

12.

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

+ W.P.(C) 12776/2009

% Judgment Delivered on: 20.05.2010

ANITA KHOSLA Petitioner
Through : Mr. Anil Grover and Mr. Manish Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through : Ms. Sangeeta Chandra, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. The facts of this case, as set out, in the present petition, are that in the year 1957, Mansarovar Garden was developed as freehold colony by a private colonizer and plots were sold to various persons. As the owners of plot nos.60-70 of B Block abutting road no.36 of the Zonal Plan had obtained a stay order against the acquisition of the land, the road could not be constructed. A road was, however, constructed by changing the alignment on the said plots and site no.10 meant for a school. Various representations were made by the aggrieved owners of the plots, who were affected by the construction of the road and also by Mansarovar Garden Residents and Plot Holder Welfare Association to the

Government for allotment of alternate plots in lieu of their plots which were utilized for construction of road by changing the alignment. It was decided by the authorities that plots measuring 200 sq. yards on lease hold basis would be allotted to the effected persons. According to the writ petition an allotment of a plot no.12 in Mansarovar Garden Residential Scheme, New Delhi, was made in favour of the petitioner. In the year 1984, a Public Interest Litigation was filed being a Writ Petition being no.4954/1994 challenging the allotment of alternate plots to the affected persons by the DDA. In the counter affidavit filed by the DDA in Writ Petition no.4954/1994, it was stated that the alternate plots had been allotted to the genuine plot holders after due verification. Accordingly, the writ petition was dismissed on 17.5.1995. A Special Leave Petition bearing No.24277/1995 against the order dated 17.5.1995 was also dismissed as withdrawn on 25.10.1996. Possession of plot no.12, Mansarovar Garden, was handed over to the petitioner by the DDA and subsequently a lease deed was executed on 18.7.1995. After execution of the lease deed the respective allottees submitted building plans to the MCD in the year 1997 for construction over the said plots. Meanwhile, the Lieutenant Governor of Delhi stayed the sanction of building plans and the Principal Secretary of Delhi Government directed the MCD not to sanction the building plan of the area. The action of the Lieutenant Governor of Delhi, was challenged by filing a Writ Petition no.4948/1998, which was allowed on 28.7.2005. A direction was issued to the MCD to take a

decision within six weeks regarding sanction of building plans. During the pendency of the writ petition No.4948/1998 respondent DDA on the basis of a complaint stated to have been received from one Sh. Tajender Pal Singh issued a show cause notice to various allottees on 27.2.2003 as to why the allotment made be not cancelled on the ground that the same was obtained by adopting illegal means and in a fraudulent manner. Being dissatisfied by the reply received, respondent cancelled the allotment of plot no.12, Mansarovar Garden, by a communication dated 14.5.2003, which led to the filing of the civil suit by the petitioner being Suit no.1160/2003. The petitioner in the suit, *inter alia*, sought a decree of permanent injunction restraining the defendants from in any manner taking any action against the plaintiff in pursuance to the notice dated 27.2.2003 and letter of cancellation dated 14.5.2003. The plaintiff also sought a decree of permanent injunction restraining the defendants from dispossessing or interfering with the possession of the plaintiffs and taking over the possession of plots no.18 and 20, Mansarovar Garden Residential Scheme. The aforesaid suit was decreed on 31.5.2007 by a Single Judge of the High Court against the DDA. After passing of the decree the petitioner approached the MCD for sanction of building plans. As per the requirement of the MCD vide letter dated 10.9.2007 a request was made by the petitioner to the DDA for issuance of a No Objection Certificate for raising construction on the plot bearing no.14, Mansarovar Garden Residential Scheme.

3. Counsel for the petitioner submits that despite several requests and personal visits made by the petitioner's attorney and the representatives, the respondent failed to furnish the required No Objection Certificate which request is pending since 10.9.2007. The DDA has assailed the judgment and decree dated 31.5.2007 by filing an appeal before a Division Bench of this Court wherein notice has been issued, however, the application seeking stay of the operation of the judgment and decree dated 31.5.2007 was dismissed. Aggrieved by the inaction on the part of the DDA in not issuing the No Objection Certificate, has forced the petitioner to knock the doors of this Court for justice.

