

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Code Of Civil Procedure

W.P.(C) 3326/2006

DATE OF DECISION : NOVEMBER 27, 2008

EAST END APARTMENTS COOPERATIVE
GROUP HOUSING SOCIETY

Petitioner
Through: Mr.Aseem Mehrotra, Advocate

versus

DELHI DEVELOPMENT AUTHORITY and ANR Respondents

Through: Mr.Vikas Gautam, Advocate for
Respondent/Ashok Nagar Welfare
Asso. Mr.Vibhu Shankar, Advocate
for DMRC. Mr.Ajay Verma,
Advocate for DDA. Mr.Jatinder
Sethi, Advocate for intervener
societies.

AND

CM(M) 1558/2007

DELHI DEVELOPMENT AUTHORITY

Petitioner
Through: Mr.Ajay Verma, Advocate.

versus

ASHOK NAGAR WELFARE ASSOCIATION REGD.and ORS Respondents

Through: Mr.Vikas Gautam, Advocate
For Respondent/Ashok Nagar
Welfare Association Mr.Vibhu
Shankar with Mr.Gautam Gupta,
Advocates for DMRC. Mr.Varun
Mehlawat, Advocate for R-3.

AND

W.P.(C) 311/2008

ASHOK NAGAR WELFARE ASSOCIATION REGD.

Through:

Petitioner

Mr.Vikas Gautam and
Mr.K.S. Kashyap, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY and ANR.

Through:

Respondents

Mr.Ajay Verma, Advocate
for DDA. Mr.Vibhu Shankar,
Advocate for DMRC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

1. These two writ petitions and the CM(M) are all concerning land measuring approximately 13 Bighas comprising in Khasra No.391/263 situate at village Chilla Saroda Bangar, Delhi. Since the matters involve common questions of law and fact, they are being disposed of by this common judgment.

2. CM(M) 1558/2007 is by the Delhi Development Authority (for short `DDA) for setting aside an ex parte decree dated 6th January, 1999 passed by the Additional District Judge, Delhi in Suit No.222/1998 (Suit 1066/1990) under Section 6 of the Specific Relief Act and also an order dated 23rd July, 2005 passed by the Civil Judge, Karkardooma Court, Delhi dismissing the application under Order IX Rule 13 CPC filed by the DDA for setting aside the said ex parte decree. The first respondent in the CM(M) is the Ashok Nagar Welfare Association (Regd.), the plaintiff in Suit No.222/1998. Respondents No.2 and 3 are Union of India and Govt. of National Capital Territory of Delhi respectively. Respondents 4 to 40 are the original defendants 1 to 37.

3. Writ Petition(C) No.3326/2006 has been filed by the East End Apartment Co-operative Group Housing Society in public interest against the DDA and Ashok Nagar Welfare Association seeking a declaration that Ashok Nagar Welfare Association has no right, title or interest in land bearing Khasra No.391/263 in view of Award No.39/82-83 passed by the Land Acquisition Collector, Narela, Delhi on 30th September, 1982 and the judgment and order dated 21st May, 1999 and 8th May, 2003 passed by this Court in Writ Petition(C) No.1507/1984 and Writ Petition(C) No.265/2001 respectively and to restrain the said Association from making any construction over the said land. A direction

is also sought by the petitioner Society to direct DDA to hold an enquiry as to why its officers have not protected its title and possession over the land Khasra No.391/263.

4. Writ Petition(C) No.311/2008 is filed by Ashok Nagar Welfare Association through its President Mr.Mohan Singh claiming to be a legal owner of Khasra No.391/263 and seeking a direction to the respondents DDA and Delhi Metro Rail Corporation(for short `DMRC) not to interfere with peaceful possession of the remaining land of Khasra No.391/263 and to issue a further direction to respondent DMRC to construct Metro Station at its original location as indicated in site plan as Exhibit `A and not to carry any further illegal activities upon the land in question.

5. The facts leading to these proceedings are as under.

6. The land in question being Khasra No.391/263 was acquired pursuant to Notification No.F-9(67)/LandB/LA dated 17th November, 1980 under Section 4 of the Land Acquisition Act and declaration under Section 6 of the said Act being Notification No. F9(16)/80-LandB dated 29th September, 1981. By these Notifications, Delhi Administration acquired a large tract of land in Chilla Saroda Bangar, Delhi admeasuring 920 Bighas and 9 Biswas for the planned development of Delhi. The acquisition proceedings culminated in an Award No.39/82-83 made on 13th September, 1982. Thereafter, possession of acquired land was taken over on 1st October, 1982 and the land was placed at the disposal of DDA under Section 22(1) of the DDA Act, 1957 vide Notification dated 14th October, 1982. Khasra No.391/263 which is a subject-matter of the present proceedings consists of 72 Bighas and 11 Biswas out of which an area of 62 Bighas and 12 Biswas was notified for acquisition and covered under Award No.39/82-83 dated 30th September, 1982 and possession of this land was also taken on 1st October, 1982. It may be mentioned that the remaining area of 5 Bighas and 8 Biswas of Khasra No.391/263 was acquired under separate Award Nos.2/73-74, 22/82-83 and 4/86-87. Thus, the entire area of Khasra No.391/263 stood acquired under different awards.

