

CASE NO.:
Special Leave Petition (civil) 21000 of 1993

PETITIONER:
Delhi Development Authority

RESPONDENT:
Skipper Construction and Anr.

DATE OF JUDGMENT: 07/04/2005

BENCH:
RUMA PAL, ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
[With IA Nos. 67, 95, 98, 99, 100, 104, 106, 107, 108, 110 and 111 in
SLP (C) No. 21000/1993
With SLP (C) ..CC Nos. 10419-10420/2003
With SLP (C) ..CC Nos. 203-204/2004

ARIJIT PASAYAT, J.

There are some cases which at times strengthen the idea that existing laws may be inadequate to grant relief to persons whom, the court feels genuinely to be entitled to relief. Courts, more particularly, this Court will not abjure its duty to prevent violent miscarriage of justice by passing such orders as are necessary to uphold the rule of law and lift the veil of purported legality over such perfidious acts. In such cases the Court should not allow itself to be deflected by red herrings drawn across the track. It has to pass such orders as the circumstances warrant, of course within the four corners of law to secure the interest of justice and to appease its judicial conscience. The facts of the present case have some such unique features. In *Miller v. Minister of Pensions* (1947 (2) All E.R. 373), it was observed that the law would fail to protect community if it admitted fanciful possibilities to deflect the course of justice. Technicalities should not stand in the way of Courts doing substantive justice. Ultimately, it has to be remembered that justice has no favourite other than truth. Fraud vitiates all transactions known to the law, however, high degree of solemnity may be attached to the transactions. In the present case, this Court took note of the massive fraud perpetuated by several persons including corporate bodies. The kingpin in the whole episode is Tejwant Singh purportedly with the aid and assistance of his wife Surinder Kaur and sons Prabhjot Singh Sabharwal and Prabhjit Singh. This Court by exercise of the jurisdiction available under Articles 129, 136 and 142 of the Constitution of India, 1950 (in short the 'Constitution') passed various orders relating to the properties acquired by Tejwant Singh and his family members and with regard to Skipper Construction Pvt. Ltd. (in short 'Skipper Construction').

By order dated 22.11.2004 following issues were demarcated for consideration:

1. Property situated at 22, Barakhamba Road and the Report of the Justice Bahari Committee on diversion of funds.
2. Property relating to Techonology Parks Limited at Vaishali, Ghaziabad.

3. Property relating to Technology Parks Limited at Greater Noida.

4. Report of the Central Vigilance Committee pursuant to the order passed by this Hon'ble Court dated 13.11.2002.

We are presently concerned with the report of Justice Bahri Committee. The first one is relating to property situated at 22, Barakhamba Road and the alleged diversion of funds, and the other relating to the report relating to Technology Parks Limited. (in short 'TPL') at Vaishali, Ghaziabad and Greater Noida. Justice Bahri Commission was appointed pursuant to the order passed by this Court on 4th May, 2000. The Commission was directed to look into diversion of funds of Skipper Tower (Pvt.) Limited (in short the 'Skipper Tower'). The project known as 22, Barakhamba Road was initially launched by Skipper Sales Pvt. Ltd. (in short 'Skipper Sale') under collaboration agreement with the owners of the property. The Commission has come to hold that foundation of the project was laid some times in 1983 and the super structure for three basements and the ground floor upto 10th floor were almost completed by 1987 and the 11th and 12th floors have been constructed during the year 1990-1991. Objection to the report dated 29.10.2001 of Justice Bahri has been filed by Tejwant Singh.

