferably within a period of three months from the said date and directed to communicate the fate thereof to the petitioner forthwith. It was made clear that in case, the petitioner did not pursue the*

restoration application of Lease diligently, then the respondent No.5 therein (respondent No.3 in this petition) was given liberty to approach this Court to obtain appropriate orders. Further recorded, question of de-sealing would be considered by this Court if restoration of Lease in question takes place.

3. The petitioner is aggrieved with the payment of Rs.10,34,06,259/- (Rs.Ten Crores Thirty Four Lakh Six Thousand Two Hundred Fifty Nine) made by the respondent No.3 on behalf of the petitioner to DDA.

4. Learned counsel appearing on behalf of the petitioner submits that before depositing the amount, the aforesaid respondent was supposed to take instructions from this Court and the respondent/DDA, being aware about the directions dated 30.10.2012 passed by this Court, could not have even accepted the said amount.

5. Learned counsel appearing on behalf of the respondents No. 1 and 2/DDA submits that pursuant to order dated 30.10.2012, the respondents/DDA asked the petitioner to submit the required documents to which the petitioner failed. Thereafter, the DDA sent a demand to the petitioner qua the aforesaid amount to which also remains unproductive.

6. Learned counsel further submits that the respondent No.3 themselves deposited the aforesaid amount with DDA on behalf of the petitioner which was accepted by the Department in the account of the petitioner. Also submits that as the Lease has not been restored, the respondents/DDA have not committed any contempt of the directions passed by this Court.

7. Learned counsel appearing on behalf of the respondent No.3 submits that since the petitioner did not take any steps either to get the Lease restored or desal the property, therefore, the respondent No.3, being Contractor, who constructed the entire property and invested crores of rupees, deposited the aforesaid amount to get the property desealed.

8. He further submits that if the petitioner is ready to deposit the said amount with respondents/DDA, the respondent No.3 will withdraw the aforesaid amount deposited with DDA.

9. In view of the facts recorded above, I am of the considered opinion that the respondents have not committed any contempt of the order dated 30.10.2012 passed by this Court. Therefore, I am not inclined to pass any order against the respondents in this petition.

10. The petition is accordingly dismissed.

11. However, liberty is granted to the petitioner to deposit the same amount which the respondent No.3 has deposited with DDA. On deposit of the said amount, DDA shall refund the amount deposited by the respondent No.3 within one week.

12. A copy of this order be given dasti to the learned counsel for the parties.”

3. In view of the aforesaid order, Mr. Rajiv Bansal contends that Rs. 10,34,06,259/- paid by respondent no.5 had been accepted by DDA on account of subletting and misuse of the property in question on behalf of the writ petitioner. He states that till the writ petitioner deposits the said amount, the same cannot be refunded to respondent no. 5.

4. On the other hand, Mr. Lalit Gupta, learned counsel for respondent no.5 states that his client had deposited Rs. 10,34,06,259/- upon DDA's assurance that the property would be de-sealed and its possession would be handed back to the respondent no. 5. In support of his contention, he relies upon the averments in CM Appl. No. 5059/2015 filed by DDA seeking permission to de-seal the premises. The relevant portion of DDA's application is reproduced hereinbelow:-

“18.....This payment would be made, subject to DDA’s assurance that upon de-sealing the said premises, the portion thereof which was previously in the possession of M/s Turner Morrison, would be handed over to M/s Turner Morrison. A true copy of the letter dated 18.12.2014 is annexed hereto and is marked with the Annexure-F.

19. That, in response to the letter dated 18.12.2014 by M/s Turner Morrison, DDA sent a letter dated 07.01.2015. It was communicated to M/s Turner Morrison that in order to comply with the order dated 30.10.2012, DDA had no objection if M/s Turner Morrison paid the sub-letting and misuse charges to DDA. DDA called upon M/s Turner Morrison to pay Rs. 10,34,06,259/- within a period of 30 days from the date of issue of the letter dated 07.01.2015. A true copy of the letter dated 07.01.2015 is annexed hereto and is marked as Annexure- G. A copy of the letter dated 07.01.2015 was also forwarded to the Petitioner society.

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21. That, as the sub-letting and misuse charges have been deposited, there is no legal impediment to de-seal the said premises. In the event that this Hon’ble Court is pleased to allow the instant application, the DDA will pursue the matter of de-sealing administratively and forward the necessary request to the SDMC.

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PRAYER

In view of the above facts and circumstances, it is prayed most respectfully that the Hon’ble Court may be pleased to –

- i. Allow the present application and give permission to the Applicant herein to de-seal the premises at B-25, Qutub Institutional Area, New Delhi.
- ii. *Pass such other and/or further order(s) which this Hon’ble Court may deem fit and proper.”*

(emphasis supplied)

5. The relevant portion of the DDA's letter dated 7th January, 2015 referred to in the said application is also reproduced hereinbelow:-

“Further, in accordance to direction of Hon'ble High Court dated 15.1.2010 in FAO (OS) No. 26.27.45 & 46 of 2010, at the time of de-sealing of the property, MCD shall be asked to ensure that previous position in respect of right of possession of Turner Morrison Ltd. is restored.

You are further requested to deposit the dues amounting to Rs. 10,34,06,259/- within 30 days from the date of issue of this letter and furnish the 3rd copy of Challan to this Office so that further action can be taken in the matter.”

(emphasis supplied)

6. In rejoinder, Mr. Rajiv Bansal states that the CM Appl. No. 5059/2015 filed by the DDA was disposed of by this Court as premature and DDA was directed to first consider the aspect of restoration of the lease. He states that the restoration of the lease could not be considered due to *inter se* disputes between the writ petitioner and the respondent no. 5.

7. Having heard learned counsel for the parties, this Court is of the view that the deposit of Rs. 10,34,06,259/- had been made on the explicit understanding that DDA would de-seal the premises and restore its possession to respondent no.5 – from whom it had taken over possession. It is pertinent to mention that DDA was aware of the serious disputes between the writ petitioner and respondent no.5 on the date of acceptance of deposit. However, as the property in question could not be de-sealed for a variety of reasons, this Court was of the view that the amount deposited by the respondent no. 5 should be refunded.

8. Even today, this Court is of the view that there is no need to recall the order dated 11th August, 2016 as the order dated 21st May, 2015 was passed

on the writ petitioner's contempt petition alleging violation of order dated 30th October, 2012 on the ground that DDA could not have accepted payment from respondent no.5. It was only in this context that the Court had given liberty to the writ petitioner to deposit the amount and in the event the said deposit was made, then the amount was to be refunded to respondent no. 5.

9. Consequently, this Court is of the view that the order dated 21st May, 2015 passed at the writ petitioner's behest and its non-compliance by the writ petitioner cannot be used to defeat the rights of the respondent no. 5, who had acted on the undertaking/representation made by DDA—which later stood belied.

10. Accordingly, present application being bereft of merits is dismissed. The DDA is free to take action against the writ petitioner i.e. lessee for any remedy that it so desires in accordance with law.

MANMOHAN, J

MARCH 24, 2017

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