

+ **LPA No. 49/2004**

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LPA No. 49/2004

Reserved on: 25th February, 2011

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Date of Decision: 20th April, 2011

VERSUS

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.

In this intra-court appeal, Delhi Development Authority, the appellant has assailed the judgment dated 8th May, 2003 allowing W.P.(C).No. 4883/2003 filed by the respondent No.1, Gurbax Singh. Learned single judge has held that respondent no.1 falls in category 'A' of the Gadgil Assurance Scheme (Scheme, for short) and as per the said

Scheme is entitled to a plot admeasuring 75 Sq. Yds. Accordingly the learned single judge has given the following directions:

“13. A writ of mandamus is issued directing the respondent to hand over possession of the plot area and execute a lease deed in respect of 75 sq. yds. of land at the present site of the petitioner. In case the adjacent land is not available for any reason, then the petitioner should be given an alternative site nearby of 75 sq. yds. on his surrendering the present area in his occupation.”

2. The contention of the appellant is that father of the respondent no.1, Hukum Singh had occupied 28 sq. yds. of land on or before 15th August, 1950 at Basti Regar, Sant Nagar, Karol Bagh, Delhi (the Property, for short) and therefore, under the Scheme, the respondent No. 1 is entitled to allotment of the same area. It is submitted that damages were paid by Late Hukum Singh for 28 sq. yds. of land and therefore entitlement of respondent no.1 is only for 28 sq. yds. of land.

3. Father of respondent No. 1, Hukum Singh had migrated from Pakistan and started residing on public land, the property. On 10th October, 1968, DDA published an advertisement in respect of migrants who had unauthorisedly occupied government land under the Scheme. Hukum Singh applied under the Scheme vide application dated 15th November, 1968. Photocopy of the application is on record. In the

application, it is mentioned that Hukum Singh was in occupation of the property since 1948 and had occupied about 30 sq. yds. of land. He had claimed entitlement of 75 sq. yds. of land. He had stated that he was paying damages.

4. After receipt of application, Hukum Singh was required to submit documents in support of the averments/statements. He was asked to furnish an affidavit that he had not received any rehabilitation benefit i.e. house, land or plot, grant etc. and that his wife and dependents including unmarried children did not own any property or house or land in Delhi or Delhi Cantonment. The said affidavit was furnished and documents were produced, but by letter dated 2nd May, 1979, the application was rejected after recording that Hukum Singh was found ineligible for allotment of alternative plot on his failure to furnish refugee ration card. Hukum Singh protested by an undated letter. By letter dated October, 1979, Hukum Singh was asked to produce clearance certificate from Coordinating Officer (Damages) regarding payment of damages upto 31st October, 1979. Hukum Singh, thereafter, approached and wrote several letters to the Executive Officer (Damages), Delhi Development Authority. Clearance certificate dated 3rd December, 1979 was issued by

Executive Officer (Damages) for the period 1st January, 1952 to 31st October, 1979 for 30 sq. yds. residential/unauthorized use and occupation of the Government land.

5. A five member committee was constituted to examine the eligibility and claims. The list cleared by the said committee has been placed on record at page 116 of the paper book. Hukum Singh's name is at serial number 1 of category 'A', i.e. the list of eligible persons who had occupied the unauthorized land before 15th August, 1950. There is no dispute and it is admitted by the appellant that Hukum Singh was covered by the Scheme and falls in category 'A'.

6. The appellant DDA vide letter dated 12th May, 1980 wrote to Hukum Singh that he has been found eligible for allotment of land admeasuring 75 sq. yds. The plot was identified in the layout plan attached. Hukum Singh was required to pay premium of the land along with ground rent @ 2 ½ % p.a. It was further indicated that cost of development shall be borne by the allottee. There were other terms and conditions also. However, it was stated that this letter would not carry any legal commitment. Why this was so stated and mentioned in the letter and significance thereof, has not been explained by the appellant

DDA. By another letter dated 3rd November, 1980, written by the appellant DDA to Hukum Singh, the latter was informed that he had been allotted 75 sq. yds. of land bearing T/5806/2 as shown in the plan attached, on no profit no loss basis on perpetual lease. There were other terms and conditions which were mentioned and Hukum Singh was required to deposit Rs.1698.75 towards the premium. In this letter, it is not stated that there was no legal commitment on the part of the appellant, DDA. This qualification mentioned in the letter dated 12th May, 1980 was not mentioned/stated in the letter dated 3rd November, 1980. It was an unqualified offer to this extent. Hukum Singh accepted the said offer and deposited Rs. 1,698.75/- towards the consideration for allotment of plot. He also submitted affidavit, clearance certificate etc. on 18th November, 1980. Thus concluded contract came to existence as far as appellant and Hukum Singh is concerned.

