

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA NO.345/2006

Date of Decision: 25th August 2008

D.D.A. Appellant
Through Ms. Anusuya Salwan with
Ms. Monica Sharma, Advs.
versus

NAND ROOP SEHRAWAT Respondent
Through Mr. V. P. Singh, Sr. Adv. with
Mr. Mukul Dhawan, Adv.

AND

LPA NO.346/2006

D.D.A. Appellant
Through: Ms. Anusuya Salwan with
Ms. Monica Sharma, Advs.

Versus

DWARKA NATH UPPAL THR. LRs Respondent
Through: Mr. V.P. Singh, Sr. Adv. with
Mr. Mukul Dhawan, Adv.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

MUKUL MUDGAL,J.

% JUDGMENT(Oral)
25.08.2008

LPA 345/2006 & CM 2456/2006 (stay) and LPA 346/2006 & CM 2459/2006

(stay)

1. Admit. With the consent of the learned counsel for parties, these appeals are taken up for final hearing.
2. Since the facts of these two appeals being LPA No.345/2006 and LPA No.346/2006 are almost identical both the appeal are being disposed of by a common judgment.
3. These appeals challenge the impugned judgment dated 22nd September,

2005 delivered by the learned Single Judge in which by a common order the writ petitions of the respondents/original writ petitioners were allowed with the following directions:

“26. Writ Petitions accordingly stand disposed of quashing the demand raised vide letter dated 7.8.1990. Mandamus is issued to DDA to determine the premium payable on the basis that premium for 266.24 sq. yards of land would be Rs.1.8 lacs. Petitioners would be liable to pay interest on the premium demanded effective from 9.12.1980 till 7.8.1990 @ 6% per annum. DDA is directed to raise the demand as aforesaid within four weeks from today.

27. Vide order dated 22.11.2004, petitioner were directed to deposit Rs.1 lac with DDA, without prejudice to the rights and contentions of the respective parties. Since it is stated at bar that petitioners have paid the said sum, DDA would give adjustment of Rs.1 lac to the petitioners while raising the revised demand as afore-directed.

28. Petitioners are granted 4 weeks time to clear the demand after receipt of the demand from DDA. Thereafter, as per procedure of DDA and on petitioners complying with the procedural formalities, perpetual lease deeds would be executed by DDA in favour of the petitioners.”

4. The facts of the appeals briefly stated are as follows:

a) M/s Uppal Coal Company respondent in LPA No.346/2006, M/s Serawat Coal Company, respondent in LPA No.345/2006 and M/s Sethi Coal Company were operating from the land belonging to DDA. The coal depots were adjacent to each other. The owners of the coal depots were occupants of the DDA land. On 1st November 1980, all the three coal depots were removed.

b) The respondent Mr. Nand Roop Sehrawat of M/s Serawat Coal Company, the respondent Mr. D.N. Uppal, owner of M/s Uppal Coal Company and the owner of M/s Sethi Coal Company made representations to the DDA. They prayed for allotment of an alternative site.

c) On 9th December, 1980, DDA allotted 216 sq. yards of land to M/s Sehrawat Coal Company. Letter of allotment dated 9th December 1980 reads as under:

“To

Sh. Dwarka Nath Uppal, (2) Sh. Nand Roop Sehrawat	
Prop. M/s Uppal Coal Co.	Prop. Sehrawat Coal Co.
Naraina Vihar	Narayana Vihar
<u>New Delhi.</u>	<u>New Delhi.</u>

Sub: Allotment of Coal Depot Site No.G-1, Naraina Residential Scheme, Block-B, Community Centre.

Sir(s),

With reference to your letter dated 28.11.1980 addressed to Vice Chairman, DDA for allotment of alternative Coal Depot Site on the above locality, I am directed to inform you that it has been decided to allot a Coal Depot Site in the aforesaid locality in lieu of your demolished premises. The terms & conditions of allotment and the price of the area will be communicated to you shortly.

