

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

% *Judgment Reserved on: 1st December, 2009*
Judgment Pronounced on: 21st December, 2009

+ **LPA No.523/2004**

DDA Appellant
Through : Ms.Sangeeta Chandra, Advocate

versus

HARISH KUMAR Respondent
Through : Mr.Sanjay Poddar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Shri Khairati Lal, grandfather of the respondent Harish Kumar was a resident of West Punjab and upon partition of this country moved to Delhi as a refugee. It was time of chaos and the Government was busy in maintaining law and order. Everybody had to fend for himself and find some source to keep the body and the soul alive i.e. earn bread and butter. These unfortunate persons (refugees) settled wherever they could find land and commenced petty business therefrom. Some of them rose to dazzling heights and became exemplary

entrepreneurs. Some continued to languish because the inefficient bureaucracy failed to implement the social welfare policies formulated by the Government. One such policy was the Gadgil assurance given on the floor of the Parliament by the Government that in Delhi, all refugees would be resettled in-situ on the land in their occupation wherefrom some were carrying on business and some had built temporary shelters over their heads. Late Sh.Khairati Lal could not get the benefit of this policy. On settling in Delhi he found bread and butter on a parcel of land ad-measuring 184 sq. yards which later on was given Municipal No.T-31 Basti Tantwali, Motia Khan, Delhi wherefrom he carried on business as a junk dealer and sale of old Motor Spare parts. The land was vested in the erstwhile Delhi Improvement Trust and since 1.1.1952 he started paying damages for use of the land under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. With the creating of the Delhi Development Authority and said Authority taking over the properties of the Delhi Improvement Trust he started paying damages to DDA till the year 1967. He died on 6.2.1967.

2. Before he died, Sh.Khairati Lal executed a will on 26.1.1967, bequeathing his interest in the land in question in favour of his grandson Harish Kumar, who after the death of

late Sh.Khairati Lal on 6.2.1967 started paying damages to DDA and took over the business of his grandfather.

3. Many other persons like Khairati Lal occupied various plots in Motia Khan and paid damages to the erstwhile improvement trust and thereafter to DDA. Some simply took possession of vacant land much after the partition and squatted thereon without paying any damages to either the improvement trust or DDA.

4. A redevelopment scheme of Motia Khan was formulated by DDA in the year 1975 and hence the same required the lands under occupation of various persons to be cleared. It is known to one and all, now a part of history of this country, that internal emergency was proclaimed in India in June 1975 and the fundamental rights of the citizens of India were suspended. In the regime where the Rule of Law got truncated, one fine morning the demolition squad of DDA came with bulldozers and uprooted all and sundry from Motia Khan and repossessed all the lands. The occupants were left high and dry.

5. The emergency came to an end in March 1977. Elections were held to the Parliament. The Government changed. The new Government decided that the assurances given in

Parliament need to be honoured. DDA was called upon to formulate a policy to rehabilitate the evictees from Motia Khan.

6. On 11.10.1977 DDA notified its policy Resolution No.211 dated 11.10.1977 regarding allotment of plots to the evictees of land at Motia Khan. In a nutshell, the policy stated that such evictees who were paying damages to DDA would be given alternative plot at reserve price and those who were not paying damages to DDA would be given alternative plots at average auction rates. As regards the size of the plot that would be allotted to the persons who were paying damages to DDA, the policy prescribed that it should be proportionate to the area under occupation of the person concerned.

7. The respondent applied for allotment of an alternative plot and claimed that he was entitled to equivalent land at reserved rates for the reason since 1.1.1952, in respect of 184 sq.yds. of land his grandfather Khairati Lal had been paying damages initially to the Improvement Trust and thereafter to DDA and after February 1967 when Khairati Lal died he had been paying damages to DDA. Needless to state, the claim of the respondent was under the policy as per which evictees who were paying damages to DDA were entitled to alternative plots at reserved rates.

8. On 20.4.1978 the allotment committee constituted by DDA rejected the claim of the respondent on two counts. It was firstly held that the respondent furnished no proof of being in occupation and carrying on business from any site at Motia Khan and secondly an alternative allotment had already been made in the name of his father Shri Amar Nath.

9. The respondent wrote a letter informing that his father Amar Nath was independently occupying a distinct piece of land and he was allotted an alternative plot in lieu thereof. Qua himself, the respondent relied upon the receipts issued by DDA in respect of damages paid initially by his grandfather from 1.1.1952 till his grandfather died and thereafter by the respondent till he was evicted from the land under his occupation.

