

REPORTED

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

RESERVED ON : February 11, 2008
DATE OF DECISION : April 4, 2008

+ LPA 1161/2007 and CM No.11148/2007

PRAGATI EDUCATIONAL AND WELFARE
SOCIETY

..... Appellant

Through: Ms. Richa Kapoor, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Sangeeta Chandra, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: **REVA KHETRAPAL, J.**

CM No.11149/2007

For the reasons set out in the application, delay of 35 days in filing the appeal is condoned.

Application stands disposed of accordingly.

LPA 1161/2007 and CM No.11148/2007

1. The challenge in the present appeal is to the judgment and order dated 15th May, 2007 passed by the learned Single Judge dismissing W.P.(C) No.20890/2005 titled **Pragati Educational & Welfare vs. D.D.A.**
2. The facts relevant for the disposal of the present appeal are

as follows. The appellant Society was allotted a plot of land on perpetual leasehold basis measuring 800 sq. m. for construction of a Nursery School, at Pocket 5, Jasola, New Delhi by the respondent DDA vide allotment letter dated 28th September, 2001. The terms of payment of the said allotment were that the appellant was required to pay the cost of land @ 80 lakhs per acre, i.e., a total sum of Rs.39,22,753/-. Clause 22 and 23 of the allotment letter, which are relevant to the present case, read as follows:

"22. If the above terms and conditions are acceptable to you, the acceptance there of with attested undertaking be sent to the undersigned along with the bank challan in favour of DDA for Rs.39,22,753/- Rs.38,27,032/- (Land Premium) + Rs.95,676/- (G. Rent) and documentation charges Rs.45/-) within 60 days from the date of issue of the allotment cum demand letter. The said amount can also be deposited in the bank counter situated in DDA's office complex and copy of the same may be sent to this office for having deposited the demand along with acceptance letter undertaking within 60 days from the date of issue of demand cum allotment letter. Within 60 days of issue of demand cum allotment letter the allottee shall be require to make the entire payment. Thereafter, 18% interest shall be chargeable up to 6 months from the date of issue of the demand cum allotment letter.

23. In case the payment and acceptance letter with required undertaking is not received within the stipulated period as stated above, it will be presumed that you are not interested in the allotment of the land and the offer of allotment will stand withdrawn."

3. Apparently, the appellant Society made an initial deposit of Rs.2 lakhs on 13.11.2001, that is, within the due date and thereafter, by a letter dated 15.11.2001 sought confirmation from the DDA whether the site allotted would be handed over to the Society free

from all encumbrances. Some more letters written to the respondent and personal visits made by the officials of the appellant Society did not yield any result, inasmuch as the Society kept on insisting on knowing whether the property was free from encumbrances, whereas the respondent DDA refused to confirm the same and, instead, told the Society that it should first deposit the full amount as asked for and then it would be informed about whether the site was free from encumbrances/encroachments. Eventually, on 13th June, 2003, the appellant Society deposited the balance sum of Rs.37,22,753/-. Despite this, the respondent did not process the case of the appellant till as late as October, 2005, that is, even after the passage of 27 months from the deposit of the balance consideration nor informed the appellant about the status of the plot to be allotted to the appellant. Consequently, the appellant on 26th October, 2005 filed a writ petition, being W.P.(C) No.20890/2005 for issuance of a writ of mandamus directing the DDA to hand over the possession of the demised plot or alternatively to allot and hand over possession of another plot of the same size and in the same area. However, even before the DDA filed its reply to the writ petition, the Single Judge on 09.01.2006 directed the DDA to remove the encroachments from an alternative site, which was offered to the appellant on that date. The said order reads as under:

"Records produced by DDA shows that the site possession whereof has been given to the petitioner has come under encroachment (partly). This

appears to be the reason why delivery of possession to the petitioner is being delayed.

DDA is directed to remove the encroachments within three weeks from today.

Renotify for 23rd February, 2006."

4. The DDA having failed to remove the aforesaid encroachments, the learned Single Judge on 23rd February, 2006 passed the following order:

"WP(C) No.20890/2005

*

DDA to file counter affidavit within a week. Under no circumstances, encroachments would continue. Encroachments would be removed within a period of three weeks from today. If encroachments are not removed, Vice Chariman, DDA will file an affidavit disclosing the following:-

- (1) When were the encroachments noted first by DDA?*
 - (2) Who was the officer in charge of the area whose duty it was to inform as and when first encroachment came up?*
 - (3) What disciplinary action has been taken against the errant officer who permitted encroachments to come up?*
 - (4) When was the complaint lodged with the local police station informing the police that public land has been encroached upon?*
 - (5) Why was FIR not registered against the encroachers under Sections 447/448 IPC.*
- List on 14.3.2006."*

