

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.10.2009

+ **W.P.(C) 22195-98/2005**

DILBAGH SINGH & ORS.

..... Petitioners

- versus-

D.D.A. & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner	:	Mr Neeraj Malhotra, Advocate
For the Respondent	:	Mr Ajay Verma, Advocate for respondent no. 1/DDA Mr Anil Kumar Sangal with Mr Nalin Sangal and Mr D.P. Mohanty, Advocates for respondent no. 2

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition was initially heard along with W.P.(C) No. 3355/1996. In that writ petition, the respondent no. 3-society had challenged the part-allotment of the land in question to the respondent no. 2. The present petitioners are four members of the respondent no. 3-society. This petition is also directed against the allotment to the respondent no. 2.

2. We may note that the allotment to the respondent no. 2 was made on 19.01.1994 by the DDA. The respondent no. 3-society, being aggrieved by such part-allotment of the plot in question, filed the said writ petition being W.P.(C) No. 3355/1996. As per the averments contained in the present petition and, particularly, in paragraph 7 (vi-x), it is apparent that the petitioners were supportive of the stand taken by the respondent no. 3-society in challenging the said part allotment. A reading of the said averments makes it clear that the petitioner was aware that the land in question had been allotted to the respondent no. 2 and efforts were being made by the respondent no. 3 to procure the balance portion of the said plot for itself. It has been specifically stated in the present writ petition that the petitioner nos. 2 and 4 along with other residents had protested against the part allotment of the plot in question in favour of the respondent no. 2 and had requested the respondent no. 3-society, as a collective body, to take up the matter in a court of law. It is pursuant to that, that W.P.(C) No. 3355/1996 had been filed by the respondent no. 3-society before this court. The present petition was, however, filed almost 10 years later in 2005.

3. W.P.(C) No. 3355/1996 was disposed of by a Division Bench of this court on 22.07.2008 by the following order:-

“The affidavit of the DDA has been placed on record which encloses the order passed by the Lt. Governor directing that a plot measuring 1,000 sq. metres can be allotted to the Society for construction of the Club as per the opinion of the C.L.A. It may be noted that the

Society in the proceedings dated 19.07.2004 had stated that it would be satisfied if the remaining available land is allotted to it for club or sports centre activities. In view of the affidavit filed by DDA conveying the decision to allot 1,000 sq. metres of land, the Society does not press the writ petition, which is dismissed as withdrawn. The DDA would spell out the terms and conditions for the allotment and other formalities to be complied with within one month from today.”

4. Although the learned counsel appearing for the petitioners argued that the present writ petition survives despite the aforesaid order dated 22.07.2008 passed in W.P.(C) No. 3355/1996, we do not agree with the said submission. The society which represented over 250 members has collectively taken a stand and the same is reflected in the order dated 22.07.2008. It is apparent that the society had given up the challenge to the allotment of part of the plot in question to the respondent no. 2 and had accepted the balance available land for purposes of a club and sports centre activities for the society itself. It is in view of this that the society did not press the writ petition and the same was dismissed as withdrawn. We are of the view that the stand taken by the petitioners had been espoused by the society in its W.P.(C) No. 3355/1996. The learned counsel for the petitioner sought to take a different stand in the present petition stating that some of the pleas raised in the present petition did not form part of the earlier writ petition filed by the society. However, from the averments mentioned above, it is apparent that the writ petition filed by the respondent no. 3-society was clearly in conformity with the pleas of the petitioners because, for over 9 years, they did not attempt to file any separate

petition or take a separate stand. It is only in the year 2005 that the present petition was filed challenging the allotment in respect of the respondent no. 2.

5. Mr. Verma, who appeared for the respondent no. 1 (DDA), also submitted that the use of the part of the land in question by the respondent no. 2 for setting up of a Women's Polytechnic is a permitted use in a residential use zone as per the Master Plan of Delhi for 2001.

6. We are of the view that after the order dated 22.07.2008 passed in W.P.(C) No. 3355/1996, which was virtually a consent order, nothing survives in the present petition also. The petitioners are members of the society and their cause was entirely represented by the society as per the admission of the petitioners themselves in the averments mentioned above. They cannot now be permitted to take a stand contrary to that of the Society as a collective body. Apart from anything else, if they are permitted to do so, it would be contrary to the very spirit of co-operation which is inherent in the cooperative movement. Consequently, this writ petition also stands disposed of in terms of the order dated 22.07.2008 passed in W.P.(C) No. 3355/1996.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

OCTOBER 07, 2009

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