

* **HIGH COURT OF DELHI : NEW DELHI**

+ **LPA No. 22 of 2008**

Judgment reserved on: April 10, 2008

% Judgment delivered on: May 02, 2008

Delhi Development Authority
Through its Vice-Chairman,
INA Vikas Sadan,
New Delhi. Appellant.

Through Mr. Mohan C. Rao, Adv.

Versus

Prof. Ram Prakash
S/o Late Sh. Brij Mohan Lal
R/o 212 Sukhdev Vihar,
New Delhi. Respondent

Through Respondent in person.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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

MADAN B. LOKUR, J.

The Delhi Development Authority (for short DDA) is aggrieved by a judgment and order dated 17th August, 2007 passed by a learned Single Judge in WP(C) No. 8464/2006.

2. The broad facts of the case are that the Respondent, his mother and wife purchased a property bearing No.7, Community Centre, East of Kailash, New Delhi in an open auction held by the DDA on 10th August, 1969. Possession of the property was then given to the purchasers and a lease deed was also executed in their favour by the DDA.

3. After the demise of the Respondent's mother and wife, the property devolved upon the Respondent and other legal heirs.

4. On 17th February, 2004 the Respondent and other legal heirs requested the DDA to mutate the property in their favour. In response, the DDA sent a letter dated 20th May, 2004 raising a demand for misuse charges to the extent of Rs.1.78 crores for the period from 30th July, 1983 to 5th February, 2003. It was stated by the DDA that in the event misuse charges were not paid, action would be taken in respect of the property under the terms and conditions of the lease deed. The Respondent was also asked by the DDA to remove the misuse. The

Respondent represented against the demand but it was impliedly turned down by the DDA when by its letter dated 22nd September, 2005 it reiterated its demand for misuse charges. It was at that stage that the Respondent filed a writ petition in this Court.

5. The stand of the DDA in its counter affidavit is to the effect that the Respondent had misused the basement from 30th July, 1983 till 5th February, 2003; the mezzanine floor was misused from 20th June, 1990 till 5th February, 2003 and the terrace was misused from 7th September, 1992 till 13th January, 2003. It was stated by the DDA that as many as 14 show cause notices were issued to the Respondent from time to time.

6. The Respondent in his rejoinder affidavit offered an explanation in respect of each instance of misuse and also referred to certain decisions in his favour.

7. It appears that during the pendency of the writ petition, the DDA agreed that the question of mutation may be delinked from payment of misuse charges and that issue was then sorted out by the learned Single Judge in his order dated 21st April, 2007.

8. Thereafter, two questions remained for adjudication by the learned Single Judge: the first question pertained to the power of the DDA to demand misuse charges while the second pertained to the validity of the

demand of misuse charges.

9. Insofar as first question is concerned, we do not propose to go into its merits and leave that issue open. This is because with regard to the validity of the demand, we are in agreement with the learned Single Judge that the DDA has clearly erred.

10. What is required to be seen, as pointed out by the learned Single Judge, is that a show cause notice alleging misuse should be issued to the Respondent; the Respondent should have admitted or denied the allegations made in the show cause notice; a decision should be taken on the show cause notice (if the contents are denied); and finally a demand should be raised on the basis of the adjudication order passed on the show cause notice.

11. In so far as the present case is concerned, show cause notices were issued to the Respondent, to which he replied, but no orders were passed thereon. This is clear from the facts given below.

12. The first show cause notice was issued to the Respondent on 8th August, 1983 regarding misuse of the basement. The Respondent submitted a reply on 10th August, 1983 but no decision was taken by the DDA on that show cause notice.

13. In June, 1990 the property was inspected by the DDA and some

non-conforming use was observed with regard to the basement, ground floor and mezzanine floor. A show cause notice dated 28th June, 1990 was issued to the Respondent only in respect of the alleged misuse of basement and mezzanine floor. The Respondent sent a reply to the show cause notice but again no decision was taken by the DDA. After the response given by the Respondent, all that happened was that the DDA issued 'final' notices to the Respondent on 3rd September, 1990 and 11th December, 1990 requiring him to stop violation of the conditions of the lease deed failing which it would be terminated. The Respondent sent a reply to the first 'final' notice on 5th November, 1990 but again no decision was taken on any of the two 'final' notices sent to the Respondent.

