

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7995/2007

versus

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **13.10.2009**

Notice in this writ petition was issued on 31st October, 2007, but no counter affidavit has been filed by the respondents till date.

2. On 19th August, 2008, last opportunity was granted to the respondents to file counter affidavit subject to payment of cost of Rs. 7,500/- to the petitioner. Additional cost of Rs.10,000/- was imposed on the respondents vide order dated 9th January, 2009, for failure to file counter affidavit. The respondents paid cost of Rs.10,000/- to the counsel for the petitioner on 27th April, 2009. On the said date, it was directed that in case counter affidavit is not filed within four weeks, the respondents will pay a cost of Rs.20,000/- to the petitioner. Cost of Rs.20,000/- has not been paid. Accordingly, the DDA's right to file counter affidavit was closed on 27th August, 2009.

2. By letter dated 23rd April, 1941, the leasehold rights in plot No.6/7, Desh Bandhu Gupta Road, New Delhi-11055, was granted to Mr. Prabhu Dayal.
3. By registered sale deed dated 18th January, 1956, Mr. Prabhu Dayal, transferred the leasehold rights in favour of the petitioner.
4. In 1966, the lease hold rights were terminated by the respondent DDA on the ground of misuse. The action was challenged in a civil suit for perpetual injunction. The said suit was dismissed vide judgment dated 31st July, 1971. However, the said judgment was reversed in the first appeal vide judgment dated 21st July, 1980. The learned Additional District Judge held that cancellation of lease deed was invalid and illegal. It was also held that Vice Chairman of DDA does not have the power to cancel the lease. The respondent DDA preferred a second appeal, being RSA No.24/1981. In the second appeal this Court held that the Vice Chairman has power to cancel the deed, but other findings in favour of the petitioner were upheld and not set aside. In other words, the judgment and decree were passed in favour of the petitioner and cancellation of deed by DDA was set aside and quashed.
5. After judgment of this Court in the second appeal dated 8th August, 2002, the petitioner repeatedly wrote letters to the respondent

requesting them to accept the lease money and consider application for sanction of building plans.

6. Counsel for the respondent, DDA agrees and admits the aforesaid facts and states that as per office notings, the judgment passed in the said suit has been accepted and, therefore, the petitioner continues to be the lessee of the aforesaid plot.

7. In these circumstances, the writ petition is allowed and mandamus is issued to the respondent to accept the lease money from the petitioner in respect of plot No.6/7, Desh Bandhu Gupta Road, New Delhi-11055. In case there is any shortfall or arrears, the respondent will inform the petitioner about the same within one month. However, the respondent will not be entitled to charge interest on the shortfall or arrears as they themselves have failed to implement the judgment and are at default. In case, the petitioner files an application for sanction of building plan, the same will be considered in accordance with law.

The writ petition is disposed of.

SANJIV KHANNA, J.

OCTOBER 13, 2009

NA