5. The DDA again defaulted in complying with the order. Not only the encroachments were not removed within the period specified by the Court, but the Vice Chairman, DDA did not file the affidavit disclosing the replies to the queries put by the learned Single Judge. Instead on 13.03.2006, a counter-affidavit was filed on behalf of the respondent DDA by the Director (Lands), Delhi Development Authority, in which an averment was made that by a

letter dated 28th December, 2001, issued to the appellant, the appellant had been requested to make the payment of the balance premium amount alongwith the interest immediately, the stipulated period of payment having already expired on 26.11.2001. Paragraphs 8, 9, 10, 11 and 12 of the said counter-affidavit are significant and the relevant portions thereof read as under:

"8. That it may be noted that till that stage there had been no verification which had been got done and not even the Department, what to speak of the petitioner, even had any idea that the site already stood allotted to another Society. The right of the Society to claim possession could have arisen only when the Society had made full payment....."

9. In fact, when any society deposits money after the stipulated time, the delay has to be regularized for restoration by the Hon'ble L.G., Delhi. Unfortunately, however, this aspect came to be over looked by the Department and instead, the file was referred/sent to the Planning Wing for sub-division and exploring of an alternative site. That was the stage when the notings (which have been referred to by this Hon'ble Court in its order dated 9.1.2006) came to be recorded that till the encroachment is removed, sub-division and subsequent handing over of the possession to the petitioner society cannot take place.

10. That it has been the consistent stand of the DDA that since 2003 no restoration of allotment of belated payment cases are being accepted. This decision was taken since after the said period, allotments of Institutional Lands to societies, were to be made by auction and not under the previous policy where allotment of institutional land was made at concessional rates, thus resulting in anomalies qua the rate of allotment....."

11. That the case of the petitioner has been examined and it has been found that in fact, the petitioner society is not entitled to be considered for the allotment of an alternative plot. Simply because the petitioner had made payment on its own in 2003

– much after the period for payment had expired, does not give any right to the petitioner. As pointed out above, the notings in the file indicating that proceedings were started to locate an alternative site for the petitioner society, did not take into consideration and overlooked the very relevant and important fact that once the offer of allotment had lapsed due to failure to make the payment within the time/extended time unless, the said allotment was restored/revived by the L.G., Delhi, the proceedings for consideration of alternative allotment are void ab-initio.

12. That there has, of course, been negligence on the part of the DDA in not refunding the amount paid by the society much after the time frame for making payment had expired and without seeking any restoration/revival from the Competent Authority. However, this can be compensated in terms of interest which would be payable by the DDA to the petitioner society."

6. It may pertinently be stated that even in the counter-affidavit filed by the DDA on 13.03.2006, the DDA did not disclose the particulars of the site/land originally allotted to the appellant, thereby leading to the inevitable conclusion that the allotment made to the appellant was only on paper. Furthermore, no explanation was given in the affidavit for retaining Rs.39,22,753/- paid by the appellant despite repeated letters written by the appellant for the allotment of the plot.

7. A further affidavit on the same day, that is, on 13.03.2006 was filed by the Commissioner (Land Disposal), Delhi Development Authority in which a prayer was made for dispensing with the requirement of the filing of the affidavit by the Vice Chairman, DDA and taking on record the affidavit filed by the Commissioner. Paragraphs 3 and 4 of the said affidavit are significant and

accordingly are being reproduced hereunder:

"3. That in order to comply with the order passed by this Hon'ble Court on 23.2.06 as regards the removal of encroachments, it is submitted that the Dy. Director (Institutional Lands) alongwith AD (Survey) and the concerned Patwari inspected the area on 24.2.06. The inspection revealed that the land in question over which the encroachments existed and were to be removed had never been transferred to the DDA by the LAC. The DDA therefore, has no jurisdiction over the said land. In fact, the land is under a Court stay order in CWP No.3111/98 entitled 'Raghubir Singh and Anr. Vs. UOI & Ors.'.

It was further revealed that the New Leases (NL) branch of the DDA had examined the land status of the proposed site which was considered for allotment as an alternative plot to the petitioner society in view of the fact that the previous site allotted to the petitioner already stood allotted earlier. At this juncture confusion was created due to misunderstanding and misinterpretation of the records and litigations. The Institutional Wing marked sites at 3 places i.e. 'X', 'Y' and 'Z' and requested the NL Wing to identify the status of the sites and their feasibility for alternative allotment. The NL Wing mentioned the site marked as 'X' as under litigation and marked that the site 'Y' and 'Z' were vacant and fell in Khasra No.267, whereas, the ground reality is that both 'Y' and 'Z' are under litigation/encroachment and fall in Khasra No.268 and not Khasra No.267 as reported by the NL Wing on 26.5.04. As on date, the dispute is going on between GNCTD and Raghubir and his brother Jagbir.