We shall deal in detail with the findings of the Commission and the objections filed. Pursuant to the directions given by the Commission, informations were submitted by Tejwant Singh and others which the Commission felt to be distorted. They were in the shape of copies of the ledgers and a report of the Chartered Accountant. Commission, however, obtained copies of the Balance Sheets and Director's reports of various companies of the Skipper Group from the Registrar of Companies. During hearing, Tejwant Singh, Prabhjeet Singh and their employees were heard by the Commission. Representative of the Flat Owners' Association (in short the 'Association') was also heard. The Commission noted that Skipper Sales Pvt. Ltd. and Skipper Tower Pvt. Ltd. were two companies which dealt with the building projects. The former was incorporated on 23.6.1997 and the equity share holding was owned by Tejwant Singh and his wife on one side and Sh. Harpreet Singh and Harveer Singh-both sons of Inderjeet Singh, on the other. With reference to the Director's report for the period from 23rd June, 1977 to 30th July, 1978, the Commission found that Rs.27,57,000/- were paid to the real owners of 22, Barakhamba Road property while entering into collaboration agreements with them and the project was launched thereafter. Soon after the agreement Rs.86,74,455/- were collected from the prospective buyers for the commercial space. The Commission noted from the subsequent Balance Sheets and other financial statements and Director's Reports that another project at 5, Bhagwan Dass Road was taken up. There was also another project i.e. at 89, Nehru Place. With reference to the Balance Sheets and the financial statements of Skipper Sales, it was noted that the said company was giving loans to its sister concerns and companies and as per the Balance Sheet relating to the financial year 1985-86, Rs.17,04,08,637/- had been collected as booking amounts, and the amount pertains to both 22, Barakhamba Road and 89, Nehru Place Project. The Balance Sheet referred to above, indicated that Rs.16,00,00,334/- had been given to sister companies and the cost of construction in respect of both the projects was Rs.6,32,18,900/-. The two groups wanted to separate and an agreement was entered into on 3rd November, 1986 by which Tejwant Singh Group transferred shares in Skipper Sales to the other group and on the basis of said agreement the project at 22, Barakhamba Road was transferred to Skipper Tower. After this transfer had been effected, the Balance Sheet of Skipper Sales relating to financial year 1986-87 showed that the booking amount relating to 89, Nehru Place was Rs.11,83,19,511/-. Skipper Towers was incorporated on

18th November, 1976. Two sons of Tejwant Singh i.e. Prabhjot Singh and Prabhjeet Singh were Directors of this Company for some period and Tejwant Singh was its Managing Director. According to the records of Registrar of Companies, Balance Sheet and other financial statements till 30th July, 1987 were available but no other statement as required under the Companies Act, 1956 (in short the 'Company Act') has been filed thereafter. After looking into the documents made available and the informations collected by it, the Commission was of the view that Rs.12,85,06,335/- had been collected from various persons for booking space.

So far as the total expenditure incurred is concerned, the Commission took note of the report given by Tilak Raj Talukia, Architect who was engaged by the Flat Owners' Association. Skipper Sales by its communication dated 23rd July, 2001 admitted that the excavation work in the foundation was started in 1983 and claimed that Rs.10,64,51,055/- was spent during the period from 1983 to 1992. The Commission took note of the various calculations made by Tilak Raj Talukia. But it thought proper for the purpose of better verification to engage Shri Ratnakar Nama, Architect and Government Valuer to give another report. Shri Nama certified the cost of construction of the basement and the construction upto 10th floor to be Rs.3,18,52,128/-. He also indicated that the cost of construction of the 11th and 12th floors was Rs.36,89,312/-. With reference to the Balance Sheet for the period ending relatable to accounting period 1987-88, the Commission found that the total cost of the work in fact was Rs.3,74,21,011/-. This was taken to be the cost incurred on the construction from the basement to the 10th floor. So far as the 11th and 12th floors are concerned taking note of the report submitted by Tilak Raj Talukia and Ratnakar Nama after making adjustments for the expenditure in respect of two lifts, overhead tanks etc. amounting to Rs.85,26,578/-. Further Rs.19,66,062.40 for the marble cladding and the black glasses. The cost of construction up to 12th floor was accordingly worked out as Rs.5,97,02,963/-. The details indicated are as follows:

