

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

Date of decision: 4th August, 2011

+ **W.P.(C) 2317/2007**

M/S BANSI LAL KANHAIYA LAL Petitioner
Through: Mr. Gaurav Barathi, Adv.

Versus

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

AND

+ **W.P.(C) 4415/2007**

M/S HUKAM CHAND DURGA PERSHAD Petitioner
Through: Mr. Gaurav Barathi, Adv.

Versus

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

AND

+

W.P.(C) 2844/2008

M/S ALLIANCE GLOBAL

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Sangeeta Chandra, Adv.

AND

+

W.P.(C) 2911/2008

M/S PREM DYES & CHEMICALS

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Sangeeta Chandra, Adv.

AND

+

W.P.(C) 13226/2009

M/S JETHANAND & CO.

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rahul Bhandari & Ms. Razia Ali,
Advs. for Mr. Rajiv Bansal, Adv.

AND

+

W.P.(C) 13257/2009

M/S R.K. CHEMICO

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rahul Bhandari & Ms. Razia Ali,
Advs. for Mr. Rajiv Bansal, Adv.

AND

+

W.P.(C) 13262/2009

M/S SATYA CHEMICALS

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rahul Bhandari & Ms. Razia Ali,
Advs. for Mr. Rajiv Bansal, Adv.

AND

+

W.P.(C) 13269/2009

M/S DIAMOND RUBBER COMPANY

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rahul Bhandari & Ms. Razia Ali,
Advs. for Mr. Rajiv Bansal, Adv.

AND

+

W.P.(C) 13280/2009

M/S KUKREJA AGENCIES

..... Petitioner

Through: Mr. Arun Vohra & Mr. Ajay Aneja,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rahul Bhandari & Ms. Razia Ali,
Advs. for Mr. Rajiv Bansal, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitions concern the shifting of the Chemicals Market from within the city, primarily in Lal Kuan and Tilak Bazar, to Holambi Kalan at Narela.
2. The precursor to the said shifting was the fire on 31st May, 1999 at Lal Kuan. A Public Interest Litigation being W.P.(C) No.3678/1999 titled ***All India Lawyers Union (Delhi Unit) Vs. UOI*** was filed seeking compensation for loss of life and property of the affected families. During the hearing of the said writ petition, directions were also issued for development of a wholesale chemicals market so that the market thriving in the congested areas of Lal Kuan and Tilak Bazar and Khari Baoli could be shifted out. Ultimately upon land at Holambi Kalan at Narela being identified for the said purpose, directions were issued in the said PIL for shifting of the entire chemical trade from the city to the said site.
3. It is the case of the respondent DDA that a total number of 883 individual traders were identified for allotment of alternative plots at Holambi Kalan at Narela at pre-determined rates.

4. The respondent DDA initially in the year 2001-02 offered 50 sq. mtrs. plots with FAR of 200 to each of the traders entitled to re-location, at a pre-determined rate of ₹5,400/- per sq. mtr. for FAR of 100. The premium so claimed by the respondent DDA and costing thereof became the subject matter of W.P.(C) No.6317/2002 preferred by the Rang Rasayan Vyapar Sangh, an association of Chemical Traders. Vide interim order dated 1st October, 2002 in the said writ petition, it was directed that the persons who desired to pay the full amount in terms of the demand letter could pay the demanded premium and take possession of the plot and if the amount charged by the DDA was found to be in excess, they would be entitled to refund of the excess amount paid together with interest; option was also given to pay 50% of the demanded amount and subject to payment of which stay of cancellation was granted; it was however provided that the balance amount found payable would be payable along with interest. DDA was thus free to cancel the allotment of those who did not pay 50% of the demanded premium also.

5. However, notwithstanding the pendency of the said writ petition, DDA on the representation of the chemical traders reconsidered the matter and vide letter dated 12th July, 2005 revised the demand to ₹8,433/- per sq. mtr. for an FAR of 100.

6. Another set of writ petitions, the lead one being W.P.(C) No.381/2007, were filed by some of the traders. In the said writ petitions, besides challenging the revised rate of ₹8,433/- per sq. mtr. for FAR of 100 as opposed to the earlier rate of ₹5,400/- per sq. mtr. for FAR of 100 with available FAR of 200, the petitioners also complained of the lack of development by the respondent DDA of the area where the plots were located.