4. That since the DDA does not have jurisdiction over the site on which the encroachments exist, nor can any action be taken by the DDA in this regard for the said piece of land no answers can be given by the VC, DDA to any of the queries set out by this Hon'ble Court in its order dated 23.2.2006. Thus, it is in view of the above circumstances that the present affidavit is being filed under the signatures of the Commissioner (LD) and not under the signatures of the VC, DDA."

8. The learned Single Judge on consideration of both the

aforesaid affidavits filed by the DDA by his order dated 4th May, 2007, after observing that *prima facie* the case appeared to be a case of double allotment for which the DDA would have to be answerable in law, observed that the matter had assumed serious proportions given the fact that not only was the petitioner kept in the dark about the fact of doubt allotment, but even this Court was led by the DDA to believe on 09.01.2006 that an alternative land existed when no such land was in fact available with the DDA. It was further observed in the order that there seemed to be no justification why the Vice Chairman, DDA did not think it fit to comply with the order dated 23rd February, 2006 by filing an affidavit himself. It was directed that the affidavit of the Vice Chairman, DDA should be filed on or before 30th April, 2007.

9. Pursuant to the aforesaid order, an application was filed by the DDA for extension of time for filing the affidavit of the Vice Chairman on the ground that the relevant records could not be collected in time and ultimately on 11.05.2007 an affidavit was filed by the Vice Chairman, DDA. In the said affidavit, a complete somersault was taken by the DDA, inasmuch as, in the said affidavit, it was categorically stated that it was not a case of double allotment, and the plea was taken that since the Society had failed to make payment with interest within the prescribed period as per condition 23, it was a case of "deemed cancellation" and the allotment stood withdrawn. It was further stated as follows:

"C. The layout plan of said plot in pocket-5, Jasola

was finalized on 9.7.2002. As per layout plan an area of 1400 sq. mtrs. was earmarked for society for Autism, 660 sq. mtrs. for community room and 963 sq. mtrs. for dispensary. No plot was earmarked in the said layout plan for petitioner society.

d. The Competent Authority approved allotment of 1400 sq. mtrs. to society for Autism on 29.4.2002 and allotment letter to the said society was issued on 2.8.2002. The decision to allot the plot to society for Autism was taken much after the deemed date of cancellation of allotment of the petitioner society. Further, it may be submitted that an area measuring 660 sq. mtr. for community room and 963 sq. mtr. for dispensary are still available. The above sequence of events shows that it is not a case of double allotment."

10. As regards alternative allotment, it was submitted as follows:

*"g. It is submitted that, DDA has not misled the Court on the issue of alternative allotment. **There was an exercise in the file for allotting an alternative allotment before delivery of the judgment in Rahul Daka Education Society case by the Hon'ble High Court in March, 2006.** In this exercise an area was identified and it was found to be encroached. This is a mistaken identify of a land which did not belong to DDA. Before rectifying this mistake the Hon'ble High Court perused the records file of DDA and noted that there are encroachments on the proposed alternative site and accordingly directed the DDA to remove those encroachments. **When an exercise was made, it was noticed that the site has not been handed over to DDA.***

5. It is submitted that, an ambiguity had crept in the file regarding alternative allotment and in the process various alternative sites were explored. An enquiry is being ordered to fix responsibility as to how this mistake has taken place."

11. Not satisfied with the affidavit filed by the Vice Chairman, DDA, the Deputy Director (Institutional Lands), DDA chose to file an additional affidavit on behalf of the respondent DDA. In the said additional affidavit, an entirely new case was sought to be made

out by the respondent DDA, and it was highlighted that when the counter-affidavit was filed by the DDA on 13.03.2006, there was an erroneous assumption that the case of the appellant Society was of double allotment, but as a matter of fact the land originally allotted to the appellant Society was allotted in favour of the Society for Autism on 2nd August, 2002, i.e., after 11 months of the allotment of land to the appellant Society, the date of allotment of which was 28th September, 2001, and 4 months after the automatic withdrawal of the offer of allotment. Thus, it could not be construed as double allotment. As regards the proceedings in the file to locate an alternative site for the appellant Society, the explanation tendered in the said additional affidavit is as follows:

"8. That it appears that the reason as to why, the proceedings were started in the file to locate an alternative site for the petitioner society was because at that stage, nobody took into consideration the very relevant and important fact that once an offer for allotment had lapsed due to failure to make the payment within the prescribed time no right for allotment accrues.

