

Dalip Singh Vs. M.C.D. and ors.

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Court : Delhi

Decided On : Mar-20-2007

Reported in : 140(2007)DLT20

Judge : Kailash Gambhir, J.

Acts : Delhi Municipal Corporation Services (Control and Appeal) Regulations, 1959; Delhi Municipal Corporation Services (Control and Appeal) Rules, 1959 - Rule 8; [Constitution of India](#) - Article 226

Appeal No. : WP(C) No. 7484/2006

Appellant : Dalip Singh

Respondent : M.C.D. and ors.

Advocate for Def. : O.P. Saxena, Adv.

Advocate for Pet/Ap. : Apurb Lal, Adv

Disposition : Petition allowed

Judgement :

Kailash Gambhir, J.

1. Rule.

2. With the consent of counsel for the parties, the matter is taken up for final hearing.

3. By way of this writ petition, the petitioner has challenged the memorandum bearing No. 37/Vig/CPC/DA II dated 08.02.2006 whereby the respondent had proposed to hold an inquiry against the petitioner under Rule 8 of D.M.C Services (Control and Appeal) Regulations, 1959. The facts of the matter in nutshell as set out in the writ petition are as under:

The petitioner was employed with the respondent as Junior Law Officer on ad hoc basis. On 19/20.9.2000, the petitioner was posted to this High Court to coordinate the legal matters pertaining to Slum and J.J. Department so as to have proper coordination with their designated counsel conducting cases on behalf of Slum and J.J. Wing in the High Court. Vide order dated 05.03.2001, the petitioner was promoted to the post of Junior Law Officer on regular basis and request of the petitioner for his promotion to the next higher post of Law Officer was pending with respondent No. 2. In the year 1998, third parties filed writ petitions bearing W.P.(C) No. 6188/1998, 6634/1998 and 6636/1998. In the said writ petitions, all the petitioners therein claimed refund of earnest money along with damages, interest etc. as possession of the plots, although, they were highest bidders was not delivered to them in time. On 29.07.1999, the petitioner sought time from the Court to seek instructions with regard to refund of money in the absence of lawyer who did not appear in the Court. The time was granted by the Court on various dates and on all the dates, only the petitioner appeared and took time to take instructions. The petitioner also wrote to the concerned department of the MCD so as to have exact instructions on the queries raised by the Court on the issue of refund of the earnest money amount along with the interest. On 08.04.2003, the matter was taken up by the Bench of Justice A.K. Sikri, when again that query was put to the petitioner with regard to the refund of money, as again the counsel was not present. Although initially, the petitioner showed his inability to answer the query made by the Judge, but ultimately suggested to the Court that the respondent/MCD will have no objection in refunding the money as paid by them towards earnest money. After this suggestion, the Court felt that the only question which remained to be decided was as to how much interest should be paid to the

petitioners therein on the said amount of earnest money. On the query raised by the Court, the petitioner submitted that the rate of interest as charged by the bank could be fixed. The Court found this suggestion of the petitioner as reasonable and accordingly gave the directions to the respondent/MCD to refund the amount along with interest at the rate of 10% per annum w.e.f. 01.02.1995.

3. It would be relevant to reproduce relevant paragraphs from the said order dated 08.04.2003 of Justice A.K. Sikri:

Today, the matter came up for hearing, learned Counsel for the petitioners submitted that in view of the delay in handing over possession because of the aforesaid disputes and change in circumstances, which are stated in detail in CM No. 1191/2000, the petitioners are not interested in possession of the plots and they confine the alternative relief of refunding the amount with interest. Mr. Sapra stated that the petitioners would not claim any damages as well.

Mr. Daleep Singh, JLO (Slum & JJ), MCD submitted that MCD has no objection in refunding the money paid by the petitioners. The only question that remains to be decided is as to how much interest should be paid on the aforesaid amount. He further submitted that the rate of interest which is charged by the bank may be fixed. This is reasonable suggestion.

In these circumstances, MCD is directed to refund the amounts of Rs. 64,27,500/-, Rs. 40,00,000/- and Rs. 23,00,000/- respectively along with interest at the rate of 10 per cent per annum w.e.f. 1st February, 1995 till date of payment. The aforesaid amount Along with interest be paid to the petitioners within two months from today.

These writ petitions stand disposed of.

