

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

% Date of decision : 03.03.2009

+ LPA No.2128 of 2006

DELHI DEVELOPMENT AUTHORITY ...APPELLANT
Through: Mr. Rajiv Bansal & Ms. Babli Kala,
Advocates.

Versus

PREM NATH SAROOP ...RESPONDENT
Through: Mr. Arvind Nigam &
Mr. Maneesh Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SANJAY KISHAN KAUL, J. (Oral)

1. An open auction was held by the appellant/DDA on 29.11.1971 in respect of certain plots and late Shrimati Sharda Devi was the successful bidder in respect of plot No.157, Block B-5, Safdarjung Residential Scheme, New Delhi, measuring 216.67 sq. yds. A perpetual lease deed was executed in her favour on 28.11.1973 crystallizing her rights in the plot. A residential building was constructed on the plot and the building was occupied by her, her husband and children for their residence. Shrimati Sharda Devi passed away on 2.6.1988. The respondent is her husband.

The respondent applied to the appellant for substitution of his name as a perpetual lessee in the record of the appellant vide letter dated 3.1.1989.

2. A show cause notice dated 30.5.1991 was issued to the respondent as to why the lease deed in respect of the said property may not be determined and the possession of the plot, building and structure standing thereon be not taken without compensation. The stated cause for issuance of show cause notice as set out was that late Shrimati Sharda Devi in her duly attested affidavit dated 30.11.1971 had stated that neither she nor her husband and dependent relations including unmarried children were in full or part ownership of any freehold or leasehold residential plot or house in the urban area of Delhi or Delhi Cantonment. This affidavit is stated to be false on account of the fact that late Shrimati Sharda Devi was already owner of land measuring 140 sq. yds., bearing No.245, Arjun Nagar, Humayunpur, Delhi. The respondent sent a reply to the show cause notice dated 29.6.1991. In the reply, it was stated that the plot in question was acquired for the DDA by issuing a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) on 3.9.1957. The notification under Section 6 of the said Act was issued on 20.2.1962 followed by award No.1662. This plot, thus, stood acquired for the planned development of Delhi and thus it was claimed that late Shrimati Sharda Devi was not owner of any property as on 29.11.1971 when she had signed the affidavit. Not only that the DDA agreed to allot

an alternative plot to late Shrimati Sharda Devi in lieu of the Arjun Nagar property on the basis that the house on the plot was demolished which was located on acquired land and that thus she was entitled to a leasehold plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi and not to a freehold plot as per the then prevailing policy. The lease deed had been executed on 28.11.1973. The show cause notice had also made a reference to an affidavit dated 6.9.1986 affirmed by Shrimati Sharda Devi and it was thus clarified that the registration is in respect of a leasehold plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi and not in respect of the property in question. A further aspect clarified was that plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi was granted in terms of the policy decision of the Government of India to those who had been dispossessed by the administrative decisions of DDA during the course of demolitions carried out without prior notice during the emergency period in 1975-76 which had nothing to do with the ownership of other properties. The grant under the policy was not conditional on not having any other property but the only pre-requisite was that the residential house of the allottee had been demolished during the relevant period.

3. Another show cause notice was issued by the appellant on 15/17.7.1991 without a reference to the reply of the respondent but referring to the earlier show cause notice dated 30.5.1991 and the respondent, once again, sent a reply on 7.8.1991. Thereafter complete silence ensued on

the part of the appellant till the end of 1999 for a period of eight (8) years and it is the case of the respondent that he presumed that the matter had been dropped in view of his explanation.

4. The respondent applied for conversion of the leasehold right into freehold as per the conversion policy of the appellant on 26.12.1999. The conversion did not materialize and thus the respondent sent a reminder on 15.7.2003. Instead of converting the property from leasehold to freehold, a notice for cancellation of the lease was issued on 12.1.2004 by the appellant in pursuance to an order dated 8.12.2003 of the Lieutenant Governor. The respondent naturally aggrieved by the same made representations and so did his son but the representations were rejected on 12.4.2005 followed up by a show cause notice being issued by the Estate Officer appointed by the DDA under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 26.4.2005. The respondent thereupon filed a writ petition, being WP (C) No.9074/2005, in this Court which has been allowed in terms of the impugned order dated 24.4.2006.

5. The challenge by the respondent to the action of the appellant was on three parameters as recorded in para 15 of the impugned order. The first was the aspect of inordinate delay since after 1991 no action was taken for a period of twelve (12) years till the order was passed on 8.12.2003 by the competent authority. Not only that the order was communicated vide letter dated 12.1.2004 giving

no reason as to why the reply of the respondent to the show cause notice was not found satisfactory. The third aspect was that the requirement of the law was that a person should not own a house in an urban area, such ownership has to be legal. Since the land already stood acquired though apparently possession was not taken despite the award, it could not be said that the occupation by the respondent of that property would disentitle her to participate in the open auction. Illustration of that was given that if the plea of the appellant was to be accepted even a slum dweller trespassing on Government land and having erected a tenement thereon would be ineligible.