When balance payment was tendered by the petitioner society on its own in 2003, at that stage, the DDA without verifying whether the allotment survived, started looking into site conditions about the site proposed for allotment to the petitioner society. Since the report at that stage (in 2003) given about site conditions was that the land had been allotted to Autism Society and certain other societies, it was presumed to be a case where alternative site would have to be located for the petitioner society....."

12. It was further submitted in the additional affidavit that the policy of the DDA regarding institutional land was being reviewed and that allotments were no longer being made at concessional

rates, and hence no regularisation of allotment of belated payment cases was being accepted "to avoid anomalies since the policy was under review".

13. We have heard the learned counsel for the parties and gone through the records of the respondent DDA and upon doing so, we have arrived at the following conclusions which are borne out by the records of the respondent DDA itself.

- (i) In the first affidavit filed on behalf of the DDA by the Director (Lands), a case of double allotment is sought to be made out and there is a categorical admission that the DDA overlooked the aspect that delay has to be regularized for restoration by the L.G., Delhi and instead the file was sent to the Planning Wing for sub-division and exploring of an alternative site. It is also submitted that the notings in the file indicated that proceedings had been started to locate an alternative site for the appellant Society.
- (ii) In the second affidavit filed on the very same date, that is, on 13.03.2006 by the Commissioner (Land Disposal), DDA, an entirely different stand was adopted and it was stated that on inspection, it was revealed that the DDA had no jurisdiction over the land in question and, in fact, the land was under a Court stay order in CWP No.311/1998 titled **Raghubir Singh and Anr. vs. UOI & Ors.**, and as on date also the dispute is going on between the GNCTD and the said Raghubir and his brother. It was admitted that the land status of the proposed

site was considered for allotment as an alternative plot to the appellant in view of the fact that the previous site allotted to the appellant already stood allotted earlier, meaning thereby that the case of double allotment and the exploration of alternative site were both admitted by the DDA. There is not a word in the said affidavit about "deemed cancellation" of allotment.

- (iii) In the third affidavit filed by the Vice Chairman, DDA dated May, 2007 too, it was admitted that there was an exercise in the file for allotting an alternative site before delivery of the judgment in the case of **Rahul Daka Vikas Society (Regd.) Through its Secretary and Anr. vs. DDA** by this Court in March, 2006, and when such an exercise was made, it was noticed that the site had not been handed over to the DDA. It was also submitted that an ambiguity had crept in the file regarding the alternative allotment and in the process, various alternative sites were explored. It was further submitted that an enquiry was being ordered to fix responsibility as to how this mistake had occurred. It was, however, added as an afterthought that the appellant Society was not entitled to any land since there was default in tendering payment on behalf of the appellant Society.
- (iv) In the fourth and final affidavit on behalf of the DDA, as already noticed, the DDA claims that the issue of double allotment did not arise in the present case as there was

“automatic withdrawal of the offer of allotment”. There was a wrong assumption that this was a case of double allotment. The reason as to why the proceedings were started in the file to locate an alternative site for the appellant Society was because nobody took into consideration the very relevant and important fact that once an offer for allotment had lapsed due to failure to make the payment within the prescribed time, no right of allotment accrues. It was further stated that now the mode of allotment to schools is by way of auction and the value of the plot as on date is much higher than the rate at which the offer was made to the appellant Society.

14. From a conjoint reading of the various affidavits filed by the DDA along with the notings on the original records pertaining to the case, the following facts clearly emerge:

(i) That the appellant's apprehension that the site allotted to him was under litigation was not a misplaced one as is evident from the noting dated 10th April, 2002, which reads as follows:

*“As per approved lay out site allotted for Nursery School is earmarked for Primary School as per approved lay out plan of the area. **Part of the school site is under litigation** before processing the case further we may refer this case to Area (Plg) to know their view.”*

(ii) That on the appellant's depositing the sum of Rs.39,22,753/- with the DDA on 17th June, 2003, the case was never considered for regularisation as per the existent policy of the

DDA, as is evident from the notings dated 14.07.2003 and 08.08.2003, which read as follows:

“This is a case of allotment of land for c/o nursery school to Pragati Educational & Welfare Society. A demand-cum-allotment letter was issued on 28.9.2001 (p-62/cr.) to Pragati Educational & Welfare Society for c/o nursery school land measuring 800 sq. mtrs at Pocket-5, Jasola with the direction the required payment within 60 days and further up to 6 months with the interest @ 18% P.A. as per the terms and conditions of the allotment letter dated 28.9.2001. After elapsed of 19 months the society has deposited the demanded amount of Rs.39,22,753/- vide challan No.171935 dtd. 13.11.2002 and challan No.32326 dtd. 19.6.2003 towards cost of land & ground rent and the same verified by A.O.(IL) subject to regularization of delay period/restoration of the case from the Competent Authority.