7. In this connection, we may reproduce the following observations of the Supreme Court in *DDA v. Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672*:

“ 62. It is well-known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations

may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject-matter of a public notice.....

66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract-making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which are not backed by any statute, new terms of contract could (*sic* not be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review....”

(emphasis supplied)

8. Referring to this decision, Supreme Court in ***BSNL v. BPL Mobile Cellular Ltd., (2008) 13 SCC 597***, has held that once parties have entered into a contract, any change cannot be made unilaterally.

9. We may now consider the contention of the appellant that the allotment of 75 sq. yds. was contrary to the Scheme and even if there was a contract, the same could not be contrary to the Scheme. As noted above, it is stated in the appeal and submitted by the appellant DDA that as per the Scheme, allotment was to be made on the basis of area in occupation of the occupier of the Government land. No such Scheme has been placed on record by the appellant.

10. Respondent No. 1 along with writ petition had placed on record Resolution No. 266 dated 16th October, 1970, passed by the DDA with regard to the allotment of land. In the said resolution the following decision was broadly taken and indicated:-

- “i) The benefit under the Gadgil Assurance be in the form of land of built up house on out-of-turn basis according to the income groups of the displaced persons. Allotment be made on the basis of the area under occupation. In no case, land more than 200 sq. yds. be allotted to any party.
- ii) One plot be allotted to one person paying damages to the Authority. In case more than one family resided at the same place and they were also displaced squatters or descendent of the original squatter; each of the latter be considered eligible for allotment of a site or built up house depending on income group and at the market rate, as might be fixed by the D.D.A.
- iii) As far as possible, steps be taken to rehabilitate the persons in the same area where they were squatting. The cost of

land which would be charged from such squatters may be worked out by the Finance Member.”

(emphasis supplied)

11. Resolution No. 266 states that the allotment would be made on the basis of the area under occupation. It is not stipulated that equivalent area would be allotted. It may relevant to reproduce the relevant criteria published and circulated by the appellant;

“Allotment of Alternative Plot under Gadgil Assurance Scheme

Criteria of categorization

As per resolution No. 266 dated 16.10.1970 following categories were formulated:

A) Category A:- Persons who have their continuous residential occupation prior to 1-08-1950 (eligibility 85 Sq. Yds.)

B) Category B:- Persons who have their continuous residential occupation from 16-80-1959 but before 30-09-1960 (eligibility 25 Sq. Yds.)

C) Category C:- Persons who have their continuous residential occupation after October 1960 but before 1980 (eligibility 25 Sq. Yds. Market rate)”

12. The respondent No.1 alongwith the writ petition had filed resolution No. 226 dated 22nd November, 1971. Paragraph No. 4 of the resolution no. 226 reads as under:-

“4. It was agreed that eligible persons be accommodated in Block 8-A itself by giving them about 85 sq. yds. plot each . The lay out plan of this block would therefore, necessitate revision. A plan has now been prepared by the Planning Branch showing in particular how the existing squatters could be resettled there (laid on the table). The entire squatted upon area has been divided into 85.6 sq. yds. plots each would give us 54 plots as against the eligible number of persons of about 51 or so by utilizing even the proposed school site for purposes of carving out plots. This change in the original layout plan of Block 8-A would however, need to be approved both by the Delhi Development Authority and the Municipal Corporation of Delhi.

- i) A reference to the M.C.D. is likely to delay matters further and in view of the insistence of the Govt. of India to settle the eligible squatters as soon as possible, it would be expedient to declare this particular area i.e. Block 8-A, Western Extension Area, a “Development Area” till such time the actual allotment and passing of individual building plans take place.
- ii) Also, it should be accepted in principle that persons other than eligibles under the “Gadgil Assurances” and squatting there during the period 16th August, 1950 and 30th Sept., 1960 are provided with built up flats in the Lawrence Road Residential Scheme on usual terms but without their having to go through the prescribed procedure for draw of lots, i.e. they would neither be required to have prior registration nor would be included with the general public for draw of lots. And finally, the persons who squatted on land after the 30th September, 1960, should be offered tenaments under our Jhuggi Jhopri Scheme.
- iii) With regard to the rate to be charged form the squatters, it is suggested that for the area actually squatted upon by the squatter, he should be charged on no profit no loss’ basis and the balance of the area be charged at the auction price of the plots likely to be disposed of in that area with a reduction of 10% as rebate.