7. The rate aforesaid of ₹8,433/- per sq. mtr. was arrived at as per the land rates prevalent in the year 2005. However, since some of the petitioners in W.P.(C) No.381/2007 and connected petitions had already made 50% payment in terms of order dated 1st October, 2002 (supra) in earlier W.P.(C) No.6317/2002, DDA was vide order dated 14th May, 2008 in W.P.(C) No.381/2007 asked to determine the rate for FAR of 100 in 2002

which was equivalent to the rate earlier demanded in the year 2002 of ₹5,400/- per sq. mtr. per 100 FAR for total FAR of 200.

8. DDA, in compliance of the order dated 14th May, 2008 in W.P.(C) No.381/2007 revised the rate from ₹8,433/- per sq. mtr. with FAR of 100 to ₹6,075/- per sq. mtr. with FAR of 100.

9. The petitioners in W.P.(C) No.381/2007 and connected petitions conveyed their agreement to pay the rate of ₹6,075/- per sq. mtr. with FAR of 100 after adjustment of the amounts already deposited by them. W.P.(C) No.381/2007 and connected petitions were therefore disposed of vide order dated 4th December, 2008 with the direction for payment of the revised rate of ₹6,075/- per sq. mtr. with FAR of 100 with interest at the rate of 6% per annum from the year 2002 till the fresh demand letter was issued by the respondent DDA.

10. As far as the plea of the petitioners in W.P.(C) No.381/2007 and connected petitions of lack of development in the area was concerned, the Court in order dated 4th December, 2008 reached a *prima facie* conclusion that the development works in the area had been completed in the year 2002.

It was however held that the right of the petitioners to agitate in that respect and to claim damages from respondent DDA would arise only after the petitioners take possession of the plots since it was only then that the petitioners would in fact suffer loss or damages on account of their inability to carry on their trade due to failure of respondent DDA to fully develop the area and to make it usable for the purpose for which it was allotted. The petitioners were therefore granted liberty to agitate the said grievance after they take over possession.

11. With the aforesaid background, now the dispute in the present set of writ petitions may be considered.

W.P.(C) No.4415/2007 & W.P.(C) No.2317/2007

12. The petitioner in W.P.(C) No.4415/2007 was in the year 2002 allotted plot No.328, Block-C, ad-measuring 50 sq. mtrs. and was / is a member of the Rang Rasayan Vyapar Sangh which had filed W.P.(C) No.6317/2002 (supra) and claims to have, pursuant to the demand dated 12th July, 2005 (supra) paid a sum of ₹4,21,940/- on 29th December, 2006 under protest and claims that possession of the plot has not been delivered to him inspite of

payment and he continues to carry on his business at the old place. The grievance of the petitioner is to the rate of ₹8,433/- per sq. mtr. for FAR of 100 and he claims to be entitled to pay at the original rate demanded of ₹5,400/- per sq. mtr. only. He claims to be entitled to refund of the excess amount deposited by him. He also, seeks mandamus to the respondent DDA to develop the area, to hand over possession of the plot, to allot an additional plot in terms of the public notices issued and in pursuance to which he claims to have applied; seeks a direction that he is liable to pay ground rent only from the date of possession.

13. Notice of the petition was issued. On 14th January, 2008, this petition was taken up along with other petitions and the counsel for respondent DDA was directed to obtain instructions on the following two aspects:

1. Whether and from when ground rent has been charged from the allottees who have made payment in terms of demand cum allotment letter issued in 2002. The respondent will also clearly indicate the date on which possession of first plot was handed over to any allottee.

2. Whether the DDA has additional land available for allotment in terms of Clause 5 of the letter dated 15th March, 2005 (this issue arises for consideration only in W.P.(C) No.4415/2007).

14. On 18th February, 2008, the petitioner was granted six weeks time to deposit ₹87,025/- demanded by the respondent DDA without prejudice to his rights and contentions and the questions of payment of ground rent and right of respondent DDA to claim current costs as of the year 2006 as well as interest were kept open for decision.