*In view of the position explained above **the case may be submitted to Hon'ble V.C./DDA being a Competent Authority for regularization of delayed period subject to payment of restoration charges @ Rs.300/- per sq. mtrs. & interest for delayed period @ 18% P.A.***

Submitted for consideration and orders please.

Sd/-

14/7/03

** * * **

*In response to the query of Director (LC) dtd. 8.7.2003 at P-16/N. In this connection it is submitted that the society has deposited the Premium of Rs.39,22,753/- and the case is to be restore subject to payment of restoration charges + interest @ 18% P.A. obtaining the approval of competent authority, as well as issue no.1 the expenditure incurred on boundary wall **the amount will be recovered after handing over/taking over the physical possession.** Issue No.2. That the site was earmarked for primary school and the same proposed/considered for c/o nursery school, as per note of A.E.(IL) dtd.10.4.2002 at P-11/N. In view of above now if agreed we may refer the case to Area Planning cell DDA for confirmation/feasibility and to know their views.*

Submitted please.

Sd/-
8/8/03”

- (iii) That it is clear from the above that the matter instead of being placed before the Vice Chairman, DDA for consideration of regularisation of the delayed period subject to the payment of Rs.12,73,704/- (Interest on premium Rs.10,33,704/- + Rs.2,40,000/- as restoration charges @ Rs.300 per sq. mtr. as worked out by the respondent DDA), was referred on 8th August, 2003 to the Area Planning Cell, DDA to know their views.
- (iv) That it further emerges from the records that it was a case of double allotment and the DDA, therefore, proceeded to explore an alternative site in the nearby area, as is clear from the notings dated 12.12.2003, 22.04.2004, 14.06.2004 and 20.04.2005, which read as follows:

“Since the proposed land to Pragati Educational & Welfare Society measuring 800 sqm at Pocket-5, Jasola has been allotted to Autism and Jan Sahyog Munch and the remaining is unallotted, so in view of the above note of Plg. Deptt. the case may be referred to AE(IL) to explore the alternate site in the nearby area as per LOP placed opposite.

Sd/-
12/12/03

* * * *

As desired gone through the file and found that PS/NS sites shown in structural plan of Jasola are not clear. As per site condition they are partially encroached and partially fenced. It seems they are not properly demarked. Therefore if agreed case may be sent to DD(NL) for verification of ownership of the lands PS/NS three sites

marked as X,Y,Z by (Gulabi color) may be verified after that file may be sent to the Chief Engineer (SEZ) for proper boundary wall/basbed wire fencing. Submitted for further n/a please.

Sd/-

22/04/04

** * * **

As per the report prepared by (NL) Branch on Page No.24 & 25/N for X,Y,Z sites marked on L.O.P. Site Z can be proposed for Nursery School to the Pragati Education and Welfare Society subject to sub-division plan of site 'Z' (which is meant for P.S + N.S). Therefore if agreed case may be sent to Area Planning Jt. Director (AP) II Vikas Minar for approved sub-division plan with dimension of P.S + N.S since this is a case of alternate site and amount has already been deposited.

Submitted for further n/a and onward transmission.

Sd/-

14/06/2004

** * * **

In this case land measuring 800 Sq. Mtrs. was allotted to Pragati Educational and Welfare Society vide the orders of Hon'ble LG on dated 25.9.2001 at page 7/N for construction of nursery school at Pkt.-5, Jasola. Demand-cum-allotment letter was issued on 28.9.2001 (P.62/C) with the direction to deposit the cost of land within 60 days and further upto 6 months alongwith interest @ 18% P.A. as per the terms and condition of the allotment letter dt.28.9.2001. The Society had made the part payment of Rs.2,00,000/- within the stipulated period and remaining Rs.37,22,753/- after the stipulated period i.e. after 18 months late.

As per report of AE(IL) at Page 11/N it has been seen that the as per approved lay out plan site allotted for nursery school is earmarked for Primary school. Part of the school site is under litigation. The case was referred to area planning Wing. It has also been reported by the AE(IL) at P.20/N that the proposed site has already been allotted to other Society. The case again sent to Planning Wing for Sub-Division plan at P.27/N. As per the report of Planing Wing at P.28/N the sub-division plan is under approval. The ownership report of the alternate site has

also been provided by the DD/NL at P.2425/N.

In view of the above if agreed we may request Dir.(AP)I in the first instance to provide the sub-division plan of the proposed alternate site.