5. The proposal contained in para 4 is submitted to the Authority for approval.”

(emphasis supplied)

13. It is therefore clear that the eligible persons in occupation of Block A-8, Western Extension area were allotted 86 sq. yards of land, even if they were in occupation of a lesser area. Thus the appellants did adopt and accept the principle that the area equal to the area under occupation would be allotted.

14. Respondent no.1 along with the writ petition had enclosed the letter dated 15th/19th July, 2000 written by DDA, Old Scheme Branch, with regard to allotment of land to the occupants in Block 8-A, WEA Karol Bagh, under the Scheme. The said letter is edified on the resolution No. 226 dated 22nd November, 1971 in respect of category ‘A’ persons who were quantified and mentioned as 26 in numbers.

15. In this connection, we may reproduce the findings recorded by the learned Single Judge rejecting this contention after perusing the original records, inter alia, holding as under:-

“6. In order to appreciate the controversy in question, the original records of the case were produced. It is rather unfortunate that the reading of the record states another story and the previous developments have not been set out

in the counter-affidavit of the respondent. In fact, this court had to go through the records to find out the true as to what happened in the past and in what circumstances the petitioner was held entitled to 75 sq. yds. of land.

7. A perusal of the record shows that a note was made on 14th December, 1970 stating that the cases of Sat Nagar (which is the case in question) have been scrutinized by the Committee constituted for this purpose and eligible persons have been asked to obtain No Objection Certificates. Clarification was sought in respect of the rates to be applied taking into consideration the fact that in some cases the area under unauthorized occupation is less than 25 sq. yds. and as per policy decision the person would be entitled to allotment of 75 sq. yds. Thus, the issue for damages of additional land was raised and considered. There is a further note of 7th May, 1980 stating that a decision has been taken that 75 sq. yds. of land will be made available to the residents of Sat Nagar. The site inspection was also carried out and in terms of the note dated 22nd May, 1988, the area under possession of 7 persons was noted. The pucca structure in respect of Shri Hukum Singh was found 25.33 sq. mtrs. Out of the seven persons inspected, only three persons were found eligible including Shri Hukum Singh and were in Category A under the Gadgil Assurance. It is noted that the persons found eligible under the said category had to be accommodated in the same area by giving them 75 sq. yds. only as decided by the authority. The other remaining four persons had not been applied for allotment/ regularization of the plot. It was thus stated that remaining four persons should be evicted so that the appropriate 75 sq. yds. of land was allotted to the petitioner. This aspect was reiterated in terms of note dated 11th June, 1985. The matter once again came up for consideration in 1989 in their note relating to the mutation of the property in favour of the petitioner. This issue of 30 sq. yds. or 25 sq. yds. was once again discussed and it was noted that according to the decision of the allotment committee, the allotment-cum-demand letter had already been issued to Shri Hukum Singh for an area of 75 sq. yds. for which payment had been made. However, since damages were being charged for 75 sq. yds. a query was raised about the execution of lease deed for 75 sq. yds. This note is dated 14th June, 1989. On this note again a discussion took place and it was stated that the

unauthorized encroachers should be removed so that the full site is handed over to the petitioner. A note is also made on 18th March, 1986 stating that mutation may be allowed in favour of the petitioner.

8. It appears that on representation of the petitioner to the Lt. Governor also, the matter was discussed. The petitioner has himself filed minutes of the meeting at Raj Niwas held on 27th February 1998 in which a decision was taken to resolve the issue and it was decided that the petitioner is entitled to allotment of land measuring 75 sq. yds. adjacent to the land of the petitioner. It was also noted that the petitioner was willing to surrender the existing 30 sq. mtrs. of plot provided he is given a single plot of 75 sq. yds. in nearby vicinity. It was decided that the petitioner should be allotted an alternative plot in the nearby vicinity and for that purpose the respondent officials agreed to consider the request of the petitioner. The aforesaid would thus show that the only issue to consider by the respondent was as to whether the petitioner could be given the plot area of 75 sq. mtrs. (it should have been actually 75 sq. yds.) in the same area or an alternative site had to be given. This finds mention even in the noting sheets produced before the court since the issue of alternative site was also considered.”