15. The respondent DDA in its counter affidavit has stated that originally it was decided to give FAR of 300 including basement and the rate of ₹5,400/- per sq. mtr. per 100 FAR was approved accordingly; that subsequently the Association of Chemical Traders represented for an out of Court settlement and requested the respondent DDA to reduce the FAR to 100 and to charge the rate at ₹5,400/- per sq. mtr. for total FAR of 100; in this background, the issue of costing was again gone into and the respondent DDA agreed to reduce the FAR from 300 to 100. However, since the earlier rate of ₹5,400/- per sq. mtr. had been computed on the basis of total FAR of

300, the rate for total FAR of 100 only had to be revised to ₹8,433/- per sq. mtr. It is further stated that the petitioner had not made the payment in accordance with the demand letter of the year 2002; that upon issuance of the revised demand letter on 12th July, 2005, majority of the allottees being satisfied made the payment and possession of the plots was delivered to them; that the petitioner however did not make payment then also and paid as aforesaid on 29th December, 2006 i.e. after the expiry of stipulated period of 60 days; however respondent DDA was in the process of handing over of possession to the petitioner. The respondent DDA also controverted that the area had not been developed.

16. The petitioner has filed a synopsis of submissions in which it is also stated that the respondent DDA has demanded the ground rent from the petitioner since the year 2002 when the first allotment was made, for the first five years at the rate of ₹1/- per year and thereafter at the rate 2.5% of the premium originally payable per annum; that the respondent DDA had also demanded interest on account of delayed payment of premium.

17. The counsels state that the position in W.P.(C) No.2317/2007 is the same as in W.P.(C) No.4415/2007 save that the date of allotment letter is 2nd September, 2002 and demand @ ₹8,433/- per sq. mtr. for 100 FAR was made vide letter dated 10th June, 2005 and payment of ₹4,21,940/- made on 27th November, 2006.

18. The counsel for the petitioners has again argued that there is no development at the site and it is not possible for the petitioners to shift their business thereto.

19. However, this Court in the order dated 4th December, 2008 (*supra*) having *prima facie* found the work of development to have been carried out as far back as in the year 2002 and having held that such grievance could not be raised without the petitioner taking over possession, I am not inclined to take any different view. Moreover, it appears to this Court that the petitioner is taking such a plea only to delay the shifting of his business from a Non Conforming Area where the petitioner continues to carry on business inspite of the directions nearly 10 years ago in the PIL aforesaid. Merit is also found in the argument of the counsel for the respondent DDA that owing to

the chemical traders showing reluctance to shift to the alternative site provided to them, the development already carried out therein is being wasted; she has further urged that the area will develop only when more and more chemical traders shift thereto and without the traders actually shifting their business thereto, no such development will take place; it is said that only when sufficient number of traders apply for and deposit money for electricity connection, would the necessary infrastructure therefor be put in place.

20. I am also of the opinion that this Court in the PIL aforesaid having directed the shifting out of the chemical trade market from the crowded areas of the city to a separate place earmarked therefor, the petitioners cannot continue carrying on the business in the city in a Non Conforming Area and if not satisfied with the plot which is offered to them, cannot on the one hand keep holding on to the same and on the other hand continue carrying on business in the Non Conforming Area. Option, during the course of hearing has been given to the petitioners to, if not satisfied with the plots and the development in the area, surrender the same and upon which

surrender, the monies deposited by the petitioners with the respondent DDA till now shall be refunded with interest. The petitioners however did not opt for the same. The said conduct of the petitioners shows the dog in the manger policy which the petitioners have been adopting. The general trend of land prices in Delhi is in the upward direction. It is obvious that the value of the land which has been allotted to the petitioners would be much more than what the petitioners have paid therefor.

21. As far as the claim of the petitioners for additional plot is concerned, the counsel for the respondent DDA has stated that though at one time, there was a proposal for acquiring further land and applications for additional plot were invited but extra land could not be made available and at present it is not possible for the respondent DDA to allot additional plots. The same is also recorded in the Minutes of the Meeting held on 26th October, 2010 between the Urban Development Minister and the Human Resource Development Minister, copy whereof is filed by the petitioner along with the synopsis of submission aforesaid. Even otherwise, I have enquired from the petitioners as to what is the right of the petitioners to additional plot. None

has been shown. There is nothing to show that the stand of the respondent DDA of no additional plots being allotted is wrong. Thus, no such relief also can be granted to the petitioners.

22. As far as the challenge by the petitioners to the price is concerned, the respondent DDA having in pursuance to the order in the petitions culminating in the order dated 4th December, 2008 revised the price from ₹8,433/- per sq. mtr. to ₹6,075/- per sq. mtr. for FAR of 100, the price payable by the petitioners has to be the same. The counsel for the petitioners also has not argued otherwise. If the amounts already paid by the petitioners are at the higher rate of ₹8,433/- per sq. mtr., the petitioners would be entitled to refund / adjustment of the excess amount if any paid.