Submitted please.

*Sd/-
20/4/05”*

- (v) That there were encroachments on the proposed site. This is evident from the notings dated 6th May, 2005 and 9th May, 2005, which are as follows:

“OSD (Lands) vide note dated 29.4.05 at page 32/N has referred the file for subdivision plan in respect of Pragati Educational Welfare Society.

The matter has already been examined in our file no.PA/JDII/APJ/2004/015 wherein Dir(API) vide note dated 29.10.04 at page 23/C has requested CLM(DDA) to kindly get it remove the encroachment on the site so that further necessary action could be taken. Copy of the note is place opposite at 97/C.

Submitted pl.

*Sd/-
6.5.05*

* * * *

The matter has been referred to CLM and CLD for removing the unauthorised encroachment on the site as per letter marked at A above. Copy of the same is placed at 97/C.

*Sd/-
9/5/05”*

- (vi) That after the passing of the order dated 9th January, 2006 by this Court, the Deputy Director (Institutional Lands) in his noting dated 24th February, 2006 stated as follows:

*“.....
2. The Court has made it very clear that the DDA cannot take people for a ride like this and it has been directed*

today that a last opportunity of 3 weeks is being given to clear the encroachment on the alternative site proposed failing which the VC, DDA shall file an affidavit under his signatures indicating the following.....

The Court has granted only one weeks time to file the counter affidavit.”

- (vii) That the land under reference was acquired land and physical possession had not been given by the LAC to the DDA. There was also a stay operating in respect of the land by orders of this Court in CWP No.311/1998, CMP No.6941/1998 titled **Raghubir Singh and Anr. vs. UOI & Ors.** against demolition and dispossession.
- (viii) That for the first time on 24th February, 2006, resort was taken by the DDA to their “**consistent stand since 2003**” that they were not accepting any restoration of belated cases. The relevant portion of the said noting being significant is reproduced herein below:

- “.....
6. When the society has deposited the money after stipulated time, the same has to be regularized for restoration by the LG but unfortunately, this aspect was deferred and the file was referred/sent to Planning for sub-division and exploring an alternative site. Subsequently, the issue being debated in the file is the feasibility of an alternative plot and sub-division of the same but the Planning at 33/N ultimately recorded that till the encroachment is removed, sub-division cannot take place.
7. As explained in the above paras, encroachments cannot be removed as the land does not belong to DDA and pertains to GNCTD.
8. Finally, the aspect which has to be considered and

examined is whether the society is eligible for allotment of alternative land. It is our consistent stand that since 2003, we are not accepting any restoration of belated cases. In this present case also, DDA has informed the society on 28.12.01 (65/C) that the society has no right/claim if they have not paid the premium. Probably, we may have to explain the Hon'ble High Court from this perspective."

- (ix) That thereafter the Vice Chairman, DDA filed an affidavit in this Court in which it was submitted as follows:

"It is submitted that an ambiguity has crept in the file regarding alternative allotment and in the process various alternative sites were explored. An enquiry is being ordered to fix responsibility as to how this mistake has taken place."

- (x) That on the aforesaid facts, the learned Single Judge rendered his judgment and order dated 15.05.2007, which is impugned before us, inter alia, on the ground that the allotment in favour of the appellant stood "automatically cancelled" in terms of condition 23 of the allotment letter dated 28th September, 2001. It was observed by the learned Single Judge that the question of the DDA not keeping the site ready for allotment could not arise till such time the petitioner/appellant in fact had performed its part of obligation and made payment. Reliance was placed on the judgment rendered by the Court in the **Rahul Daka Vikas Society's** case. However, while rejecting the prayers made in the writ petition, the learned Single Judge directed that the DDA within six weeks and in any event not later than 29th June, 2007 refund to the appellant the entire sum of Rs.39,22,753/-

together with interest @ 18% p.a. on those amounts from the respective dates of their deposit by the appellant with the DDA till 29.06.2007 or an earlier date on which the refund is made.

- (xi) That the refund was accordingly made by the respondent and accepted by the appellant "under protest" in terms of the decision of the learned Single Judge, which is impugned before us.

15. On a conspectus of all the facts and circumstances of the case, we are, however, unable to concur with the findings of the learned Single Judge for the following reasons:

- (i) The appellant's apprehension that the site allotted to him was not free from encumbrances was not misplaced as is evident from the records.
- (ii) The appellant in his letter dated 15.11.2001 clearly stated that it had already suffered a loss of Rs.22 lakhs in respect of another allotment made by the DDA to it. Apparently, therefore, it was a case of once bitten twice shy.
- (iii) The DDA did nothing to allay the apprehensions of the appellant in this regard, despite several letters written by the appellant to the DDA enquiring about the status of the land allotted to it and insisted that the appellant first make the payment.
- (iv) Admittedly, no notice was ever served on the appellant Society to show cause as to why the allotment in its favour be

not cancelled.

