

(2009) 08 DEL CK 0425

Delhi High Court

Case No: CCP No. 665 of 2009

Ram Chander Education Society

APPELLANT

Vs

Ashok Kumar Nigam and
Another

RESPONDENT

Date of Decision: Aug. 17, 2009

Acts Referred:

- Contempt of Courts Act, 1971 - Section 2

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Harish Malhotra and Sachin Midha, for the Appellant; Rajeev Bansal, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar, J.

The petitioner seeks initiation of contempt proceedings against the respondents, Vice Chairman and Deputy Director, Institutional Lands on account of alleged violation of orders dated 22nd July, 2008 and 26th February, 2009.

2. The petitioner has filed Civil Writ Petition No. 5205/2008 titled Ram Chander Educational Society and Anr. v. DDA seeking inter-alia quashing of show cause notice dated 6th May, 2004 and withdrawal of sponsorship letter dated 6th July, 2004 and a direction for declaring the sponsorship letter dated 12th November, 2002 as subsisting, valid and enforceable and further direction to the DDA and Directorate of Education to change the sponsorship for allotment of land to petitioner society for establishing senior secondary school in Janakpuri/Vikaspuri, District West-B from zone 18 to 17 and issue a fresh sponsorship letter in this regard and to allot the land to the petitioner.

3. By order dated 22nd July, 2008 this Court had directed the respondents not to dispose of the plot in favour of any other party, in case the plot has already stands

earmarked by the DDA for allotment to the petitioner.

4. The application of the petitioner for interim direction in CM No. 9921/2008 was disposed of by order dated 26th February, 2009 holding that in view of the interim order passed on 22nd July, 2008 no further orders are required on the application and the order dated 22nd July, 2008 shall continue to operate in favour of petitioner till the disposal of the writ petition.

5. The counter affidavit was filed by the DDA and a copy of the same was given to the counsel for the petitioner on 13th August, 2009. The DDA categorically took the stand in its counter affidavit that recommendation for allotment of land to the petitioner society could not be accepted as the same piece of land was allotted to another society by the name of Florence Nightingale Society. It is further contended that the allotment of Florence Nightingale Society was also cancelled on account of various complaints and representations received by the Lieutenant Governor for keeping the land green though specified use of land as per the layout plan was for senior secondary school. It is further contended that for the reason the land could not be allotted to Florence Nightingale Society, the same was not to be allotted to the petitioner society. The respondents have further clarified that no final decision was taken for allotment of land to the petitioner society nor any land was earmarked for the petitioner society.

6. The respondents in the counter affidavit also contended that since the allotment of land by IAC 2003 came under the scanner of the investigating agency and the policy of allotment of land at highly concessional rate to the schools and other institution was proposed to be reviewed, therefore, no further action was taken on the pending application for the allotment. It is also asserted that the policy has been changed for allotment at concessional rate to auction mode vide gazette notification dated 19th April, 2006.

7. The petitioner has contended that they have learnt from "reliable sources" that respondents have made the allotment of land to Sardar Jagat Singh Chadha Charitable Trust, Rajouri Garden for setting up of a school by the name of Shemrock Jagat Senior Secondary School and have thus violated the order dated 22nd July, 2008 and 26th February, 2009.

8. The interim order dated 22nd July, 2008 is categorical that in case any plot has already been earmarked by DDA for the petitioner, the same shall not be disposed of in favour of any other party. From the averments made by the respondent DDA it is apparent that no final decision was taken for earmarking any plot in favour of the petitioner. Rather the proposal for allotment of the plot in favour of petitioner was found to be untenable as the said land had already been allotted to another society Florence Nightingale which allotment was also cancelled as the complaints were received for keeping the area green despite the area being earmarked for a senior secondary school. In the circumstances, it cannot be held that any area was

earmarked for allotment to the petitioner.

9. The plea of the petitioner that petitioner has learnt from reliable sources is also utterly vague and on the basis of such vague plea it will not be appropriate to issue a contempt notice to the respondents.

10. Exercise of power under Contempt of Courts Act of 1971 is comparatively a rarity and has to be used sparingly and in the larger interest of society and for proper administration of justice. Even mere disobedience of an order may not be sufficient to amount to a "Civil Contempt" within the meaning of Section 2(b) of the Act of 1971. The element of willingness and intention is an indispensable requirement to take action. If two interpretations are possible and the action of alleged contemnor pertains to one of such interpretations which will raise doubts about the willful nature of conduct, if raised, contempt will not be made out. The Supreme Court of India in the case [Perspective Publications \(P\) Ltd. and Another Vs. State of Maharashtra](#), has observed at page 230, inter alia thus:

The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice." (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).

11. Having carefully considered the allegations made in the contempt petition, it is apparent that the action of the respondents does not fall within the ambit of Contempt of Courts Act. The allegation of the petitioner is that he has learnt from reliable sources which are utterly vague. The petitioner before this allegation also had to allege that the respondent had earmarked a particular plot for the petitioner, which fact has been denied by the respondents contending that the proposal for allotment had not become finalized and no plot was earmarked for the petitioner, as the same was allotted to another society which allotment was also cancelled on account of objections raised to keep that area green. In the circumstances, it cannot be inferred that even prima facie there is deliberate or willfully violation of the order passed by this Court which is very categorical that in case the respondents has

earmarked any plot for the petitioner, the same shall not be transferred to any other society during the pendency of the writ petition filed by the petitioner.

12. The application in the facts and circumstances, is an abuse of the process of law and is without any legal basis and the petitioner is not entitled for the relief claimed. The application is, therefore, dismissed.