4. Counter affidavit has been filed by the DDA. Counsel for the respondent has relied upon paras 5 and 7 of the counter affidavit, which are reproduced below:

5. That at the outset it is stated that the DDA is not issuing the NOC in favour of the petitioner herein, for the reason that the DDA has, filed an appeal being RFA (OS)No.28/2009 against the judgment and decree passed by the Delhi High Court in Suit No.1160/03. It is submitted that although, the Hon'ble DB has not issued any order for stay of the operation of the impugned decree, the appeal filed by the DDA would become infructuous if the NOC is issued to the petitioner since the stand of the DDA is that the petitioner has no right over the said land.

7. That from the above mentioned facts, it is clear that the issue regarding entitlement of the petitioner to the plot in question is under consideration in the appeal filed by the DDA and therefore, granting of an NOC at this stage would prejudice the rights of the DDA in the appeal. It is for this reason, that after an examination of the facts and circumstances by the department (pursuant to the order dated 15.12.2009 passed in the present Writ Petition) it has been opined that, "*Given the narrated facts, it may not advisable to give NOC*". For this reason, and for the sake of abundant caution, the NOC is not being issued by the DDA.

5. Counsel for the petitioner submits that although the plot no.12 was allotted to the petitioner a communication was received from the Principal Secretary, UD, Government of Delhi, vide DO letter dated 1.5.1998 informing the DDA about the orders of the Lieutenant Governor, Delhi, to carry out an enquiry into the allotment of 21 alternate plots in Mansarovar Garden and request for the original record to be handed over.
6. Counsel for the respondent also contends that as per the enquiry report cases have been filed against 14 individuals for cheating and fraud for submitting bogus slips including in the present case relating to plot no.12 (old no.B-54, Mansarovar Garden). The Secretary (L&B), GNCTD, also sent a DO letter dated 31.1.2003 to the then Vice-Chairman, DDA, along with a status report of 10 cases including the case of the present petitioner stating therein that a complaint of Sh. Tajender Pal Singh was lodged with the DCP, West District, as an FIR no.403 dated 31.8.1999 with respect to 14 allottees. While relying on the RR No.403/1999 DDA found that the original cash receipt produced by Smt. Anita Khosla in the office of the DDA at the time of obtaining possession was found forged and bogus as per the FSL report and, thus the allotment made to the similarly situated persons including the petitioner herein was to be treated as void ab initio and null and void.
7. I have heard counsel for the parties and also perused the annexures filed along with the writ petition. The basic facts are not in dispute. The petitioner was allotted an alternate plot as a road was constructed over the plot of the petitioner. Subsequently

a lease deed was issued in favour of the petitioner. The petitioner approached the MCD for sanction of the building plans and a request was forwarded to the DDA for issuing a No Objection Certificate. The DDA has failed to grant the No Objection which has led to the filing of the present petition. Based on a complaint filed by one Sh. Tajender Pal Singh, an FIR was registered by the police. The DDA based on the complaint filed by Sh. Tajender Pal Singh issued a show cause notice to the petitioner as to why the allotment made in his favour be not cancelled as the same was obtained by adopting illegal means and in a fraudulent manner. As the DDA was not satisfied with the reply received the allotment made by the DDA in favour of the petitioner was cancelled. The petitioner and other similarly situated persons challenged the cancellation by instituting a suit in the Delhi High Court, which was decreed on 31.5.2007.