5. The opinion of the petitioner was sought by the respondent to examine the possibility of filing appeals against the said order of Single Judge dated 08.04.2003. Vide letter dated 13.05.2003, the petitioner gave detailed reasons and opined that no useful purpose would be served in filing the appeals, however, the petitioner also stated that if the department still persisted in filing appeals then he

should be given the instructions accordingly. The said order of learned Single Judge was challenged before the Division Bench on the ground that the petitioner was not competent to make a statement before the learned Single Judge so as to give the said concession of agreeing to pay interest at the rate of 10% per annum. The said appeal was withdrawn with liberty to file review petition and the review petition was also filed by the respondent which was dismissed vide order dated 30.04.2004.

6. Vide order dated 03.06.2003, the petitioner was placed under suspension on the sole ground that he did not take any permission from the competent authority to make the statement for refund of auction money with interest at the bank rate. The petitioner challenged the said suspension order by filing a writ petition being W.P.(C) No. 8817/2005. The Hon'ble Court while directing the suspension order to remain in abeyance, prima facie felt that there was no justification for the MCD to issue such a suspension order for making statement in the Court which was ultimately found by the Court to be reasonable. The interim order as passed by my brother Vikramajit Sen, J is reproduced as under:

CM No. 6617/2005

Allowed subject to all just exceptions.

WP(C) No. 8817/2005 & CM No. 6616/2005

This is yet another case where due to the obduracy of the MCD the dockets in this Court keep multiplying exponentially. Briefly stated the facts are that a third party had submitted the highest bid towards the purchase of a plot, which admittedly has several trees thereon. Writ Petition was filed in which a stay against felling the trees was granted. In these circumstances, the possession of the plot could not be handed to the highest bidder. The effect was that the amounts received by the MCD had to be returned to the highest bidder. In those proceedings, the Junior Law Officer stated that the MCD had no objection in refunding the money together with interest at the bank rate. The Court specifically found the suggestion to be reasonable. The Court also passed a clear direction to the MCD to refund the amounts together with interest at the rate of 10% per annum. A Letters Patent

Appeal has been dismissed as well as an application seeking review of that Order. My learned brother Justice A.K. Sikri had allowed the Writ Petitions No. 6188, 6634 and 6636 of 1998 and dismissed the Review application; he had noted that the Petitioner had taken adjournments on few occasions in order to make a statement on behalf of the MCD. It is contended by Mr.Sabharwal that the statement of JLO, Petitioner herein was made in the absence of instructions and without authority. Prima facie, I find no justification for harboring this view. It was for the Department to respond to queries written by the JLO with expedition. Instead, as is the usual case, no decision has been taken and now a scapegoat has been found in the person of JLO.

It is difficult to appreciate any legal grounds on which the MCD was justified in withholding the amounts in respect of plots the possession of which had been held up. It is also not possible to appreciate why interest at the bank rate should not be payable on amounts retained by the MCD in these circumstances.

Till further Orders to the contrary, the suspension Order is held in abeyance since prima facie there seems to be no justification for its issuance.

Mr.Sabharwal seeks four weeks time to file Counter-Affidavit. Allowed.

Renotify on 12th July, 2005.

7. The order of review dated 30.4.2004 was also challenged by the respondent by filing LPA Nos.839, 880 and 970/2004 and vide order dated 29.04.2005, the Division Bench had dismissed all the LPAs by passing the following order:

The learned Counsel for the appellant states that notice be issued with a view to see that the Corporation can save some amount of interest. The learned Single Judge had directed the appellant to pay interest at the rate of 10% p.a. On the amount deposited by the original petitioners.

Grant of interest being a discretionary, ordinarily the appellate court is not required to interfere. In the instant case, the admitted fact is that amounts were received by the Corporation for handing over of the plots, but, for some reason possession of the same could not be delivered and it was not the fault of the persons who paid

the amounts to the Corporation. As the Corporation enjoyed the amounts deposited by the petitioners, obviously, they are required to return the same with interest. thereforee, no interference is called for.

Dismissed.

8. Based on the above facts, counsel for the petitioner contended that the petitioner in lawful discharge of his duties as a Junior Law Officer by making the said statement had merely assisted the Court in passing fair, just and reasonable order.

9. Counsel for the petitioner also contended that the petitioner did not act in a manner prejudicial to the interest of the respondent/MCD as the MCD was under legal obligation to refund the amount which was lying deposited with them and there was no fault on the part of the private persons to whom the MCD could not hand over the possession in time. Counsel also submitted that once the Court had given the clear indication of giving said directions of refunding the amount to the private persons, the grant of interest thereon by the MCD was inevitable consequence and there was nothing wrong or illegal on the part of the petitioner to suggest that interest at the bank rate only should be directed to be paid by the MCD on the aforesaid deposit.