10. Reconsidering the case of the respondent, the allotment committee opined that since the respondent did not get recorded his name as the person paying damages for use and occupation of the land he could not be considered for being allotted any land. But, for reasons which have neither been disclosed in the pleadings of DDA, nor can be gathered from the record produced by DDA before the Lok Adalat and thereafter before the learned Single Judge and finally before us when the appeal was heard, at a draw of lots held on

19.11.1979, a 50 sq.yds. plot bearing No.17/1 Block D-3, Mayapuri Warehousing Scheme was allotted to the respondent and in respect of the allotment letter dated 29.11.1979 was prepared in duplicate as per which the respondent was to pay @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for 5 sq.yds. of land.

11. Record of DDA seen by the Presiding Officer of the Lok Adalat as also the learned Single Judge of this Court and lastly by us shows that the letter dated 29.11.1979 was never posted or otherwise sent by any means to the respondent for the reason the original and the office copy thereof are still in the files of DDA. We note that this fact has been noted by the Presiding Officer of the Lok Adalat vide order dated 8.8.2000.

12. The respondent learnt that DDA had allotted some plots in the year 1979 and that a plot was allotted to him. But he could gather no further details from DDA save and except that he was to obtain a clearance certificate from the relevant branch of DDA that damages in respect of 184 sq.yds. of land had been paid from 1.1.1952 to 31.10.1975. On 2.6.1980, the respondent obtained the necessary certificate.

13. On 11.2.1981 DDA informed the respondent that a 50 sq.yds. plot was allotted to him for which he had to pay @Rs.1,616.50 per sq.mtr. Before the respondent could revert

to DDA with reference to the letter dated 11.2.1981, vide letter dated 19.3.1981, DDA reduced the rate to Rs.668/- per sq.mtr.

14. The respondent wrote to DDA on 15.6.1981 that he was entitled to land admeasuring at least 184 sq.yds. and the rate to be charged was the one at which plots were allotted to similarly situated persons i.e. the ones who had been paying damages to DDA and were allotted equivalent plot as per the policy decision of DDA notified in the year 1977. Receiving no response, on 23.9.1981, 4.3.1982, 5.11.1982 and 31.1.1983 respondent sent reminders.

15. On 13.10.1983, DDA rejected the representations of the respondent informing him that since he had not deposited the money required to be deposited in terms of the allotment letter dated 29.11.1979, he was not entitled to any plot at a reserve rate. As regards his entitlement it was informed that he was entitled to land no more than 50 sq.yds.

16. The respondent insisted that his claim had to be satisfied as per the policy at par with all such persons to whom equivalent land was allotted at reserve rate subject to said persons being the ones who had been paying damages to DDA. The respondent highlighted that his claim was as a successor to his grandfather and that his grandfather had been paying damages for 184 sq.yds. of land since 1.1.1952 till his

grandfather died on 6.2.1967 and thereafter he, as the beneficiary under his grandfather's will, had been paying the damages till he along with other occupants were evicted by force. He referred to the clearance certificate dated 2.6.1980 issued by DDA certifying that qua 184 sq.yds. of land damages had been paid from 1.1.1952 till 31.10.1975. The petitioner also highlighted that the letter dated 29.11.1979 was lying in the file of DDA and was never transmitted to him.

17. Matter lingered on. On 27.7.1993 DDA announced another policy being No.108/1993 as per which all evictees from Motia Khan who were evicted during the emergency were to be allotted alternative land @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the remaining land. The entitlement of the land area was the equivalence of the land area in occupation of the evictee.

18. Hoping that policy No.108/1993 had settled the issue of land area to be allotted to him as also the rate at which the premium would be charged, the respondent made another representation that he be allotted a plot admeasuring 200 sq.yds. @Rs.95 per sq.yd. for the first 45 sq.yds. and @Rs.142.50 per sq.yd. for the rest. The Deputy Director DDA informed the respondent vide letter dated 1.10.1993 that he could be allotted only 50 sq.yds. of land. Correspondence

continued between the parties with DDA not justifying as to on what basis it was denying to the respondent a plot of land equivalent to the area in his occupation when he was evicted but to other similarly situated persons equivalent land was allotted.

19. Fed up with the issue, on 21.6.1999, the respondent wrote to DDA that let a 50 sq.yds. of plot be allotted to him and requested that allotment letter be issued charging premium @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the remaining 5 sq.yds. of land.

20. Obstinate, the officers of DDA did not issue any demand-cum-allotment letter. The respondent met various officers in DDA and finally on 20.9.1999 the Commissioner (LD) DDA issued a demand notice dated 6.3.2000 informing respondent that a 50 sq.yds. of plot will be allotted to him at a premium of Rs.39,404/- per sq.yd. The respondent was called upon to deposit Rs.16,56,544/-. Needless to state, the respondent was shell shocked and protested at the premium charged as also only 50 sq.yds. of land being allotted to him.