7. The Ashok Nagar Welfare Association (hereinafter for brevity's sake referred to as the plaintiff Association) through its President Mr.Mohan Singh had filed a writ petition bearing CWP No.1507/84 challenging Notifications dated 17th November, 1980 and 29th September, 1981 claiming that land bearing Khasra Nos.391/263, 392/264, 393/264 and 402/268 was sold to its members between 1972- 78 by one Jawaharlal who was the owner of the land. The contention raised in the petition was that wide publicity was not given to the notice under Section 4 of the Act and no individual notice was given to the members of the plaintiff Association. The writ petition came to be dismissed by the Division Bench of this Court on 21st May, 1998 holding that failure to give individual notice to the members of the Association does not invalidate the acquisition proceedings. In Paragraph 10 of the said judgment it was noted that possession of the acquired land was taken over on 1st October, 1982 and the land was placed at the disposal of the DDA under Section 22 of the DDA Act vide Notification dated 14th October, 1982. It was held that under the Land Acquisition Act, after possession of the land is taken over, the acquired land vests in the State free from all encumbrances. It may be mentioned that during the pendency of this petition an order of status quo was passed which stood

vacated on dismissal of the writ petition. The SLP preferred against the said judgment was dismissed in limine by the Supreme Court on 6th July, 1998.

8. The plaintiff Association then filed a second writ petition bearing WP(C) No.1158/96 seeking a mandamus for regularization of the colony in Khasra No. 391/263 in respect of which the Association had claimed rights in earlier CWP No.1507/1984. WP(C) 1158/96 was dismissed by the learned single Judge of this Court on 12th July, 1999 in view of the judgment dated 21st May, 1998 passed in CWP No.1507/84. LPA No.354/99 preferred against the said order dated 12th July, 1999 of the learned single Judge was dismissed by the Division Bench on 11th July, 2000. SLP(C) No.19499/2000 of the Association was also dismissed by the Supreme Court on 8th December, 2000. With this, the plea for regularization for the unauthorised colony in the above Khasra No. 391/263 also came to be dismissed by this Court and confirmed by the Supreme Court.

9. The plaintiff Association then initiated a third round of litigation in this Court by filing W.P.(C) No.6268/98 praying for quashing of the award dated 30th September, 1982 on the ground that DDA had abandoned the award by initiating proceedings for regularization of the unauthorised colony on the land. A learned single Judge of this Court dismissed this writ petition vide order dated 13th September, 2000 holding that the issue was covered by the earlier judgment dated 21st May, 1998 in CWP No.1507/84. Against the said order of the learned single Judge, LPA No.15/2001 was filed by the plaintiff Association which came to be dismissed by the Division Bench on 15th October, 2001. SLP(C) No.4072/2002 preferred by the Association was dismissed as withdrawn by the Supreme Court by order dated 31st January, 2003.

10. Notwithstanding all these proceedings, the plaintiff Association filed one more writ petition bearing W.P.(C) No.265/2001 in this Court praying that an enquiry be held as to how the compensation was disbursed in respect of 141 Bighas 15 Biswas of land which included land which is the subject-matter of the present petition. This writ petition was also dismissed by a Division Bench of this Court vide order dated 8th May, 2003 holding that there was no dispute that possession had been handed over to the appropriate authority and that the plaintiff Association could not approach the Court by filing the writ petition. The SLP filed by the Association in the Supreme Court was also dismissed.

11. CM(M) arises out of Suit No.1066 of 1990 filed by the Association. This suit was originally filed in High Court and was subsequently transferred to the trial court vide order dated 6th August, 1993 where it was registered as Suit No.222/1998. In this suit, the plaintiff Association had claimed that it was the owner and in possession of land bearing Khasra no.391/263 measuring 13 Bighas. It was further claimed that defendants 1 to 37 i.e. respondents No.4 to 40 in CM(M), had encroached upon the land by dispossessing the members of the plaintiff Association. In this suit, the Association did not make the DDA or Union of India or the Govt. of NCT parties. However, the plaintiff Association averred in the suit that it had filed CWP No.1507/1984 challenging the notifications under Section 4 and 6 of the Land Acquisition Act and the Award 39/82-85 and an order of status quo had been passed by this Court in the writ petition. In view of this, the High Court was pleased to implead DDA, Union of India and Delhi

Administration as the defendants in the suit. Vide order dated 26th May, 1992, the plaintiff Association was directed to file amended memo of parties. This order was, however, not complied with. In the meantime, the suit was transferred to the trial court. The defendants including DDA were proceeded ex parte but since there was failure to supply correct status regarding compliance of direction to file amended memo of parties, the ex parte order was set aside. Finally the amended memo of parties was filed on 1st August, 1998. The trial court ordered for service of summons on the newly added defendants, namely, DDA, Union of India and Delhi Administration on 22nd September, 1998. Thereafter the trial court was pleased to proceed ex parte against DDA as well as other defendants for non-appearance despite service of summons and an ex parte decree was passed on 6th January, 1999. According to the DDA, it was never served with summons in the said suit and had no knowledge of its pendency. The DDA learnt about the ex parte decree only on 29th August, 2000 after the filing of Execution Petition No.74/1999 by the plaintiff Association.

12. On 21st November, 2000, the DDA moved the trial court under Order IX Rule 13 for setting aside the ex parte judgment and decree dated 6th January, 1999. It is seen from the records that DDA led evidence to show that it had not been served with any of the summons and that there was no mention of receipt of such summons in the DDA records. The DDA also produced the photocopy of Dak Register pertaining to the month of August, 1998 in order to show that no summons in respect of Suit No.222/1998 (Suit no.1066/1990) was received by the DDA. The DDA also led evidence to show that the seal alleged to have been used to acknowledge receipt was never used by the department in receiving the summons from different agencies. The trial court, however, dismissed the application under Order IX Rule 13 on 23rd July, 2005 on a technical ground that it was not accompanied by application for condonation of delay under Section 5 of the Limitation Act and that there was delay of 35 days in filing the application and no sufficient cause was shown.