- (v) The respondent DDA, at no point of time, issued a cancellation letter to the appellant Society informing the Society about the “deemed cancellation” or otherwise, not even after the payment was belatedly made by the appellant Society and accepted by the respondent DDA. The respondent DDA is, therefore, estopped from raising the plea of “deemed cancellation”.
- (vi) The appellant Society was handicapped even to raise funds for making payment without being given the particulars of the land and without being assured by the respondent that the land allotted to it was free from encumbrances/encroachments.
- (vii) The appellant Society all along was made to believe that the reason for not disclosing the particulars of the land was that the respondent itself was processing the case of the appellant for making alternative allotment of a plot.
- (viii) Finding no alternative and to save the allotment, the appellant had no option but to deposit the balance of Rs.37,22,753/- belatedly on 13th June, 2003.
- (ix) A number of representations were made by the appellant even thereafter for obtaining possession of the land, none of which were responded to by the respondent.
- (x) Till as late as October, 2005, i.e., after 27 months from the deposit made by the appellant Society on 13th June, 2003,

the respondent did not process the case of the appellant and did not offer any plot to the appellant or inform the appellant about the status of the plot to be allotted to it.

- (xi) On 09.01.2006, on the appellant Society filing a writ petition before this Court and during the course of hearing of the said writ petition, the respondent submitted that the alternative site, possession whereof was to be handed over to the appellant, had come under encroachment and it was due to this reason that the delivery of possession of the alternative plot of land had also been delayed. Accordingly, by orders dated 09.01.2006 and 23.02.2006 passed by the learned Single Judge, the respondent was directed to remove the said encroachments.
- (xii) For the first time in the counter-affidavit, the respondent DDA came out with an entirely different story that the plot of land originally allotted to the appellant was cancelled as there was delay in making payment by the appellant.
- (xiii) The respondent DDA in the counter-affidavit filed by the Vice Chairman, DDA clearly admitted their fault/lapse in not referring the case of the appellant for regularisation of delay in making the payment to the Lieutenant Governor as per the existent policy and instead referring the file to the Planning Wing for sub-division and exploring of an alternative site.
- (xiv) The respondent in a subsequent affidavit filed by it changed its stand to state that the alternative site over which

encroachment existed "had never been transferred to the DDA by the LAC" and, therefore, it had no jurisdiction over the said land.

- (xv) Resort was taken to the purported change in policy of the respondent in auctioning the institutional plots for the first time after the filing of the writ petition in this Court. Further, according to the respondent DDA, the said policy came into existence in 2003, but neither the date of the policy nor the policy itself was enclosed with the various affidavits filed by the respondent DDA.
- (xvi) The learned Single Judge while observing that there was absolutely no justification for the DDA to have retained the sum of Rs.40 lakhs (approx.) for such a long span of time without apprising the appellant about the cancellation of the allotment made to it and without even refunding the amount to the appellant Society, simultaneously could not have held that there was "deemed cancellation of the allotment", which is also belied by one fact that the DDA themselves were looking for alternative land to be given to the appellant. There was no letter or intimation cancelling allotment in favour of the appellant. There was some delay in depositing the entire amount, but their delay was condoned which is established and crystal clear from the subsequent conduct of the DDA in looking for alternative land and also pursuing the issue for making land available to the appellant.

- (xvii) The direction for return of the entire payment deposited by the appellant Society along with interest @ 18% p.a. in the circumstances of this case cannot be said to be equitable as the appellant cannot be made to suffer either for the fact that the site allotted to him was under litigation and was not free from encumbrances/encroachments or for the fact that his case for restoration of the plot was by the fault of the DDA officials not placed before the Vice Chairman for regularisation as per the existent policy of the DDA or for the fact that the possession of the alternative site allotted by the DDA to the appellant Society was never in fact handed over by the LAC to the DDA.
- (xviii) The respondent would have been fully within its rights to cancel the allotment of the site in question on the failure of the appellant Society to make the payment within the stipulated time. It having failed to do so, cannot now take up a stand of "deemed cancellation".
- (xix) The reliance placed by the respondent DDA on the judgment rendered by Single Bench of this Court on 17th March, 2006 in WP(C) No.5358-59/2004 titled as **Rahul Daka Vikas Society (Regd.) Through its Secretary & Anr. vs. DDA & Anr.** is of no avail to the respondent as the said decision is distinguishable on its facts. The most fundamental fact which distinguishes and sets apart that case from the present case is that the DDA in the present case was never in a position to hand over