10. Per contra, Mr.O.P. Saxena, counsel appearing for the MCD stated that the petitioner being Junior Law Officer was legally bound to take instructions in the matter and thereafter, alone could have made a statement strictly in accordance with the instructions received by him. In the present case, counsel stated that no such instructions were given by the superior officers and, thereforee, the statement made by the petitioner was unauthorised and improper which caused financial loss to the MCD.

11. I find force in the submissions made by counsel for the petitioner. There was no fault of the petitioner when he made a statement before the Court as on repeated occasions, the Court had desired the MCD to take instructions but on all such dates, neither the counsel appeared nor the respondent MCD reverted back to the petitioner with the exact instructions. It is correct that normally in all such

cases, the Law Officers representing their departments cannot give statements without they are properly instructed to do so. However, in the peculiar facts of the present case, it is noticed that the statement which was made by the petitioner was insignificant in nature in a sense that the MCD was legally bound to refund the money and MCD was liable to pay the interest accrued on the amount lying deposited with them. It is admitted fact that the private parties had filed three separate writ petitions after the respondent/MCD had failed to hand over possession of the plots due to some dispute between MCD and L&DO; regarding ownership over the auctioned plots. These private petitioners had filed writs claiming vacant possession of the plots on acceptance of the balance consideration amount from them or in the alternative directions to MCD to refund back the 25% amount paid by them together with interest w.e.f. 01.02.1995. These private persons also claimed damages in the said writ petitions. On 08.04.2003, the said private parties/petitioners in the said writ petitions came forward with a plea that they were not interested to claim possession of the plots and had agreed to confine themselves to the alternative relief of refund of amount along with interest. It is because of this background, the present petitioner who was present in Court had stated that the MCD would have no objection in refunding the money as paid by the said private parties and as far as interest was concerned, the petitioner stated that bank rate could be charged. This suggestion of the petitioner was considered very fair and reasonable and the Court had disposed of all the three writ petitions by giving directions to the respondent/MCD to refund the amount along with interest at the rate of 10% per annum w.e.f. 01.02.1995 till the date of payment.

12. In the review petitions filed by the petitioners, the respondent/MCD took up the stand that the present petitioner was not authorized to make such a concession or to give no objection, and, therefore, review was sought of the said order dated 08.04.2003. While deciding the said review petitions vide order dated 30.4.2004, Justice A.K. Sikri has duly observed that the present petitioner on behalf of MCD took time to take instructions with regard to the refund of money and when the matter was taken on 29.07.1999 and the same very officer took time on 01.09.1999 for the same purpose and ultimately the order was passed on 08.04.2003. The learned Single Judge also categorically observed that even if

there was no concession made by the Junior Law Officer, it was otherwise also equitable and reasonable to give the said directions to MCD to refund the amount. The operative para of the said order dated 30.4.2004 passed in the review petitions are as under:..In these circumstances, even if there was no concession made by the said JLO, I am of the opinion that it is but equitable and reasonable to direct the MCD to refund the amounts in question. I, thereforee, find no merit in these review petitions. Dismissed....

13. Even in order dated 23.05.2005, my brother Judge Vikramajit Sen has also arrived at the same conclusion directing the suspension order to remain in abeyance. He specifically observed that it is not possible to appreciate as to how interest at the bank rate should not have been paid by the MCD on the amount retained by them.

14. While exercising judicial powers under Article 226 of the [Constitution of India](#), this Court would not have interfered at this interim stage of chargesheet but looking at the total perversity on the part of the respondent in issuing the memorandum in question, the interference has become necessary. With the observations of Justice A.K. Sikri, in the review order and of the Division Bench in LPA Nos.839/2004, 880/2004 and 970/2004, of Justice Vikramajit Sen in CWP No. 8817/2006 and observations of my predecessor Justice S. Ravindra Bhat in its order dated 18.5.2006, I do not feel the said memorandum can be held to be sustainable against the petitioner. The malady at all which needs remedial action is that these Government bodies should give timely instructions to their representatives so that such situations in future can be averted. Repeated adjournments to seek instructions also cause unnecessary delay in the disposal of matters and in the present case when the petitioner could not extract the instructions from the department, he was left with no option but to come out with a suggestion which was not only found reasonable and fair by the Court but even in the absence of such suggestions, the Court was not powerless to grant the said relief in favor of the said private parties or against the respondents.

15. In view of the above discussion, the present writ petition is allowed and the memorandum bearing No. 37/Vig/CPC/DA II dated 08.02.2006 is quashed.

16. Parties are left to bear their own costs.

17. Rule is made absolute.

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