13. At this stage, it may be noted that the plaintiff Association had also filed another suit, being Suit No.649/1990 where again it contended that it was the owner and in actual physical possession of land measuring 141 Bighas and 15 Biswas in Khasra No.391/263, 392/264, 393/264 and 402/268. In the said suit relief was claimed in respect of 13.4 Bighas out of Khasra No.391/263 forming part of Plot No.66-120, 157-162 and 208-212. The DDA raised an objection that the suit was not maintainable as the physical possession of the said land had already been taken on 1st October, 1982 and no portion of Khasra No.391/263 was owned or possessed by the plaintiff Association. It was further contended by the DDA that the site was lying vacant and a boundary wall had been constructed by the DDA. The Civil Judge, Delhi dismissed Suit No.649 of 1990 holding that a suit for possession is not maintainable since the land stood acquired under the Land Acquisition Act and the same was placed at the disposal of the DDA. It may be stated that against the dismissal of the said suit, the plaintiff Association filed an appeal, being RCA No.3/2005, which was dismissed as withdrawn after recording the statement of the President of plaintiff Association to the effect that the Plot Nos. 66-120, 157-162 and 208-212 falling in Khasra No.391/263 had merged in the changing road due to

construction of new bridge over Hindon Canal and land across the road and some land/plots had been taken possession of by GAIL and the Irrigation Department.

14. Meanwhile, in the execution proceedings which were initiated pursuant to the ex parte decree dated 6th January, 1999 the statement of Mr.Mohan Singh, President of the plaintiff Association came to be recorded to the effect that the land forming subject-matter of Suit No.222/1998 had been encroached upon by erecting a boundary wall and accordingly police help was sought to take possession thereof. It seems that in October, 2005, the plaintiff Association through the Court Bailiff broke the boundary wall of the DDA and took possession of part of the land. According to DDA the possession of the land which was taken over by the plaintiff Association was, in fact, the land which formed the subject-matter of Suit No.649/02/1990 which was dismissed and an appeal preferred against the dismissal of the suit was withdrawn by the plaintiff Association stating that the possession of the land was already taken over by the DDA. Thereafter DDA has approached this Court by filing CM(M) No. 1558/2007.

15. Coming then to WP(C) No. 3326/2006 filed by East End Apartment Cooperative Group Housing Society it is seen that the grievance of the society is that despite the fact that the property in question was acquired as far back as in 1982 for which an award was passed on 30th September, 1982 the suit has been decreed ex parte and in execution, the plaintiff Association has been put in possession on which it has no right, title or interest in view of the fact that land has already been vested in the State Government and has been entrusted to the DDA. It has been brought on record that in respect of the adjoining land being Khasra No. 393/264, a similar suit was filed and an ex parte decree was obtained by the Association and in appeal, that ex parte decree was set aside by a Division Bench of this Court holding that the report on the summons was fake and was deliberately manipulated to make it appear that service had been effected. It is also pointed out that in the said judgment it was held that a fraud had been played by the plaintiff Association in obtaining the ex parte decree. The said judgment of the Division Bench (Vol. 90 2001 DLT 583) was confirmed by the Supreme Court in (2002) 1 SCC 749.

16. In WP(C) No.3326 of 2006 an order came to be passed by the Division Bench of this Court on 7th March, 2006 restraining the plaintiff Association from raising and/or making any construction over the land in question. On 12th November, 2007, the Division Bench recorded the statement of the learned counsel appearing for the plaintiff Association that Mr.Mohan Singh has filed an affidavit offering to surrender the possession of 6 Bighas in Khasra No.391/263 on certain terms and conditions stipulated in the affidavit. Learned counsel also stated that the plaintiff Association is ready and willing to hand over the possession of whatsoever extent of land is in its possession in Khasra No. 391/263 and the Court may direct a proper enquiry into the circumstances in which a major part of the 920 Bighas of land acquired has been occupied by unauthorised persons. The counsel further stated that Mr.Mohan Singh can make a solemn statement before the Court regarding the willingness of the Association to surrender the possession of the land in question. The Division Bench directed Mr. Mohan Singh to appear before the Registrar General of this Court on 14.11.2007 to get his statement recorded. The

Registrar General was directed to get the following aspects verified from Mr. Mohan Singh: 1) What is the basis on which Ashok Nagar Welfare Association and Maha Kaleshwar Welfare claim title and possession over different parts of land acquired by the DDA in the Village mentioned earlier. In particular, is there any document registered or otherwise executed by anyone owning any right or interest in the land in favour of anyone of the two Associations. If so, a copy of the document be got produced by Shri Mohan Singh. 2) In case, the Associations have no document of title in their possession, what is the basis on which the members of the Associations claim title to any portion for the lands acquired by the DDA in the village mentioned above. Copies of the documents of title, if any, available with the Associations may be produced by Shri Mohan Singh. (3) What is the total number of cases instituted by Shri Mohan Singh in the name of Ashok Nagar Welfare Association or Maha Kaleshwar Welfare Association are in different Courts in Delhi and what has been the result in the said cases in relation to the lands acquired by the DDA in the village mentioned above. In particular, are there any case over and above those mentioned at page No.336 of the writ petition file. If so, the particulars of the said case may also be given. 4. Whether respondent No.2 Association is willing to surrender possession of the land in its occupation as offered by Mr. Niyazi, its counsel The Division Bench also asked the learned counsel of respondent DDA whether it is ready and willing to transfer and/or allot the land in question in favour of DMRC for construction of the Metro Station at Ashok Nagar in terms of requisition sent by DMRC to it after the order dated 14.11.2007.