Cost of construction for basement & Ground floor to 10th floor	Rs. 3,74,21,011/-
Cost of construction for 11th & 12th floor	Rs. 36,89,312/-
Cost of extra items as mentioned Above	Rs. 85,26,578/-
Cost of Black Glasses	Rs. 19,66,062/-
Amount paid to L&DO	Rs. 10,00,000/-
Amount paid to the Owners	Rs. 71,00,000/-
Total	Rs. 5,97,02,963/-

Rupees 50,74,751/- were added as 2% Brokerage, 1.5% Architect Fee and 5% Administrative Charges to the above figures thus making total Rs.6,47,77,714/-. It was, therefore, held that a balance of Rs.6,37,28,621/- was left. The Commission was of the view that the above amount was obviously used by giving loans to sister concerns. These companies utilized the said amount for their respective projects.

The Chartered Accountants' report was treated to be unreliable on the ground that a sum of Rs.1,46,00,000/- received from Jain Shudh Vanaspati Co. was not included. The Commission noted that it was confronted with what was a real mess. The record of the builder was in a state of anarchy and confusion, and was not reliable. It was observed that Skippers "Shamelessly plundered the purchasers and harnessed everything to personal and private advantage."

The objectors had objected to the inclusion of Rs.7,27,504.27 collected as additional charges. But no reason could be indicated to support the plea regarding non-inclusion.

In its objection to the Report of the Commission, the primary stand was that the cost of construction has been taken at a lower figure and the receipts were shown at higher figure. The records, according to the objector, show that the construction was not completed in either 1986 or 1987 and the completion was in 1991. Further with reference to the CPWD rates it was submitted that the cost of construction is much higher. According to him the following cost will accrue if the construction is completed in a particular period:-

1983-87	Rs. 7,84,86,534.66
1983-88	Rs. 8,06,14,312.23
1983-89	Rs. 8,31,91,700.75
1983-90	Rs. 8,63,11,308.80
1983-91	Rs. 8,99,21,641.70
1983-92	Rs.10,64,51,055.64

It was also pointed out that the Commission proceeded on erroneous premises by ignoring the details submitted and the statements duly verified by the Chartered Accountant. Reference was also made to MCD Departmental instruments regarding Valuer Reports and Plinth Area Rates from 1950 to June 1997 where reference was made to a decision of this Court in Dr. Balbir Singh v. MCD (1985 (1) SCC 167). In that case certain guidelines were laid down for determination of the rateable value of the properties subject to Rent Control Legislation.

We have considered the Report of the Commission and the Objections. It appears that objections, so far as the cost as raised are based on hypothetical figures. On perusal of the Commission's Report we find that it not only made an effort to co-ordinate the various figures submitted by the company, but also engaged the services of qualified valuers who, on the basis of available data, worked out the figures.

It would be relevant only to point out so far as the Chartered Accountants' certificates are concerned that they were un-audited statements and appear to have been compiled from whatever details were furnished by the Company. It is fairly accepted by the learned counsel for Tejwant Singh that complete documents were not produced before the Commission. The plea taken for non production was that they were seized by the Central Bureau of Investigation/Police officials.

There is substance in the commissions' findings that the accounts were cooked up. Copies of certain ledger accounts were produced before the Commission. It noticed that white fluid was used to obliterate the entries. A rather vague and fanciful explanation was given that since the amounts did not relate to the project in question the entries were obliterated. Interestingly, no explanation was offered as to which project the entries related and/or the nature of the entries.

We are of the considered view that the more detailed working out, as done by the Commission, has to be preferred over hypothetical figures given in the objection on the basis of incomplete and/or

manipulated data. Therefore, the Report submitted by Justice Bahri Commission is accepted.