14. The property was again inspected by the DDA on 31st December, 1990 and although it appears that there was some alleged misuse or non-conforming use of the property, no show cause notice was issued to the Respondent.

15. A third inspection was carried out of the property on 24th April, 1991 and some misuse was noticed in the basement, ground floor and the mezzanine floor. It was also observed that the first floor, second floor and third floor were being used as offices. However, a show cause

notice dated 8th May, 1991 was issued only in respect of the alleged misuse of the mezzanine floor. The Respondent replied to the show cause notice but again the DDA did not take any further steps for passing an order on the show cause notice.

16. On 16th September, 1992, a show cause notice was issued to the Respondent with regard to unauthorized construction of two rooms on the terrace. The Respondent replied to the show cause notice stating that the tenant had raised the unauthorized construction without his consent and that the Municipal Corporation of Delhi had been asked to demolish the unauthorized construction. No further action was taken on this show cause notice by the DDA. On 11th August, 1994, yet another show cause notice was issued to the Respondent which was again replied to but no decision was taken. Two final show cause notices were issued to the Respondent on 28th November, 1994 and 11th January, 1995 requiring the Respondent to remove the alleged breaches but again no follow up action was taken by the DDA pursuant to these notices.

17. All these facts would show that till 11th January, 1995 allegations were made against the Respondent regarding misuse of the basement and mezzanine floor and several show cause notices were issued to him. No show cause notice was issued to him thereafter. The Respondent replied

to almost all these notices, but there was no determination by the DDA at any point of time on any of the notices after the replies given by the Respondent that there was no misuse of the property or that there were no breaches of the lease deed.

18. As regards the terrace, a show cause notice was issued to the Respondent first on 16th September, 1992, as mentioned above, but despite a reply having been given by the Respondent, no order was passed by the DDA. A further show cause notice was issued on 11th August, 1994 regarding misuse of the basement, the mezzanine floor and unauthorized construction of three rooms on the terrace. This was followed by two final show cause notices dated 28th November, 1994 and 11th January, 1995 repeating the allegations but again despite the Respondent having given a reply to the show cause notice dated 11th August, 1994, no determination took place insofar as the Respondent is concerned.

19. It may be worthwhile to mention here that the alleged misuse was being committed by the tenants of the Respondent and it has come on record that the Respondent had initiated action against his tenants for vacating the premises. In fact it has been mentioned by the learned Single Judge that one of the tenants had vacated the mezzanine floor on

1st December, 1991 and legal proceedings were also initiated against the tenants on the ground floor as well as terrace. We have been informed that the tenants have since been evicted by the Respondent.

20. The facts mentioned above clearly go to show that despite allegations of misuse of the property and issuance of show cause notices, the DDA has not taken any final decision as a result of the replies given from time to time by the Respondent. It has also been noticed by the learned Single Judge that in none of the show cause or 'final' notices has the Respondent been informed that the DDA is proposing to levy misuse charges against him. It is, therefore, not possible to accept the contention of learned counsel for the DDA that since no limitation has been prescribed for recovery of misuse charges, the DDA is not at fault in keeping the matter pending or, as was submitted, by being lenient to the Respondent.

21. It is trite law that where no period of limitation is prescribed, action must be taken by the authorities within a reasonable period of time. Reference in this regard can be made to a decision of the Supreme Court in *State of Punjab v. Bhatinda District Coop. MIL P. Union Ltd.*, [2007] 11 SCC 363 wherein it has been held that if no period of limitation is prescribed, a statutory authority must exercise its

jurisdiction within a reasonable period. What should be the reasonable period depends upon the nature of the statute, rights and liabilities thereunder and other relevant factors. By no stretch of imagination, it can be said today after a lapse of almost 25 years (and in any case at least 10 years) that the DDA has not acted arbitrarily or at least unfairly insofar as the Respondent is concerned. Moreover, as noticed above, the Respondent was never informed by the DDA that he was required to pay any misuse charges.

22. Under the circumstances, we are of the opinion that the learned Single Judge was right in coming to the conclusion that the demand of misuse charges of Rs.1,78,85,001/- is unjustified and it has to be quashed.

23. The appeal is dismissed.

MADAN B. LOKUR, J

May 02, 2008

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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.