17. By order dated 14.11.2007, this Court took on record a copy of the letter of allotment in respect of the disputed area issued by the DDA in favour of DMRC. The Court further noted that original copy of the letter of allotment has been handed over to Mr. Vibhu Shankar, counsel for DMRC. By virtue of the further orders dated 20th December, 2007 and 4th January, 2008, the DMRC has taken over possession of certain portions of the land and the work of the construction of the Metro Station is in progress.

18. In the meanwhile Mr.Mohan Singh who appeared before the Registrar General on 14th November, 2007 backtracked from his statement. He now stated that he needed to convene a meeting of the members of the Association to seek their approval for making a statement regarding surrender of possession of the land. In his statement he also claimed to have filed 85 cases in respect of the land in question including the cases detailed in Annexure 11 Mark A and promised to give details of those proceedings after consulting record of the plaintiff Association. The material part of the statement of Mr.Mohan Singh is reproduced below: I am aware that in November, 1980 a Notification under Section 4 of the Land Acquisition Act, 1894 was issued seeking to acquire 920 bighas and 9 biswas of land situated at Village Chilla Saroda Bangar, Delhi, for planned development which included the land which is the subject matter of writ petition except 5 bighas 8 biswas of land out of Khasra No. 391/263 which were not subject matter of Notification for acquisition. However, respondent no. 2 Association as its members did not receive the notice of notification issued under Section 4 of the Land Acquisition Act. I am now aware that Notification under Section was followed by Notification under Section 6 of the Land Acquisition Act, 1894 pursuant to which the Award was passed by the Land Acquisition Collector on 30th September, 1982 acquiring 920 bighas 9 biswas of land

situated in Village Chilla Saroda Bangar, Delhi. However, respondent no. 2 Association as its members did not receive any notice of Notification under Section 6 of the Act also. In the year 1984 I came to know about the aforesaid Award passed in respect of acquisition of 920 bighas and 9 biswas of land, therefore, I filed a writ petition on behalf of the respondent no. 2 in Delhi High Court bearing No. W.P.(C) No. 1507/1984 challenging the above said Notifications. In the said writ petition, respondent no. 2 claimed that the land bearing Khasra Nos. 391/263, 392/264, 393/264 and 402/268 measuring about 141 bighas and 15 biswas was sold to members of the respondent no. 2 in bits and pieces during the period between 1972-78 by one Jawahar Lal, who was owner of the aforesaid land besides some other owners. Aforesaid writ petition of respondent no. 2 Association was dismissed by the Division Bench of the High Court of Delhi in the year 1998. Respondent No. 2 filed an SLP against the order of dismissal of the writ petition by the High Court but SLP was also dismissed by the Hon'ble Supreme Court. Members of the respondent no. 2 Association have documents of title in their favour pertaining to 141 bighas of land regarding which we had challenged the Award in the WP(C) No. 1507/1984. I can produce those documents of title, if need be. All documents of title which I have referred to pertained to the period prior to initiation of acquisition proceedings and passing of Award. In the year 2003 with a view to tide over the legal difficulties pertaining to filing of the suits to protect the interests of members of the Association, the then President of Respondent No. 2 Association, Mr. Shankar Das Thakur, constituted one other Association known as Maha Kaleshwar Welfare Association and got it registered under Societies Registration Act. Thereafter, by virtue of my Power of Attorney I transferred entire 141 bighas of land forming part of the entire chunk of 920 bighas and 15 biswas vide several separate Assignment Deeds to Maha Kaleshwar Welfare Association. The owners of various plots forming part of those 141 bighas of land thus became members of Maha Kaleshwar Welfare Association. It was decided by the executive body that some cases which were instituted on behalf of respondent no. 2 Association would continue to be pursued by the same Association. I have not brought any of those Assignment Deeds or Resolution of executive body. I have seen Annexure 11 mark A to the writ petition which is at page 336 of the file which contains list of 45 cases including writ petitions, LPAs, etc. which have either been dismissed or are pending, filed by respondent no. 2 Association as well as Maha Kaleshwar Association. This is not a complete list of matters filed by the above said two Associations in different courts. Total number of cases filed by us including writ petitions, appeals, executions, civil suits, etc. is about 85 which include the cases detailed in the Annexure 11 mark A. At present, I am not in a position to give details, however, I can submit complete details in the court after consulting record of the Association. Some of the members of the Association are agitated because of my filing affidavits in the Court on 8.11.2007 and they have seized the record. Therefore, there is slight difficulty in giving a complete information to the Court. Those members are Mr. P.C. Sharma, Mr. Sanjay Tandon, Mr. Hargobind, Mr. Rajesh Jain, Mr. R.K. Sharma, Mr. Dharampal, Ms. Neera Gupta, Ms. Kusumkar Sood, Mr. Sham Lal, etc.) The aforesaid record is available at office of the respondent no. 2 Association as well as Maha Kaleshwar Welfare Association located at A-11/1, Pandav Nagar, Delhi-110 092 which has been locked by the aforesaid persons. They are saying that they will allow him to take the records only after I explain the facts to them. Today, I am not in a position to commit that respondent

no. 2 Association or Maha Kaleshwar Welfare Association or their members would surrender possession of land in their occupation, as offered by my counsel in the court subject to certain conditions stipulated in my affidavit dated 7.11.2007. I need some time to convene a meeting of the members of the respective Associations to seek their approval for making a statement regarding surrender of possession of the land in occupation of respondent no. 2 Association or Maha Kaleshwar Welfare Association.