6. It may be noticed that the appellant did not dispute that the land stood acquired much prior to the affidavit but claimed that since alternative property was given against the house at Arjun Nagar there was valid title with the respondent. It was further pleaded that no time had been prescribed for finalization of the show cause notice and that Shrimati Sharda Devi should be treated as an owner of the residential house when she participated in the auction in 1971.
7. The learned single Judge of this Court has found against the appellant on all the accounts. It has been observed that though no time limit has been prescribed to dispose of a show cause notice, it does not imply that the appellant can wake up at any time and it must be presumed that the show cause notice must be disposed of within a reasonable period of time. The period of twelve (12) years, thus, could

hardly be reasonable. Another fact taken note of is that the letter dated 12.1.2004 recorded the failure of the respondent to show any sufficient/satisfactory cause, where care was not even taken to strike out which of the reasons applied and which did not. It was not stated whether no reply to show cause notice was received or there was no justifiable reason found in the reply. This showed the non-application of mind. The receipt of the reply had not been denied in the counter affidavit. The orders did not show any reason whatsoever.

8. The learned single Judge has also found that to incur the disqualification there must be a legal ownership of the property and thus could not include acquired land albeit of which possession had not been taken. The last aspect considered in the impugned order is that late Shrimati Sharda Devi lost possession of the house at Arjun Nagar when the same was demolished by the Government as being illegal structure on acquired land. Thus, till as late as 1975 the Government did not accord status of legal or lawful property to the house at Arjun Nagar. The allotment of plot at B-7/Extension/63 Safdarjung Enclave, New Delhi was not as a matter of right but as a result of the policy framed by the successor Government which felt that during emergency when fundamental rights were suspended the citizens got a raw deal. Thus, if at all it was the second allotment could have been questioned but that was not the issue in the case.

9. We have heard learned counsels for the parties and find no infirmity in the impugned order.
10. The *raison d'etre* for issuing a show cause notice followed by the order of cancellation was that a false affidavit had been filed in 1971 when late Shrimati Sharda Devi bid for the plot in question. The action of cancellation was being taken in respect of the plot in question and not in respect of plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi. Thus, all that had to be seen is whether the affidavit filed by late Shrimati Sharda Devi can be stated to be false on the date it was affirmed and whether consequently she was disentitled to the plot.
11. The affidavit is stated to be false as it states:

“....I or my husband or any of my dependent relations including unmarried children do not and will not own, in full or in part, on free-hold or lease-hold basis, any residential plot or house in the urban areas of Delhi, New Delhi, or Delhi Cantonment, or the date of application for the allotment of the plot and at any time thereafter till the execution of the lease-deed, respectively.”
12. This averment is stated to be false as the respondent is alleged to be owner of the Arjun Nagar property. The fact remains that in respect of the Arjun Nagar property notifications under Sections 4 & 6 of the said Act were issued on 3.9.1957 and 20.2.1962 and the award was passed on 13.12.1963. No doubt the respondent continued to occupy the property but that cannot be a legal ownership and thus she was not possessed of any other property which would disentitle her to the property in question. The phrase “do not own” would only imply a legal ownership and acquired land/property cannot be a disqualification.

13. The subsequent development when the property of Arjun Nagar was demolished in 1975 itself shows that the occupation of the respondent was held to be illegal and demolition was carried out. The fact that the respondent was held subsequently entitled to plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi was on account of demolition being carried out at the time of emergency and was as per a general policy decision of the successor Government which did not have any conditions/restrictions of not owning any other property. Of course this aspect is not very material because the action is not for cancellation of plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi.
14. We, thus, find no infirmity in the findings that the affidavit affirmed by late Shrimati Sharda Devi was not false nor can the acquired property at Arjun Nagar stand as an impediment in the way of her successful participation in the open auction.
15. We also agree with the conclusion of the learned single Judge that the delay in consideration of the show cause notice itself disentitles the appellant to any action. The appellant issued the show cause notices dated 30.5.1991 and 15/17.7.1991. These notices were required to be dealt with within a reasonable period of time. The period of twelve (12) years can hardly be said to be reasonable. The appellant seem to have, once again, woken up on the issue when the respondent applied for conversion of the said plot from leasehold to freehold. Not only that the non-application of mind while issuing letter dated 12.1.2004 is

apparent from the fact that the respondent does not even show as to whether the reply given by the appellant had been considered and found to be meritless or there is absence of reply. There is no recording of reasons that if the reply has been considered why the same has been found to be without merit. There appears to be just a mechanical exercise undertaken by the appellant. We may notice at this stage that the affidavit dated 6.9.1986 is in respect of plot No.B-7/Extension/63 Safdarjung Enclave, New Delhi.

16. We are, thus, of the considered view that the appeal is without any merit and is dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

MARCH 03, 2009
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SUDERSHAN KUMAR MISRA, J.