

IN THE HIGH COURT OF DELHI

CM(M) No.1384/2005

Delhi Development Authority Petitioner

VERSUS

\$ Surender Dogra Respondent

CM(M) No.1412/2005

Delhi Development Authority Petitioner

VERSUS

\$ Navjot Singh & Anr. Respondents

CM(M) No.2362/2005

Delhi Development Authority Petitioner

VERSUS

\$ Ved Prakash Respondent

! Present : Mr.Ajay Verma, Adv. for DDA.
Mr. Sakal Bhushan and
Mr. P.S.Singh, Advs.
for respondent in
CM(M) Nos.1384/2005 & 1412/2005.

% DATE OF DECISION: 25.02.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.(Oral)**
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1. The above captioned 3 petitions raise similar questions of law and fact and hence are being decided by a common order.

2. CM(M) No.1384/2005 and CM(M) No.1412/2005 lay challenge to identically worded orders, both dated 22.12.2004, passed in two suits filed by the respondents.

3. CM(M) No.2362/2005 lays a challenge to a similar order but dated 4.5.2005.

4. It is not in dispute that DDA was a defendant in all the 3 suits and was proceeded against ex-parte on 30.7.1998 in suits which are the subject matter of CM(M) No.1384/2005 and CM(M) No.1412/2005. In the suit which is forming subject matter of CM(M) No.2362/2005, DDA was proceeded against ex-parte on 10.1.1996.

5. In all the 3 suits, applications under Order 9 Rule 7 CPC were filed. Averments in the applications are identical save and except reference to the date when DDA was proceeded against ex-parte.

6. All applications were accompanied by applications under Section 5 of the Limitation Act praying that delay in seeking recall of the order directing that DDA would be

proceeded against ex-parte be recalled. The applicants have suffered a dismissal.

7. It was stated in the applications that a large number of suits pertaining to village Kishan Garh were filed and were assigned to different counsel. It was stated that the instant suit also related to village Kishan Garh. It was stated that land in village Kishan Garh which was gaon sabha land, on urbanization of the village, stood vested in the Central Government and was placed at disposal of DDA for purposes of Planned Development of Delhi. It was stated that noting that development schemes were hampered due to court injunctions meeting was held on 18.12.2002 and 19.12.2002 where decision was taken that all matters should be entrusted to one counsel. It was stated that thereafter files were requisitioned from the counsel to whom suits were assigned and thereupon inspections were carried out on 5.3.2003. It dawned on DDA that in the instant 3 suits DDA had been proceeded against ex-parte.

8. In a nut shell, sufficiency of cause entitling DDA to have the delay condoned was negligence by the counsel to whom suits were assigned in not informing DDA of the orders passed in the suit. Sufficiency of cause for non appearance when DDA was directed to be proceeded against ex-parte was

explained with reference to negligence by the counsel.

9. The applications have suffered a dismissal vide impugned orders dated 22.12.2004 and 4.5.2005. The learned Trial Judge has noted that it has become a tendency to shift burden on the shoulders of the earlier counsel. Conduct of the DDA has been commented upon adversely with reference to lack of duty by officers of DDA in not maintaining contact with the counsel and ascertaining the stage of the suit.

10. As conventionally applied, pertaining to sufficiency of a cause, approach of the learned Trial Judge appears to be prima facie justified. But, a deeper look reveals a hidden infirmity in the approach of the learned Trial Judge.

11. Where the litigating party is a State or its instrumentality, nature of the dispute and resultant impact of non suiting the State or its instrumentality has additionally to be kept in mind.

12. Public interest has also to be kept in mind.

13. If large track of a land is placed at the disposal of a developing agency which is in instrumentality of the State, if small chunks of land are permitted to be lost due to technicalities of law, the loss is not restricted to said lands but extends to the entire development scheme which is under a cloud. Ultimately, public suffers as it is the ultimate

beneficiary of the scheme.

14. Indeed, courts have been conscious of the fact that sufficiency of a cause has to be liberally construed and parameters thereof cannot be straight jacketed.

15. No doubt law assists those who are vigilant (*Vigilantibus non Dormientibus Jura Subveniunt*) and not those who sleep over their rights but at the same time it cannot be forgotten that *to err is human* is a practical notion of human behaviour.

16. It does happen, where large volume of litigation has to be defended by a party, that miscommunication or lack of communications result in a few cases left unattended.

17. In the instant case the larger public interest compels this court to condone the default of non appearance when orders were passed in the 3 suits on 30.7.1998 and 10.1.1996 proceeding ex-parte against DDA.

18. However, adequate costs have to be ensured to be paid to the plaintiff of the suits for the inconvenience caused on account of the fact that applications under Order 9 Rule 7 were filed after nearly 5 years of the default.

19. I thus dispose of the petitions quashing the impugned order dated 22.12.2004 which is subject matter of challenge in CM(M) No.1384/2005 & CM(M) No.1412/2005.

But, the same would be subject to payment of costs in sum of Rs.15,000/- each to the plaintiffs of the two suits.

20. On cost being paid within 8 weeks from today, tender being by means of cheque in name of the respective plaintiffs and posted to the plaintiffs at the address notified in the memo of parties in the instant petitions, impugned orders in said two petitions would be treated as having been set aside. Applications filed by DDA under Order 9 Rule 7 seeking recall of the order dated 22.12.2004 passed in the respective suits would be allowed. DDA would be permitted to join proceedings at the stage they were when order(s) dated 30.7.1998 was passed in the two suits.

21. As regards CM(M) No.2362/2005, same stands disposed of directing that directions issued in para 19 and 20 above would apply to the suit filed by Ved Prakash. In that, on necessary costs being paid to Ved Prakash impugned order dated 4.5.2005 which is subject matter of said petition would be set aside. DDA's application under Order 9 Rule 7 CPC would be allowed. Order dated 10.1.1996 directing DDA to be proceeded against ex-parte would be treated as having been set aside. DDA would be permitted to join proceedings at the stage suit was as of 10.1.1996.

22. Copy of this order be supplied dasti to counsel for DDA on payment of usual charges.

February 25, 2008
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(PRADEEP NANDRAJOG)
JUDGE