19. Despite his solemn assurance, Mr.Mohan Singh has failed to furnish the details of 85 proceedings instituted by him in various Courts. The Annexure 11 Mark A contains list of the following 45 cases: S. No. Case No. Petitioner Respondent Land in Suit (Khasra no.) Decision

1. 28/82 Mohan Singh Jaichand and ors. 391/263 and ors. Dismissed
2. CWP 1507/84 Ashok Nagar Welfare Assoc. Through Mohan Singh UOI, DDA and East End 391/263 and ors. Dismissed
3. SLP 10510/98 - Do- -Do- -Do- Dismissed
4. CWP 6286/98 -Do- UOI, DDA and ors. -Do- Dismissed
5. LPA 15/2001 -Do- -Do- -Do- Dismissed
6. SLP 4012/2000 -Do- -Do- -Do- Dismissed as withdrawn
7. CWP 1158/96 -Do- -Do- -Do- Dismissed
8. CWP -Do- -Do- -Do- Dismissed
9. LPA 354/99 -Do- -Do- -Do- Dismissed
10. SLP 19499/ 2000 -Do- -Do- -Do- Dismissed
11. CWP 4842/2002 -Do- UOI, MCD -Do- Dismissed
12. 309/1991 -Do- MC Malik and 35 others 393/264 Pending
13. 544/91 5-7-91/04 -Do- Vinod Kumar and ors. -Do- In this case the petitioner obtained ex parte decree. The Division Bench of High Court set aside the said decree observing that the same was obtained by playing fraud.
14. 597/91 S-37-91/04 -Do- Biranjan Das Gupta and ors. -Do- -Do-
15. SLP No. 4657/01 -Do- -Do- -Do- Dismissed
16. SLP No. 4635/01 -Do- Vinod Kumar and ors. Dismissed

17. Suit 312/91 -Do- Daroga Rai and ors.
18. Suit No. 1066 -Do- Ravinder Kumar Seth and ors. 391/263 Ex parte decree challenged in High Court by East End Apartments
19. Suit No. 1704/90 -Do- Sunil Misri and ors. -Do- Dismissed 20. RFA 363/03 -Do- -Do- -Do- Dismissed 21. Suit No. 163/2005/93 -Do- UOI, DDA, East End -Do- Pending 22. Suit 558/99 Rukmani Devi through K S Kashyap S/o Mr. Mohan Singh -Do- -Do- Dismissed 23. Suit No.71/02 Ashok Nagar Welfare Assoc. through Mohan Singh Purbanchal Cultural Welfare Assoc. and 814 ors. 391/263 and ors. Dismissed 24. 1205/2002 -Do- -Do- -Do- Dismissed 25. CWP 265/2001 -Do- -Do- -Do- Dismissed
26. 273/86 -Do- Jawahar Lal, DDA and 36 ors. 391/263 etc. Adjourned sine-die as the plaintiff stated that the documents proving the case are not traceable.
27. CCP 455/2001 -Do- Sunil Kumar Mehra -Do- Dismissed 28. Suit No. 1913/2000 -Do- Mangal Chakraborty
29. Suit 179/03 -Do- Director DDA Land Management
30. Suit No.164/03 Mahakaleshwar Wel. Assoc. President Mohan Singh Urmila Devi and ors. 393/264
31. Suit No. 169/03 -Do- N G Paul and ors -Do-
32. Suit No. 487/03 -Do- Malika Chowdhury and ors. -Do-
33. Suit No. 486/03 -Do- Shiela Dey and ors. -Do-
34. Suit No.205/04 -Do- Renu Singh and ors. -Do-
35. Suit No. 106/04 -Do- Keshar Devi and ors. -Do-
36. Suit no.239/04 -Do- Rekha Choudhary and ors. -Do-
37. Suit No. -Do- S K Singh and ors. -Do-
38. Suit No. 287/03 -Do- Surendra Devi and ors. -Do-
39. Suit No. 484/03 -Do- Manoj Kumar and ors. -Do-
40. Suit No. 85/04 -Do- Rashmi Rekha Nath and ors. -Do-
41. Suit No. 151/04 -Do- Pramod Kumar and ors. -Do-

42. Suit No. 154/03 -Do- Geeta Mishra and ors. -Do-
43. Suit No. 543/03 -Do- SK Bholra and ors. -Do-
44. Suit No. 676/04/03 -Do- S S Gill and ors. -Do-
45. Suit No. 273/03 -Do- Chander Shekhar and ors. 393/264