21. Another stalemate ensued.

22. In the year 2000 DDA set up a permanent lok adalat for redressal of public grievances. On 13.6.2000 the respondent applied to the Lok Adalat stating that as per the policy

resolution No.211 dated 11.10.1977 as also the policy resolution No.108/1993 he was entitled to 200 sq.yds. of land at a premium of Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the remaining land. The respondent highlighted that since 1.1.1952 till eviction on 31.10.1975 damages had been paid initially by his grandfather and thereafter by him. He highlighted that other similarly situated occupants were allotted equivalent land at said premium. Petitioner highlighted that his concession to take 50 sq.yds. of land vide letter dated 21.6.1999 was contingent upon DDA allotting 50 sq.yds. land to him at afore-noted premiums and since DDA did not do so, he was entitled to withdraw his concession.

23. Various meetings were held before the Presiding Officer of the Permanent Lok Adalat. Officers of DDA participated. The Presiding Officer DDA Lok Adalat passed various orders and on 8.8.2000 recommended that a plot ad-measuring 200 sq.yds. should be allotted to the respondent since DDA had carved out plots of various sizes and the nearest to the plot size 184 sq.yds. was the plot ad-measuring 200 sq.yds. It was recommended that the rate to be charged was the one at which similarly situated persons were called upon to pay i.e.

@Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

24. DDA sent the file to the Lt.Governor for approval who vide order dated 12.12.2000 agreed that a plot ad-measuring 50 sq.yds. be allotted to the respondent at the reserve rate applicable in the year 1975 i.e. @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

25. The decision of the Lt.Governor is not premised on a finding that the entitlement of the petitioner under the policy was for a plot ad-measuring 50 sq.yds. The Lt. Governor opined that since, vide letter dated 21.6.1999, the petitioner had acquiesced to take a plot ad-measuring 50 sq.yds., he could lay a claim to no more.

26. The order passed by the Lt.Governor was produced before the Lok Adalat on 9.1.2001. The respondent stated that his consent vide letter dated 21.6.1999 was under a virtual duress and in any case was conditional upon DDA forthwith allotting 50 sq.yds. of land @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance. The respondent highlighted that DDA not having accepted his condition qua the price and insisting upon premium to be paid @Rs.39,404/- per sq.yd. was not entitled to pin down the

respondent qua a part of his concession by severing the condition upon which the concession was given.

27. The Presiding Officer of the Lok Adalat recorded no settlement. But, while so doing expressed anguish at the fact that the respondent had successfully brought home the point that similar situated persons were allotted 200 sq.yds. plot @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance. It was opined that injustice had been done by DDA to the respondent. The Presiding Officer of the Lok Adalat noted that the respondent was free to approach a Court of Law.

28. The respondent filed a writ petition which was registered as WP(C) No.4731/2001 in this Court and after pleading afore-noted facts prayed that directions be issued to DDA to forthwith allot a plot of land ad-measuring 200 sq.yds. @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

29. Opposing the writ petition and realizing that DDA had not much to plead by way of defence a cryptic counter affidavit was filed by DDA as per which the respondent was not entitled to any land because his father had been allotted an alternative plot. It was pleaded that notwithstanding that, on 29.11.1979 a plot of land ad-measuring 50 sq.yds. was allotted to the

respondent at the premium desired by the respondent but he did not pay the same and hence was entitled to nothing even on said count.

30. We may note at the outset that the DDA did not refute the averments made in the writ petition that father of the respondent was occupying a different plot, his grandfather was occupying a different plot and that the allotment of a plot to his father was in lieu of the right of the father. That the respondent was claiming through his grandfather. It has not been denied by DDA that qua 184 sq.yds. of land assigned municipal No.T-31, Basti Tantwali, Motia Khan, Delhi, damages have been received by DDA from 1.1.1952 to 31.10.1975. DDA even did not deny that similarly situated evictees were allotted equivalent plots @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance. Lastly, DDA pleaded acquiescence by the respondent.

31. Vide impugned judgment and order dated 11.11.2003 the writ petition has been allowed and a mandamus has been issued as under:-

“The petitioner would thus be entitled to allotment of a plot @Rs.95/- for the first 45 sq.yard and balance @Rs.142.50 sq.yard. However, on account of delay on the part of the petitioner in approaching the Court for redressal of his grievance, the petitioner would be liable to pay simple interest @10% per annum from July 1993 to July 1999 for a period of six years which is not disputed by learned counsel for the petitioner.”

32. Needless to state, qua the defence of DDA predicated on the respondent not having complied with the letter of allotment dated 29.11.1979, the learned Single Judge held that the record of DDA shows that the said letter was not even posted to the respondent.