In respect of Technology Parks Ltd. (in short 'TPL') there are two projects. One relates to village Tushiana Block Bisarakh Tehsil Dadri Ghaziabad \026 Greater Noida and other relates to plot nos. 23 and 26 Vaishali Parks Apartment \026 Vaishali Ghaziabad. The Commission in its reports dated 5.9.2001 and 3.12.2001 has submitted its report in respect of two projects and transactions of TPL. As noted above, at present, consideration is to the report so far as it relates to plot nos. 23 and 26 Vaishali Parks Apartment \026 Vaishali Ghaziabad. Referring to the communication from Ghaziabad Development Authority (in short 'GDA') it has noted that plot nos. 23 and 26 Vaishali Parks Apartment \026 Vaishali Ghaziabad were allotted to M/s Kanchan Properties, Kanpur for a sum of Rs.1.20 crores; 50% of the price had been deposited by the allottee and the possession was handed over to the allottee and the plan for constructing a multi storeyed building was also sanctioned. Balance 50% of the price was yet to be paid and the same had not been paid upto 31st December, 1995. The amount payable inclusive of interest etc. is Rs.1,04,74,452/-. Though time was extended, the deposit had not been made and the allotment was cancelled and the order of cancellation was communicated to the allottee on 4.4.1996. Proceedings were initiated under the applicable Public Premises Eviction Act for obtaining possession. The area allotted was 4840 sq. yds. in terms of Memorandum of Understanding (in short 'MOU') between M/s Kanchan Properties and M/s Aldeco Housing and Industries on one side and TPL on the other side. The rights of the said plot were transferred to TPL for a consideration of Rs.87.75 lakhs. In the agreement it was noted that the original allottee had paid Rs.70 lakhs towards principal amount and Rs.2.25 lakhs towards interest to GDA and balance amount with other demands of the authority were to be paid by TPL. The Commission noted that 15 floors + basement and ground floor were sanctioned for this plot. On verification it was found that bare structure upto 9 floors including basement were constructed. Upto signing of MOU, no booking had been done for sale of flats in the project. The MOU was executed between TPL, Aman Associates, Madhu Kamboj on one side and M/s Shikha Developers Ltd. (in short 'Shikha') on the other side on 18th January, 1999. In terms of this MOU plot Nos. 23 and 26 Vaishali Parks Apartment \026 Vaishali Ghaziabad had been transferred to Shikha for a consideration of Rs.50 lacs. In lieu of consideration, TPL had purchased a flat measuring 2500 sq. ft. at 1E/2 Jhandewalan Extn., New Delhi in the name of Miss Madhu Kamboj. The said Jhandewalan flat belongs to M/s Aman Associates and that is why a tripartite agreement had been entered into. It was noted by the Commission that the sanctioned area of the project is 109000+13250 sq. ft. and the covered area is 177250 sq. ft. It was claimed that Rs.2,30,52,833/- was spent for raising the structure. So far as plot no.26 Vaishali Group Housing Scheme of 4840 sq. yds. is concerned, the same was allotted to M/s Charanjit Kochar, a partnership firm (in short "Kochar") on leasehold basis by GDA. The Commission has noted that the address of M/s Charanjit Kochar is N-268 Greater Kailash-II, New Delhi and the price was Rs.1.20 crores and 50% of the price had been deposited and possession was delivered. Building plans were also sanctioned. On failure of the allottee to pay the balance price along with interest, the allotment had been cancelled. Basement, ground floor and 8 more floors were sanctioned and the structure constructed was upto 8 floors. It was claimed that the sanctioned covered area was 1,70,357 sq. ft. But in reality it was 1.06,000 Sq. ft. + 13250 Sq. ft. for the basement. The total cost of construction was claimed to be Rs.2,17,00,000/-. M/s Charanjit Kochar had made the bookings and

collected Rs.1,43,29,344/- from the purchasers of the plots. The rights in the project were transferred to TPL for a consideration of Rs.30,00,000/-. According to the terms of MOU, the persons who had made the bookings were still to pay Rs.18,43,371.50. This plot was also transferred to Shikha vide MOU dated 18th January, 1999.

The Commission issued public notices inviting claims from the members of public who had booked spaces in both the projects of plot 23 and 26 Vaishali Parks Apartment. Individual notices were also sent to the persons whose addresses were available.