Yours faithfully

sd/-

(R.S. Chaudhary)

Dy. Director(CE)”

d) M/s Sethi Coal Company was also allotted a site. The respondents made a representation to the DDA that the site allotted to them which admeasures 216 sq. yards be divided half and half. By a letter dated 16th January 1981, DDA divided the plot jointly allotted to both the respondents. In other words, both the respondents got 108 sq. yards of land.

e) Since December, 1980, the respondents have been in possession of the site allotted. The respondents wrote letters to the DDA on various dates requesting that the land cost be finalized and premium charged from them. Similar request

was made by M/s Sethi Coal Company.

f) DDA fixed the land price to be charged from M/s Sethi Coal Company.

The respondents on 8th April 1985 addressed a joint communication to the DDA, requiring the DDA to intimate to them the land price fixed for their land so that they could pay the same. On 14th June 1985, 21st June 1985, 21st February 1986 and 5th August 1986 the respondents sent reminders calling upon the DDA to fix the land cost so that they could pay the same.

g) For unexplainable reasons, on 3rd August 1988 the DDA informed the respondents that it would be resuming possession of the site, stating that their licences stand cancelled.

h) By the letter dated 30th September, 1988, the respondents represented to the DDA, pointing out that they were not licencees and they were given possession of the plot as perpetual lessees. The DDA had not intimated the land cost and hence they could not pay the same. They requested DDA to withdraw the letter of cancellation and intimate the respondents of the premium to be paid.

i) On 6th April 1989, DDA informed the respondents that the plot was

restored subject to payment of restoration and other charges. On 7th August 1990, DDA raised a demand on the respondents fixing the premium of their respective plots at Rs.2,95,535/-. In addition to the premium, licence fee effective from 16th January 1981 to 9th March 1989, interest @ 16% per annum on the licence fee from 16th January 1981 to 20th August 1981 and @ 18% per annum thereafter was raised. Interest on the premium @ 18% per annum was demanded, besides the above amount charges for restoration were also demanded.

j) The respondents were thereupon constrained to file the two writ petitions praying that the demand raised vide letter dated 7th August 1990 be quashed.

5. The learned Single Judge by his common judgment dated 22nd September, 2005 held as follows:

“21. Admitted position is that the petitioners and M/s Sethi Coal Company were identically situated. The 3 coal companies were removed in November, 1980 and in December, 1980 alternative site was allotted to the 3 coal companies. Merely because DDA finalized the premium for M/s Sethi Coal Company in the year 1984 and failed to finalize the same qua the petitioners does not mean that DDA

would be entitled to charge land cost as of the year when it finalized the premium.

22. It is settled law that DDA as to charge premium as on the date of allotment of the land. (See 1994 (Supply) 3 SCC 494 DDA v. Pushpinder Kumar).

23. It is trite till a demand is crystalised, no interest is payable for late payment. Indeed, to be labeled as the payment, it must first become due and payable.

24. Admittedly, DDA did not raise any demand prior to 7.8.1990.

25. In view of the allotment letter dated 9.12.1980, question of the petitioner being licencees does not arise. As a consequence, question of the petitioner paying any licence fee, must less interest on outstanding licence fee does not arise.

26. Writ Petitions accordingly stand disposed of quashing the demand raised vide letter dated 7.8.1990. Mandamus is issued to DDA to determine the premium payable on the basis that premium for 266.24 sq. yards of land would be Rs.1.8 lacs. Petitioners would be liable to pay interest on the premium demanded effective from 9.12.1980 till 7.8.1990 @ 6% per annum. DDA is directed to raise the demand as aforesaid within four weeks from today.”

6. The main plea put forward by Ms. Anusuya Salwan, the learned counsel

for the appellant/DDA is that the basis for allocation to M/s Sethi Coal Company could not be applied to the respondent, as in the year 1989 the respondent's allocation was cancelled for unauthorized user and restored later in 1989. She further submitted that consequently, the learned Single Judge has erred in equating the respondent with M/s Sethi Coal Company as M/s Sethi Coal Company was communicated about the premium charges to be paid by it in 1984 and the respondent herein had sought the making of the payment only in 1990.

7. Mr. V.P. Singh, Senior Counsel, appearing for the respondent, the original writ petitioners, has submitted that from 1984-89 in spite of several demands and communications no action has been taken qua the respondents though M/s Sethi Coal Company and the respondents were situated similarly. He has further submitted that the respondents and M/s Sethi Coal Company were dislocated from the said spot and relocated in adjoining areas.