possession of the land, whereas in the said case the land was free from all encumbrances and the DDA was in a position to allot the land to the petitioner immediately on payment being made. Then again, the petitioner in the said case had paid only 50% of the price of the land when the DDA issued notice to the petitioner calling upon the petitioner to immediately pay, within ten days, the balance amount payable together with the stipulated interest and only thereafter proceeded to cancel the allotment on the file. Though not immediately intimating the cancellation to the petitioner, the DDA, however, much prior to the filing of the writ petition by the petitioner intimated to the petitioner that its allotment stood cancelled. Not only this, the DDA wrote to the petitioner immediately on cancellation that the no objection certificate issued to the petitioner, permitting it to mortgage the land with the banker to obtain a loan, be returned to enable the DDA to further process the case, the further process contemplated by the DDA being to return the partial payment deposited by the petitioner.

- (xx) It is trite law that in the sale of immovable property, there is no presumption as to time being the essence of the contract even where the parties have expressly provided that the time is the essence of the contract. Such a stipulation will have to be read along with the other provisions of the contract and the attendant facts and circumstances. A Constitution Bench

of the Supreme Court in the case of **Chand Rani (Smt.) (dead) by LRs vs. Kamal Rani (Smt.) (dead) by LRs (1993) 1 SCC 519** held that in fact there is a presumption against time being the essence of the contract. The Constitution Bench decision refers to and relies upon the earlier decisions of the Supreme Court in **Govind Prasad Chaturvedi vs. Hari Dutt Shastri (1977) 2 SCC 539** and **Indira Kaur (Smt.) vs. Sheo Lal Kapoor (1988) 2 SCC 488**. In a series of subsequent decisions of the Supreme Court also, it has been reiterated time and again that in transactions of immovable property, there is no presumption as to time being the essence of the contract and if it is provided in the agreement it has to be read along with the other provisions of the contract. [See **Swarnam Ramachandran (Smt.) and Anr. vs. Aravacode Chakungal Jayapalan (2004) 8 SCC 689**, **K.S. Vidyanadam and Ors. vs. Vairavan (1997) 3 SCC 1** and **Balasaheb Dayandeo Naik (Dead) through LRs and Ors. vs. Appasaheb Dattatraya Pawar JT 2008(2) SC 63**].

Applying the aforesaid law laid down by the Supreme Court to the facts of the instant case, it is nowhere provided in the allotment letter issued by the respondent that time is of the essence and all that is provided in condition 23, which is heavily relied upon by the respondent DDA, is that in case the payment and acceptance letter with required undertaking is not received within the stipulated period, it will be presumed

that the appellant is not interested in the allotment of the land and the offer of allotment will stand withdrawn. This, by no stretch of imagination, can be construed to mean that time was the essence of the contract assuming this to be a case of contract between the Delhi Development Authority and the appellant. The theory of "deemed cancellation" propounded by the respondent DDA after the filing of the writ petition is not discernible either in condition 23 or from the records maintained by the DDA prior to the filing of the writ petition.

16. In the aforesaid facts and circumstances, we are of the considered opinion that the appeal deserves to be allowed. We accordingly allow the appeal and direct the respondent DDA to place the matter before the Vice Chairman, DDA for restoration of the allotment of land measuring 800 sq. mtrs. in Jasola to the appellant Society within a period of six weeks, which, as per the notings in the records is still available in Pocket-5, Village Jasola, subject to the payment of regularisation charges by the appellant Society @ Rs.300 per sq. mtr. and also subject to the payment of interest on the entire amount at the rate of 18% per annum from 28th November, 2001 till 13th June, 2003. The appellant Society shall make payment of the aforesaid amount to the DDA by way of a demand draft within four weeks of the date of the intimation to it of the site allotted to it by the respondent DDA and shall simultaneously refund the entire amount received by it from the

respondent DDA pursuant to the orders of this Court, which was received by it "under protest".

17. Before parting with the case, we also express our anguish at the cavalier and inept manner in which the entire case has been handled and dealt with by the respondent DDA at all stages, and also the manner in which wholly irreconcilable and vacillating stands have been taken by the DDA from time to time before this Court. We hope and expect that the DDA will in the future bear in mind the doctrine of legitimate expectation imposing upon it a duty to act in consonance with the principles of fair play, and its duty as a statutory body to ensure that the citizen receives nothing less than his due, both in law and in equity.

18. The appeal stands disposed of with the aforesaid observations and directions. CM No.11148/2007 also stands disposed of accordingly.

REVA KHETRAPAL, J

CHIEF JUSTICE

APRIL 4, 2008
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