(emphasis supplied)

Thus, after due deliberation and thought DDA had decided and made allotment of 75 sq. yds. to Hukum Singh, the father of the respondent No.1. The allotment was rightly made.

16. Application for allotment was made in 1968. The resolutions in question were passed in 1970 and 1971. The letter of allotment was issued on 3rd November, 1980, nearly 9 years thereafter. There is no explanation or reason given why the said allotment letter was allegedly

wrongly issued for 75 sq. yds. Secondly, even after the payment was made on 18th November, 1980, no clarification was issued and the entitlement to 75 sq. yds. was not objected to, or recalled/modified. Hukum Singh and thereafter the respondent No.1 kept on making representations one after another, which were met with silence, without any response and answer from the appellant. Compelled, respondent No. 1 approached the office of Lt. Governor, who is the Chairman of the appellant DDA. A meeting was held and the relevant files were examined. The respondent No. 1 has placed on record, the minutes of the meeting dated 27th February, 1998. The discussion and the decision in the said meeting is reproduced below:-

“Sub: Minutes of the Intervention Meeting held on 27.02.1998 at 3.00 PM in the chamber of Dr. (Mrs.) Kiran Bedi, Special Secretary to LG, Delhi, at Raj Niwas, to discuss the case relating to execution of lease deed in respect of land allotted under Gadgil Assurance Scheme (Complaint No. 11524).

ISSUE:

In response to the representation received from Sh. Gurbax Singh, resident of Sector 4/1329, R.K. Puram, ND-22, regarding above mentioned subject. The issue was forwarded to the concerned Department. The report was submitted to this office but no breakthrough was received. To resolve the problem, the intervention meeting was fixed.

DISCUSSIONS:

The matter was discussed in detail and following decision was taken.

DECISIONS:

To resolve the issue, it was decided that the complainant is entitled for allotment of land measuring 75 Sq.m. adjacent to land measuring 30 sq. m. which is under possession of complainant. But it was made clear by DDA officers that at present no land is available adjacent to land in question. On this, complainant agreed to surrender the existing 30 sq. m. of plot provided he is given a single plot of 75 Sq. m. in nearby vicinity. It was decided that the complainant should be allotted an alternative plot measuring 75 sq. m. in the nearby vicinity. For this purpose, DDA officials agreed to consider it afresh request from Complainant and will process the case accordingly for permission of competent authority immediately.

The Action Taken Report be submitted by DDA within one month's time positively.”

17. This even in late 1998, the appellant had not objected to or stated that Hukum Singh or now respondent No.1, was not entitled to 75 sq. yds. of land. It is stated in the grounds of appeal that there was no decision but a tentative decision. This is factually incorrect and false as is clear from the minutes. What is apparent from the aforesaid minutes and letters which have been written by the respondent No. 1 and which are on record that the appellant DDA was not able to give possession of 75 sq. yds. of land as the adjacent land was in unauthorized occupation of third parties. DDA was not able to demolish the construction made

by the third parties and remove them, to give possession of the land. After the aforesaid decision dated 27th February, 1998, the appellant DDA had carried out demolition of the unauthorized properties in 1999. It may be noted that persons in unauthorized occupation were mostly persons in category 'B' & 'C' who were in occupation of area beyond their entitlement or others who had unauthorisedly occupied Government land. In these circumstances, left with no option, respondent No. 1 was forced to file Writ Petition (Civil) No. 4883/2002 in which the impugned directions have been issued.

18. Along with the affidavit dated 6th February, 2008, the appellant has placed on record copy of file notings dated 30th August, 1999 to 25th October, 1999. We have examined the said file notings including the note of Coordinating Officer, Damages dated 30th August, 1999. The said note does not reflect the correct position which we have noticed and referred to above. It does not refer to earlier file notings preferred to by the single judge, the letter dated 3rd November, 1980 written by the appellant, and the payment made by Hukum Singh on 18th November, 1980. It appears that after 19 years, the appellant wanted to reopen the matter on the ground that they were unable to hand over 75

sq. yds. of land. It was further pleaded that Hukum Singh was in possession of 28 sq. yds, therefore 75 sq. yds. of land should not be allotted to him. This change and summersault after 19 years and after entering into the contract cannot be accepted. The appellant is acting in an arbitrary manner and contrary to law.

19. In view of the aforesaid, we do not find any merit in the present appeal, which is dismissed with costs of Rs.10,000/-. The judgment and directions of the learned Single Judge will be implemented within two months and the costs will also be paid within a period of two months.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

April 20, 2011
kbb