8. We have considered the pleas of the learned counsel for the parties and in our view, the learned Single Judge in paragraph 17 of the judgment has noticed the following averments in the counter affidavit of the DDA:

“16. With respect to para 16 it is submitted that M/s Sethi Coal Company was allotted 266.24 sq. yards and was asked to pay Rs.1,16,610/- in 1984. In any case, the price to be paid by the petitioner cannot be the same as that was in 1984 and the price of the plot of the petitioner was fixed in 1990 and the petitioner is holding a corner plot and a much better location. Hence, the price payable by the petitioner cannot be the same as that of Sethi Coal Company. In fact, even the price payable by Sethi Coal Company was Rs.1,80,000/0 but due to disadvantageous location the price was reduced to Rs.1,16,610/-. The said case cannot be compared at all with the present case.”

The disadvantage owing to the location of M/s Sethi Coal Company has been quantified by reduction from Rs.1,80,000/- to Rs.1,16,610/- by the DDA. The learned Single Judge having granted land on the basis of Rs.1.8 lakh, consequently, the plea of disadvantage of location of M/s Sethi Coal Company cannot enure for the benefit of the DDA.

9. Furthermore, that the learned Single Judge was fully justified in equating the writ petitioners with M/s Sethi Coal Company. We are of the view that both the writ petitioners were dislocated from the same spot along with M/s Sethi Coal Company and relocated at another spot also at adjoining plots. Thus, the

appellant being an 'authority' under Article 12 of the Constitution of India was unjustified in differentiating between respondents and M/s Sethi Coal Company. Article 14 mandated that all entities similarly situated to M/s Sethi Coal Company were entitled to be treated in the same manner. This is what the learned Single Judge has done and no perversity or unreasonableness has been pointed out warranting interference with the impugned judgment.

10. In so far the plea of the learned counsel for the DDA that 1990 was the period which ought to have been reckoned for the premium qua the respondents cannot be sustained for the following reasons:

- i) The appellant itself admitted that the allotment made in favour of the respondents was cancelled and thereafter restored and restoration under no circumstances can be called a fresh allocation.
- ii) The respondents had also since 1984 been clamouring for the premium to be fixed so as to regularize the relocation upon displacement. Whatever may have been the reasons for cancellation of the allotment to the respondents but it cannot be lost sight of that the same was restored later on and it cannot be treated

as cancelled.

11. The Hon'ble Supreme Court in the case of **B. Venkatamuni v. C.J.**

Ayodhya Ram Singh, (2006) 13 SCC 449 held as follows:

“In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this Court in *Umabai v. Nilkanth Dhondiba Chavan* could not have been ignored by it, whereupon the learned counsel for the respondents relied:

“52. It may be, as has been held in *Asha Devi v. Dukhi Sao* that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

12. In the said decision, it was further noticed:

“50. Yet in *Manjunath Anandappa v. Tammanasa* it was held:

‘36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.’ ”

13. The Division Bench of the High Court did not address itself to the circumstances noticed by the

learned Single Judge, but proceeded on the premise that once execution is duly proved, the court may not probe deeper into the matter stating:

“If the various requirements of a valid will are established, then as observed by the Privy Council in *Motibai Hormusjee case* , “A man may act foolishly and ever heartlessly; if he acts with full comprehension of what he is doing the court will not interfere with the exercise of his volition.”

The learned Single Judge had after a reasonable assessment of the facts of the case and relevant law had come to the conclusion that the writ petitions should be disposed of by quashing the demand raised by a letter dated 7th August 1990. In light of the facts of the case and the law laid down by the Hon'ble Supreme Court we find no cogent reason for interference with the eminently reasonable findings of the learned Single Judge.

12. In this view of the matter, we find no merit in the appeal and accordingly, the appeals are dismissed and stands disposed of along with CMs 2456/2006 2459/2006. The directions as contained in the common judgment dated 22nd September, 2005 of the learned Single Judge shall be complied with not later than 23rd September, 2008 by the DDA.

CM 2454/2006 & 2457/2006 (delay)

Since we are pronouncing the judgment on merits by dismissing the appeals, we are not going into the aspect of delay. Accordingly, the application is allowed and the delay of 105 days in filing the appeal is condoned and the application stands disposed of.

MUKUL MUDGAL, J.

MANMOHAN, J.

AUGUST 25, 2008
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