In response, 619 claimants claimed to have made bookings. The amount of total claims which has been accepted comes to Rs.5,62,76,875/- while the amount of rejected claims comes to Rs.18,58,473/-. The total area booked by the claimants whose claims have been accepted comes to 353615 sq. ft. Out of the total claims 360 claimants sought for refund of their deposited amounts while 230 claimants continued to stake their claim for allotment of plots booked. 11 claims were rejected. It was noted that 18 claims were registered twice. The claimants who claimed allotment have booked total area of 118947 sq. ft.

During the course of hearing, Mr. Sanjay Parikh, learned counsel appearing for the claimants submitted that those persons who had claimed allotment were not insisting on it and, in fact, would also like to get refund of the deposited amount with reasonable interest.

Learned counsel appearing for TPL submitted that after it had transferred the interest to Shikha, it had no subsisting interest.

One question which arises for consideration is that the construction of 128 flats had been sanctioned. If the allotments are to be made to all those who claim allotment there will be some controversy as to who of the 230 claimants who are interested in allotment will get from 128 sanctioned flats. In that context, Mr. Parekh had submitted that there was no rigidity on the allotment aspect and as noted above, depositors will be happy to have the amount refunded with reasonable interest. It appears that the amount claimed by GDA was deposited by Shikha and it was treated to be a fresh sanction. It is to be noted that Kochar never appeared before this Court during earlier proceedings. There was no negotiation with Kochar by the GDA and on the contrary negotiation was with Shikha. Claim of Kochar that the deposit was made by Shikha on its behalf does not warrant acceptance. Though it was submitted by TPL that area as available will be sufficient to take care of the claimants, there can be no definite direction to all claimants because original sanction related to 128 flats. After having entered into arrangement with Shikha TPL has no further role to play. Therefore, both TPL and Kochar go out of picture.

Learned counsel appearing for Shikha submitted that if three months' time is granted, it shall be able to pay all the 590 claimants (360 depositors who have claimed refund and 230 who were interested in getting plots but have alternatively prayed for refund). It is submitted that if construction is permitted, Shikha will refund the amount with interest. We accept the prayer subject to following conditions:

- (1) An undertaking shall be filed before this Court within two weeks from today clearly stating the undertaking of Shikha to pay back all the 590 allottees the amount they had deposited and accepted by the Commission along with 8% interest from the date of deposit till the date of payment.
- (2) Construction on the area in question shall be permitted on the basis of sanctioned plan. But no sale of the properties is

permitted until payment is fully made by the Shikha.

(3) A bank guarantee covering the entire amount payable alongwith interest shall be furnished and filed with the Registrar General of this Court. After all the claims are settled, the Registrar General on verification of the documents to be filed regarding full payment of all the claimants shall discharge the Bank guarantee with due intimation to the bank(s) giving the guarantee.

We feel it would be appropriate to appoint a senior judicial officer to scrutinize the claims of all the claimants other than those who are to be paid by Shikha and to direct disbursement of the amounts out of the surplus available from the sale of 3 Aurangzeb Road property. We are informed that several legally enforceable judgments/decrees/orders have been passed to which effect has to be given. The officer to be appointed shall also examine the enforceability of the judgments/decrees/orders in question, and pass appropriate orders regarding payment, if any, to be made. The properties identified by the Commission to have been acquired of, application of funds received from the depositors may be attached and such other assets and properties which in his prima facie opinion appear to have been acquired out of such amount may also be attached by the officer. Such assets and properties may be put up to sale by him. If any objection is raised within two months of the date of attachment, the officer shall consider the same and with his views and findings place the matter before this Court for further orders.

We request the Hon'ble Chief Justice of the Delhi High Court to nominate a suitable judicial officer for the purpose. The officer should not be below the rank of Additional District and Sessions Judge.

Considering the pains taken by Mr. Dayanand Krishnan, learned amicus to assist the Court in dealing with the complex matters, it would be unfair not to direct payment of honorarium to him. Presently, let a sum of Rs.50,000/- be paid to him by the Registry out of the surplus available from the sale of 3, Aurangzeb Road property.

Call the matter after four months for further orders and directions.