33. Indeed, having perused the record of DDA, even we note the fact that the said letter, in original, together with its office copy is still in the record of DDA. Thus, we concur with the finding that DDA cannot non suit the respondent with reference to any alleged default in respect of the letter dated 29.11.1979.

34. The defence of DDA that father of the respondent was allotted a plot has been rightly negated for the reason record of DDA shows that respondent's father was occupying a different plot of land and his grandfather was occupying a different plot of land. With reference to the record of DDA, we concur with the said finding of fact.

35. The only plea urged before us in appeal was that vide letter dated 21.6.1999, the respondent having accepted unconditionally to take a plot of land ad-measuring 50 sq.yds., he could claim no more. Learned counsel for DDA could not show to us as to how the respondent was not entitled to be

charged premium @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

36. Thus, the only issue which we need to further decide is whether the respondent has acquiesced to take 50 sq.yds. of land vide his letter dated 21.6.1999.

37. Before dealing with the issue, we may note that record of DDA shows that the grandfather of the respondent was occupying 184 sq.yds of land at Motia Khan and in respect thereof was paying damages since 1.1.1952 and after the death of his grandfather the respondent paid damages and that till 31.10.1975 damages were paid. It is also not in dispute that DDA allotted equivalent land to such evictees who were paying damages to DDA and the premium charged was @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance. Thus, subject to the plea of acquiescence, as held by the learned Single Judge, a finding with which we concur, that the respondent is entitled to a plot ad-measuring 200 sq.yds., being the nearest equivalent plot to 184 sq.yds. and as per the policy of DDA (both policies i.e. the policy notified on 11.10.1977 and the policy notified on 27.7.1993) the premium to be charged is @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

38. As held in the decision reported as 1983 (3) SCC 75 M/s.Ramnarain Pvt. Ltd. & Anr. vs. State Trading Corporation of India Ltd. in judging the conduct of a party to decide whether the party concerned had abandoned, relinquished or waived its right, all the relevant facts and circumstances which have a bearing on the question have to be considered.

39. The term acquiescence is used where a person refrains from seeking redressal when there is brought to his notice a violation of his rights of which he did not know at that time. In that sense acquiescence has an element of laches. The term is, however, properly used where a person having a right and seeing another person about to commit it in the course of committing an act infringing upon the right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, a person so standing by cannot afterward be heard to complain of the act.

40. Thus, as legally understood, on the instant facts DDA cannot strictly speaking raise the plea of acquiescence.

41. We consider the plea raised by DDA as one of estoppel. What DDA really intends to convey is that having agreed to take 50 sq.yds. land, the respondent is estopped from raising a claim to the contrary.

42. But, DDA forgets that while accepting 50 sq.yds land in the year 1999, the respondent clearly indicated that this would be subject to DDA forthwith allotting the plot to him by charging premium @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance. Thus, the acceptance of 50 sq.yds. land was conditional upon two conditions, firstly, immediate allotment of land and secondly premium to be charged @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the balance.

43. DDA did not do so. The demand letter dated 6.3.2000 did allot 50 sq.yds. land but charged premium @Rs.39,404/- per sq.yd. It is apparent that the conditional offer of the respondent was not accepted by DDA and thus we see no scope for applying estoppel against the respondent.

44. The learned Single Judge has so held. We concur with the view taken by the learned Single Judge.

45. Before concluding we may highlight how the executive is choking the Courts. Instant case highlights how a non-responsive bureaucracy can make a citizen run mad and how the Courts can be burdened with unnecessary litigation. Counsel for DDA short of virtually conceding that the respondent was entitled to 200 sq.yds. land @Rs.95/- per sq.yd. for 45 sq.yds. of land and @Rs.142.50 per sq.yd. for the

balance was yet compelled by the officers of DDA to urge each and every point which we have dealt with. To a reader of the present decision it is apparent that the only worthwhile point, if at all, worthy of some consideration was the plea of estoppel. Had counsel for DDA restricted arguments to said plea, valuable judicial time in perusing the entire record of DDA would have not been wasted.

46. There are at least two dozen matters still pending in this Court pertaining to the claim of refugees for allotment of alternative sites, as in the instant case, the grandchildren of the original applicant are fighting the battle with the State. Yet the State proclaims to be a Welfare State having solemnly resolved to secure to its citizens social and economic justice. We are pained to note that the action of the State in the instant case is just opposite to the solemn resolve for which the State has been created.

47. We find no merit in the appeal which is dismissed with costs in sum of Rs.5,500/- against the appellant and in favour of the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 21, 2009

Dharmender

LPA No.523/2004