

CASE NO.:
Contempt Petition (civil) 353 of 2001

PETITIONER:
Lt. Col. Nikhil Kumar

RESPONDENT:
Vs.
Smt. L.M. Vas

DATE OF JUDGMENT: 31/07/2003

BENCH:
S. Rajendra Babu & G. P. Mathur.

JUDGMENT:

JUDGMENT

CIVIL APPEAL NO.620 OF 1998

With Contempt Petition (C) No.354/2001 in C.A. No.5329 of 1996

G.P. Mathur, J.

1. These petitions have been filed for initiating contempt proceedings against Smt. L.M. Vas, Vice-Chairman, Ghaziabad Development Authority, Ghaziabad. Lt. Col. Nikhil Kumar is son of Maj. Gen. Baldev Kumar and he claims to have executed a power of attorney in favour of his father, who has filed the affidavit in support of the petition. The controversy raised in both the petitions is identical and, therefore, they are being disposed of by a common order. For the sake of convenience, we will set out the facts of Contempt Petition No.353 of 2001.

2. The facts pleaded in the Contempt Petition are as follows. The Ghaziabad Development Authority issued an advertisement in June 1989 for sale of plots in Indrapuram Scheme. It was mentioned in the brochure that the possession of the plots will be given in the year 1991. The petitioner made complete payment of Rs.508,851/- between 29.7.1989 and 3.12.1992 as per the payment schedule stipulated by the Authority, but the possession of the plot was not delivered. The petitioner accordingly filed a compensation application on 13.9.1994 before the MRTS Commission. The MRTS Commission passed an order on 14.5.1997 directing the Authority to (1) deliver physical possession of the plot to the petitioner within four weeks; (2) pay interest at the rate of 18% w.e.f. 1.1.1993 till the actual delivery of possession on the entire amount deposited; (3) pay Rs.5,000/- towards mental agony and anxiety; and (4) Rs.5,000/- as costs. The Authority filed Special Leave Petition (C) No.21532 of 1997 (later converted to Civil Appeal No.620 of 1998) and one of the main pleas taken therein was that the possession of the plot was offered to the petitioner on 28.2.1995 and he did not accept the same and the delay in delivery of possession had not taken place on account of any fault of the Authority. On 2.2.1998, this Court granted special leave and directed the Authority to offer physical possession of the plot to the petitioner. The petitioner visited the office of the Authority number of times but the physical possession of the plot was not delivered to him. The petitioner also deposited the additional amount of Rs.72,737/- between June 1997 and 15th May, 1998. However, in spite of this deposit, the possession was not delivered and the Assistant Engineer made a note that the leased plan of the plot had not been received after approval. The petitioner thereafter filed Contempt Petition No.428 of 1998 against the Secretary of the Authority on the ground that he had violated the order passed by this Court on 2.2.1998. The petitioner continued to contact the Authority on several occasions and on 27.10.1998 the Assistant Engineer wrote that as the leased plan had not been received

after approval, the possession cannot be delivered. Civil Appeal No.620 of 1998 was decided by this Court on 12.5.2000, wherein the order of the MRTD Commission was upheld with the modification that the interest was reduced to 12% instead of 18%. In para 22 it is averred that the physical possession of the plot has not been delivered till date.

3. A counter-affidavit in reply to the Contempt Petition has been filed by Smt. L.M. Vas, Vice-Chairman of Ghaziabad Development Authority. It is averred therein that it is the petitioner who had raised an issue regarding availability of site plan and thereby avoided to take possession even after allotment-cum-possession letter was issued on 28.2.1995. The site plan was available by 24.11.1998 but the petitioner did not complete the required formalities and avoided to take possession. Many allottees of the nearby plots in the same Scheme had been delivered possession commencing from 1996 and this was done within a few months from the date of issuance of letter offering to take possession. The area of the plot allotted to the petitioner was more than 350 sq. meters on the spot and, therefore, he was asked to deposit additional amount towards increase of the area of the plot and also other charges as per the rules, but he failed to deposit the amount in spite of repeated letters written to him. In para 3(iv), it is averred that the plot allotted to the petitioner has been registered in his favour after completion of necessary formalities and he had taken possession thereof on 8.3.2002. In para 3(v), it is averred that the orders passed by MRTD Commission as modified by this Court vide judgment and order dated 12.5.2000 had been complied with and the Authority had forwarded a cheque of Rs.303,012/- to the petitioner on 19.9.2000. The petitioner was informed on 17.11.2000 that a cheque for the aforesaid amount had already been sent to him and he should take possession. Finally, the petitioner's father Maj. Gen. Baldev Kumar had collected the cheque from the Authority on 26.2.2002. The cheque has been prepared after deducting 10% TDS and 10% surcharge on TDS as per the Income Tax Act.

4. In the rejoinder-affidavit filed on behalf of the petitioner, it is admitted in para 6 that interest at the rate of 12% has been paid by the Authority on the amount deposited by the petitioner for the period 1.1.1993 to 22.5.1998. However, no interest has been paid on the amount deposited by the petitioner on 23.6.1997 and 15.5.1998. It is pleaded that the Authority had not refunded Rs.1,793/- which was the excess premium charged by it on 23.6.1997. It is also pleaded that the amount of Rs.5,000/- awarded as compensation for mental agony and Rs.5,000/- as costs by the MRTD Commission had been paid to the petitioner on 25.5.2002 but the said amount had been wrongly deducted from the interest amount. In para 4 of the additional affidavit, the petitioner has made an additional claim of Rs.38,857/-.

5. We have heard Shri Prashant Bhushan for the petitioner, Shri Sudhir Kulshreshtha for the contemnor-respondent and have perused the record.

6. It is not in dispute now that the plot has been registered in favour of the petitioner and physical possession thereof has been delivered to him on 8.3.2002. It is also not in dispute that Rs.303,012/- has been paid to the petitioner towards interest amount. Deduction from the interest has been made as per the provisions of the Income Tax Act. The Authority was bound to comply with law and deduct 10% TDS and 10% surcharge on TDS as per the Income Tax Act while making payment of the interest amount. By making deductions as per the provisions of the Income Tax Act, the respondent cannot be said to have committed contempt of the order passed by this Court as she is bound to act in accordance with law and statutory provisions regarding payment of interest. From the material placed on record, it does appear that possession of nearby plots to several persons in the Scheme was delivered in 1996 and 1997. Copies of several possession letters have been filed along with the counter-affidavit. The actual area of the plot which was finally allotted to the petitioner exceeded 350 sq. meters and, therefore, a demand was made from him to pay the cost of the excess land, lease rent and free-hold charges. After he had deposited the excess amount, the petitioner was delivered possession of the plot. On the material on record, we do not think that there has been any willful disobedience of the order passed by this Court on the part of the respondent. It appears that the petitioner was also making all kinds of demands and objections due to

which delivery of possession was delayed. The additional demand made by the petitioner regarding which a calculation has been given in para 4 of the additional affidavit is not at all understandable. At any rate if the said amount has not been paid, it cannot form the basis for initiating contempt proceedings against the respondent.

7. In the result, both the Contempt Petitions lack merit and are hereby dismissed. The notices issued to the respondent are discharged.

JUDIS