20. After the land was handed over to DMRC for the construction of the Metro Station in pursuance of the orders of the Division Bench, the plaintiff Association has filed yet another writ petition being WP(C) No.311/2008 claiming itself to be the legal owner of land bearing Khasra No. 391/263. It has sought a mandamus to direct the DDA and DMRC not to interfere with the peaceful possession of the remaining land in Khasra No. 391/263. A further direction is sought that the DMRC should construct the Metro Station at its original location as is shown in the site plan marked Ex.A and further that both DDA and DMRC should not engage in any further illegal activities upon the subject land being Khasra No. 391/263. In these proceedings Mr. Mohan Singh has relied upon a photocopy of letter dated 21st November, 2007 allegedly written to him by the DMRC. According to the DMRC the said photocopy of the letter is a fabricated document and no such letter was ever issued by the DMRC and an affidavit to that effect has been filed by the DMRC on 27th February, 2008. In view of this affidavit, Mr. Mohan Singh was directed to file an affidavit along with the original letter received by him from DMRC. By a further order dated 10th September, 2008 the letter dated 21st November, 2007 and some other letters produced by Mr.Mohan Singh have been directed to be kept in a sealed cover with the Registrar General of this Court. It may be stated that Criminal Case No.1346/2008 has also been filed by Mr.Mohan Singh in his capacity as President of the Ashok Nagar Welfare Association against the Chairperson and other officials of the DDA and the DMRC under Sections 147/166/193/196/426/120B/325/327/420/440/447/448/506/34 IPC and under the Prevention of Corruption Act, 1988. Further proceedings in the criminal case have been stayed by this Court.

21. It may be stated that 47 Cooperative Societies in the area have filed an application bearing CM No. 14473/2007 in WP(C) No.3226 of 2006 for intervention and all these societies are supporting the stand taken by the petitioner East End Apartment Co-operative Group Housing Society.

22. Mr.Ajay Verma, learned counsel for the DDA, submitted that filing of Suit No.222/1998 is nothing but an abuse of process of court. The land in question was acquired and possession of the land was taken on 1st October, 1982 and it was placed at the disposal of the DDA. The writ petition challenging the acquisition was dismissed by the Division Bench of this Court and SLP was also dismissed. Yet, a suit was filed under Section 6 of the Specific Relief Act on the ground of alleged dispossession of the members of the plaintiff Association by some private parties. He submitted that it was not disclosed to the trial court that the writ petition was already dismissed by the High Court and the order of status quo was vacated. He submitted that Mr.Mohan Singh, who represented the plaintiff Association, misled the trial court in believing that the status quo

order was still in operation and thus procured an ex parte decree by suppression of material facts. He submitted that this was a clear case of practising fraud on the Court. He submitted that the entire claim was founded on the statement that members of the plaintiff Association continued to be in possession of the land and that they were dispossessed by some parties otherwise than in due course of law, which was false. He submitted that the possession of the land was taken by the Land Acquisition Collector long prior to the suit and the land stood vested in the Government and thus the suit filed under Section 6 of the Specific Relief Act was clearly not maintainable. Even otherwise, according to the learned counsel, no such suit is available or lies against the Government under Section 6 of the Specific Relief Act as sub-section (2)(b) thereof clearly excludes a suit against the Government. He submitted that the decree passed by the trial court was thus clearly without jurisdiction and a nullity. Mr.Verma further submitted that though the Ashok Nagar Welfare Association is claiming itself as a registered society, but the record shows that registration number 10988/1980 pertains to Ashok Nagar Jan Kalyan Samiti, Delhi. He submitted that the Ashok Nagar Jan Kalyan Samiti applied to the Registrar of Cooperative Societies for change of its name to Ashok Nagar Welfare Association. However, that application came to be rejected and thus there is no registered Association by the name of Ashok Nagar Welfare Association. Yet Mr.Mohan Singh has been perpetrating fraud on various courts by filing suits styling himself as president of an Association registered under the Societies Registration Act. He submitted that Mr.Mohan Singh, in his cross examination in Suit No.106/2004 titled Mahakaleshwar Welfare Society v. Ms. Keshar Devi and Others, stated on oath on 23.11.2005 that Ashok Nagar Welfare Association has surrendered its rights to the plaintiff and that its members have now become members of the plaintiff i.e. Mahakaleshwar Welfare Society. He submitted that neither Ashok Nagar Welfare Association nor Mahakaleshwar Welfare Society are in possession of any part of the land in question and the action of Mr.Mohan Singh, who is the self proclaimed president of these societies, in repeatedly filing suits in different courts is nothing but an abuse of process of law and undermining the dignity of the court.

23. Mr.Aseem Mehrotra appearing for East End Apartments Cooperative Group Housing Society, Mr.Jatinder Sethi appearing for intervener societies and Mr.Vibhu Shankar appearing for DMRC supported the stand taken by the DDA. 24.In reply, Mr.K.S. Kashyap, learned counsel appearing for plaintiff Association submitted that in its written submissions filed before the trial court the fact of the dismissal of the writ petition was disclosed and that there was, therefore, neither any attempt on its part to mislead the court nor had it in any way abused the process of law. It is also his contention that the plaintiff Association was within its right to bring a suit under Section 6 of the Specific Relief Act on account of dispossession of its members by respondents 4 to 40. According to him the issue of title is not relevant in a suit under Section 6 of the Specif Relief Act and the trial court on examination of the evidence on record has rightly come to the conclusion that members of the plaintiff Association were dispossessed otherwise than by due process of law. Learned counsel also questioned the maintainability of CM(M) on the ground that an alternative remedy of appeal is available to the DDA under Order 43 Rule 1 CPC. Learned counsel also contended that CM(M) suffers from delay and laches and the DDA has not approached the court with clean hands. It is also his contention that

Mr.Mohan Singh was justified in filing various suits against alleged encroachers with a view to protect the possession of the members of the Association.