8. Paras 13 and 15 of ***S. Balbir Singh Sahni & Ors. Vs. Union of India & Ors.***, CS(OS)No.1160/2003 reads as under:

13. It is also of importance to note that at the instance of the complainant Sh. Tajinder Pal Singh, the case was registered under Sections 420/468/471/120B IPC against six persons containing the same allegations, precisely, that there was fraudulent allotments. In the said case, after investigation, police filed the chargesheet. However, after hearing the arguments on charge, the Court of learned MM was not convinced that any case was made out and discharged the accused persons except accused No. 1. Certified copy of the discharge order is produced as Ex. PW1/26. Learned MM has held that no such case of forgery or cheating is made out and apart from other reasons stated in support of this order, he has referred to the report of Investigating Agency which has sent the questionable papers to FSL and the FSL in its report dated 30.1.2002 had opined that signatures on the said papers were by the same person who had appended his signatures on the admitted documents.

15. I have gone through show cause notice dated 27.2.2003 issued by the DDA. It is primarily based entirely on the complaint of Sh. Tajinder Pal Singh and also mentions registration of case under Section 420/468/471/120B IPC against six persons which include plaintiff No. 2. Sh. Udhmi Singh the predecessor in interest of plaintiff No. 1 was not

made accused as he had already died. Since the Court of learned MM discharged all the accused persons, the very basis of the show cause notice evaporates and vanishes in thinner. Consequently, the cancellation order also would be of no consequence. The suit of the plaintiffs, therefore, is decreed and decree of injunction is passed against the DDA not to act upon the show cause notice dated 27.2.2003 or cancellation order dated 14.5.2003. However, I may note that the plaintiffs did not apply for mutation on the basis of documents executed in their favour by the original owners. It would be open for the plaintiffs to take such a step and the DDA may consider the same in accordance with the law. Decree be passed in the aforesaid terms.

9. As noticed by the learned Single Judge on the basis of a complaint received from Sh. Tajender Singh, a case registered under Sections 420/468/471/120B IPC against six persons containing the same allegations that the allotments were fraudulent. Upon investigation charge sheet was filed. After hearing the arguments on charge, the Court of learned Metropolitan Magistrate was not convinced that any case was made out and he discharged the accused persons including the petitioner herein except accused no.1. A copy of the discharge order was produced and exhibited as PW-1/26. The effect of the accused persons being discharged would have a direct bearing on the show cause which was issued to the petitioner as the show cause was issued on the basis of a complaint and FIR No.403/1999 lodged by Sh. Tejender Singh.
10. The sole ground taken in the counter affidavit for not issuing the No Objection Certificate is on account of the pendency of the Regular First Appeal No.28/2009 before the Division Bench and in the given facts DDA has not considered it appropriate to issue the No Objection Certificate.
11. Counsel for the petitioner has strongly urged before this Court that serious prejudice is being caused to the rights of the

petitioner as in the absence of a No Objection Certificate the petitioner cannot carry over the construction over the plot, in question, and each day's delay is causing financial loss to the petitioner on account of increasing cost of construction and also on account of not being able to utilize the property, in question. Counsel also submits that petitioner is willing to give an undertaking to this Court that the property, in question, shall not be sold, alienated or transferred to any third party without prior permission of the DDA as also that the construction shall be carried out subject to final outcome of the appeal filed by the DDA and merely on account of construction over the plot, in question, no special equities will flow in his favour. Although an appeal has been filed by the DDA, the Division Bench has dismissed the stay application. DDA is unable to point out any provision under the DDA Act or building by-laws framed therein for not granting the No Objection Certificate to the petitioner. In the absence of any provision pointed out to withhold the no objection and having regard to the facts of this case and the judgment and decree dated 31.5.2007 present petition is allowed. To balance the equities the petitioner shall file an undertaking in this Court within four weeks from receipt of this order clearly stating that (i) he shall not sell, alienate or transfer the plot, in question, to any third party without prior permission of the DDA or till final decision in the application; *and* (ii) the construction shall be carried out subject to final outcome of the appeal filed by the DDA and merely on account of construction over the plot, no special equities will

flow in his favour. No objection be granted within eight weeks of receipt of this order. No costs.

May 20, 2010

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G.S. SISTANI, J.