25. Having considered rival contentions of the parties, in our opinion, the suit filed by the plaintiff Association under Section 6 of the Specific Relief Act was clearly an abuse of the process of law and the decree has been obtained by practising fraud on the court. In the suit it was alleged that the plaintiff Association has been in possession of the land in dispute since 1980 and that defendants 1 to 37 have occupied the land on 8th March, 1990 shortly before the suit was filed. It was further alleged that the plaintiff Association has filed CWP No.1507/1984 against Union of India, Delhi Administration and DDA and an order of status quo has been passed in favour of the plaintiff Association and on that basis a prayer was made that possession of land in suit measuring 13 Bighas falling in Khasra No.391/263 as shown in red in the site plan filed with the plaint be restored. The plaintiff Association suppressed the fact that the writ petition was dismissed by the High Court on 21st May, 1998 and that the order of status quo was vacated. The trial court seems to have proceeded on the basis that the order of status quo passed in the writ petition was still in force on the date of the passing of the decree as can be clearly seen from paragraphs 3 and 4 of the judgment, which are reproduced below: 3. The plaintiff society filed Civil Writ Petition No.1507/84 and the order passed in that writ petition is Ex. PW-1/88. The order dated 1.6.84 Ex. PW-1/88 was subsequently confirmed vide order dated 18.7.2005, certified copy of which is Ex.PW-1/90. The order was to maintain status quo in respect of possession over the land in question. Whether the writ petition has been finally disposed of is not disclosed on record. The writ petition can be presumed to be still pending. The plaintiffs have proved another order of the Hon'ble High Court of Delhi in Suit No. 273/86, Ex. PW1/91 dated 12.11.87. Two interim applications were disposed of by the order dated 12.11.87. Under one of the application defendants in the suit before the Hon'ble High Court were restrained from raising construction on the land in dispute, which fell in Khasra No. 391/263. On the second application prayer by one of the defendants for vacating the order of injunction was rejected. 4. The witness has deposed that the land in question has still not been taken over by the Union of India, although, there have been proceedings for its acquisition under the Land Acquisition Act. The witness proved an affidavit of the Secretary of the DDA Ex. PW-1/92 wherein the possession of the members of the plaintiff in the land in suit was admitted. The defendants 1 to 65 are stated to be the encroachers in the plaintiffs land within 6 months prior to filing of the suit.

26. According to the learned counsel for the plaintiff Association it had no intention or motive to suppress the dismissal of the writ petition and this fact had been disclosed in the written submissions filed on behalf of the Association before the trial court. In our view the argument is wholly fallacious. In this one page written submissions filed on behalf of the Association on 19th December, 1998 it was merely stated that the writ petition has been disposed of and SLP has also been dismissed by order dated 6th July, 1998. The fact that the writ petition was dismissed on 21st May, 1998 and the status quo order was vacated was not disclosed in the written submissions which the Association had filed on 19th December, 1998. A party must come to the court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions

of the parties. In our view, a litigant, who approaches the court, must produce all the documents which are relevant to the litigation and he must disclose to the court about pendency of any earlier litigation between the parties and the result thereof. It was obligatory on the part of the Association to disclose to the civil court that its writ petition filed in the High Court had been dismissed and the interim order was vacated. In our view, if these facts had been disclosed before the civil court when the suit came up for hearing, the court would not have been persuaded to pass a decree in favour of the plaintiff.

27. It is a settled legal position that in a suit under Section 6 of the Specific Relief Act a plaintiff has to prove that he was dispossessed within a period of six months prior to the suit. It is clear from the above narration that the plaintiff Association could not have succeeded in view of the fact that the possession of the land had already been taken by the Collector and the land stood vested in the State Government. In our opinion, the Association suppressed the material facts from the civil court with a view to securing a decree under Section 6 of the Specific Relief Act. The Association founded its case before the civil court on a false plea which it knew to be false, it suppressed the order of the High Court dismissing its writ petition. This clearly amounts to practising fraud on the court. The civil court had passed a decree in favour of the plaintiff Association only based on its plea that the writ petition was pending in the High Court and an order of status quo was in operation. It is clearly seen that when it made the claim, the Association had neither any title nor valid possession over the land. It was not a case of mere perjured evidence, it was suppression of the most vital fact and founding of a claim on a non-existent fact. It was done intentionally and deliberately with the intention to deceive. Therefore, in our opinion, it is established without an iota of dispute that the plaintiff Association had procured a decree from the trial court by practising fraud on it. This is a case where on a very fundamental fact of entitlement to relief the Association had deliberately misled the court by suppressing vital information and put forward a false claim, false to its knowledge and a claim which it knew had no basis either in fact or in law.

28. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. In a recent judgment in *A.V. Papayya Sastry and Ors. v. Government of A.P. and Ors.* AIR 2007 SC 1546, the Court held that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such a judgment, decree or order --by the first court or by the final court-- has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

29. In the celebrated case in *S.P.Chengalvaraya Naidu v. Jagannath and Others*, AIR 1994 SC 853 it was held that the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by

him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. The following observations of the Court in the aforesaid case are relevant for the purposes of the present case: The High Court in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. The principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on false-hood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

30. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* (1996) 5 SCC 550, the Court observed:- The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the Court's business.

31. In *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* (2005) 7 SCC 605 the Court held that: Suppression of a material document would also amount to a fraud on the court. Although, negligence is not fraud, it can be evidence of fraud.

32. In *Hamza Haji v. State of Kerala and Anr.* AIR 2006 SC 3028, the Court explained the legal position and held that the High Court, as a court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal procured by the appellant on finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Article 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. When the order secured by appellant is vitiated by fraud, the Supreme Court declined to come to his aid by refusing the exercise of its discretionary jurisdiction under Article 136.

33. In our opinion the impugned decree of the trial court which has been obtained by practising fraud cannot be allowed to stand and this court cannot decline to interfere either on the ground of delay and laches or not availing alternative remedy of appeal under Order 43 Rule 1 CPC. We hasten to add that the suit was brought under Section 6 of the Specific Relief Act and the decree passed under the said Act is also not appealable and consequently no appeal would lie under Order 43 Rule 1. In our opinion, Mr. Verma is also right in his submission that a suit under Section 6 of the Specific Relief Act is not maintainable against the State Government. Sub-section (2)(b) of Section 6 clearly stipulates that no suit under this Section shall be brought against the Government. It is pertinent to note that though Union of India, Delhi Administration and DDA were impleaded in the suit no relief was claimed against them and the relief was claimed only against the private respondents, who conveniently remained *ex parte*. Moreover, it is clear from a bare perusal of Section 6 that if any person is dispossessed from the immovable property otherwise than in due process of law, he can file a suit within a period of six months from the date of dispossession. In the present case, the possession was taken by the State following due process of law long prior to the filing of the suit. The Division Bench has already recorded a finding that the possession of the land was taken on 1.10.1982 and the land stood vested in the State Government. Therefore, a suit under Section 6 was clearly not maintainable and the decree passed by the trial court is a nullity.

34. In the present case the plaintiff Association filed a series of writ petitions in this court challenging the acquisition and all those writ petitions were dismissed. In spite of dismissal of the writ petitions the Association has kept on filing the suits under section 6 against private parties and obstructing the course of justice after this Court dismissed the CWP No.1507/1984. In our opinion, this *prima facie* amounts to a criminal contempt as laid down in *Advocate General, State of Bihar v. Madhya Pradesh Khair Industries and Anr.* (1980 3 SCC 311), *Bloom Dekor Limited v. Subhash Himatlal Desai and Ors* (1994) 6 SCC 322 and *Delhi Development Authority v. Skipper Construction* (1995) 3 SCC 567. This is not a case of a stray act but deliberate repetitive acts of filing series of suits with a view to grab the land which has been vested in the State Government more than 25 years back. The conduct of the plaintiff Association tends to bring the authority and administration of justice into disrepute and even disregard. It also tends to seriously affect the rights of the parties in the litigation, which is seen from the fact that the plaintiff Association managed to get possession of DDA land by resorting to dubious methods.

35. In the light of the foregoing discussion, we pass the following orders: (i) CM(M) No. 1558/2007 is allowed and the impugned decree dated 6th January, 1999 and the order dated 23rd July, 2005 dismissing the application under Order IX Rule 13 CPC are quashed and set aside. Suit No.222/1998 is dismissed and the execution proceedings in Execution No. 74/99 (now Execution No. 18/04) are also dismissed. Mr. Mohan Singh shall pay the cost of CM(M) to the DDA, quantified at Rs.10 lacs. The costs shall be payable within a period of eight weeks from today failing which the DDA is at liberty to recover the same in accordance with law. (ii) Registry is directed to ascertain the status of the various proceedings mentioned in paragraph 19 of the judgment and all these proceedings which are pending as of date before the courts subordinate to this court shall

stand withdrawn to this court and be placed before this Bench on 15th December, 2008 for passing further orders. In the meantime, Ashok Nagar Welfare Association, Mahakaleshwar Welfare Society and Mr.Mohan Singh, who is claiming to be the President of these societies, are restrained from filing / instituting or initiating any proceedings, whether civil or criminal, in respect of 141 Bighas and 15 Biswas of land and any other land which forms the subject matter of Award No. 39/82-83 dated 30th September, 1982. (iii) Criminal case filed by Mr.Mohan Singh being Criminal Case No.1346/2008 shall also be withdrawn to this Court and be placed before this Court on 15th December, 2008. (iv) Let the Registry issue a notice to Mr. Mohan Singh s/o Mr. M.L. Singh, without process fee, to show cause as to why he should not be punished for contempt of court for the following acts: (a) procuring a decree in Suit No.222/1998 (Suit No.1066/1990) by suppressing the fact that the writ petition of the plaintiff Association was dismissed and status quo was vacated, and (b) repeatedly filing suits and proceedings in respect of Khasra No.391/263, 392/264, 393/264 and 402/268 in spite of the fact that possession of the said land was taken pursuant to the award No.39/82-83 and the land stood vested in the State Government and the petitions filed by the plaintiff Association were dismissed by the High Court and orders of the High Court were confirmed by the Supreme Court. (v) DMRC is free to proceed with the construction of the Metro Station in the land allotted by the DDA in terms of the orders dated 20th December, 2007 and 4th January, 2008 and the DMRC will be free to deal with the said land in terms of the letter of allotment and the restriction regarding the user of the land placed by the orders dated 4th January, 2008 stands withdrawn. (vi) In view of the above directions, no further orders are necessary in Writ Petition (C) No. 3326/2006 and the same stands disposed of. (vii) Writ Petition (C) No. 311/2008 is hereby dismissed. Mr.Mohan Singh shall pay the cost of Rs.2.5 lacs each to DDA and DMRC. The cost shall be payable within a period of eight weeks from today failing which the DDA and DMRC will be entitled to recover the same from Mr.Mohan Singh in accordance with law. The documents contained in the sealed cover be placed before this court on the next date.

Sd./-
CHIEF JUSTICE

Sd./-
S.MURALIDHAR, J