23. The arguments of the counsels were rather concentrated on the aspect of ground rent, with the counsel for the respondent DDA contending that the ground rent is payable with effect from 2002 when initially the allotments were made and the counsel for the petitioners contending that ground rent would be payable only with effect from the date the petitioners are put into possession of the land.

24. The counsel for the respondent DDA has invited attention to the additional affidavit filed by the respondent DDA in this regard in earlier W.P.(C) No.381/2007 file whereof was requisitioned and tagged to this bunch of writ petitions. It is stated therein that as per Rule 42(2) of DDA (Disposal of Developed Nazul Land) Rules, 1981, the ground rent for holding the Nazul Land allotted under the Rules is payable at the rate of ₹1/- per annum per plot for the first five years from the date of allotment and as per Rule 42(3), the annual ground rent payable after the first five years is to be at the rate of two and half per cent of the premium originally payable by the allottee. It was further stated that the plots were ready for handing over of possession in February, 2003 and the first possession was handed over on 28th December, 2006.

25. Rule 42 (supra) makes the ground rent leviable from “the date of allotment”. The question which arises is as to in the circumstances aforesaid, what can be said to be the date of allotment; whether of the year 2002 when initially allotment was made; or, when the price was revised and fresh demand-cum-allotment letters dated 12th July, 2005 / 10th June, 2005

issued; or when the rate was revised to ₹6,075/- per sq. mtr. in the year 2008; or, when the petitioners made the payment on 29th December, 2006 / 27th November, 2006; or, when the petitioners will be put in possession.

26. The counsel for the respondent DDA has urged that owing to the allotment in favour of the petitioners in the year 2002, the land could not be allotted to anyone else and as such the petitioners are liable for ground rent with effect from that date.

27. Per contra, the counsel for the petitioners has urged that handing over of possession having commenced admittedly on 28th December, 2006, the respondent DDA cannot be allowed to claim ground rent in any case from prior thereto.

28. Rule 42 having made the ground rent leviable from the date of allotment as distinct from the date of possession and / or the date of execution of perpetual lease, the Nazul Land Rules have been looked into to enquire as to what is intended to be the date of allotment. Chapter II thereof deals with “Disposal of Nazul Land” and, Rule 3 thereunder defines the “Purposes for which Nazul land may be allotted”; Rule 4 defines the

“Persons to whom Nazul land may be allotted”; Rules 5&6 deal with the determination of premium or pre-determined rate for allotment of Nazul land; and, Rule 8 concerns the “Manner of allotment”; Rule 8 provides for “allotment to be made on payment of such premium as may be determined”. The same indicates the allotment to take place upon payment of premium and / or pre-determined rate. The question which however arises is whether a person can defer the date of allotment by delaying the payment. The answer obviously has to be in the negative. The date of payment has to be the date of actual payment and / or the date of payment stipulated in the demand-cum-allotment letter. Thus, allotment takes place upon determination of the pre-determined rate and demand-cum-allotment letter being issued to the allottee.

29. Though the respondent DDA in the present cases determined the pre-determined rate in the year 2002 but revised the same in the year 2005 and yet again in the year 2008 as aforesaid. I have wondered whether for this reason it can be said that the determination at which petitioners have been held liable can be said to be of the year 2008 and thus liability for ground

rent cannot be said to commence at any time prior thereto.

30. Though at one stage it appeared to be so but on further consideration it is found that the rate determined in 2008 is also of the year 2002 only. Though the respondent DDA in the year 2005 had determined the rate at ₹8433/- per sq. mtr. as per the land rates of the year 2005 but under direction from this Court in W.P.(C) No.381/2007, reduced the rate to ₹6,075/- per sq. mtr. as per the land rates of the year 2002. The petitioners cannot have their cake and eat it too; they cannot pay pre-determined premium at the land rates of the year 2002 and pay ground rent from the year 2008; if they want to pay ground rent from the year 2008 or later, they ought to pay pre-determined premium at the land rates of 2008 or later and which they are unwilling to.

31. I have also considered whether notwithstanding the above, for the reason of the determination of rate having remained in a state of flux from the year 2002 till the year 2008, the date for commencement of ground rent is to be deferred.

32. However, the facts aforesaid show that it was the petitioners themselves who challenged the rate of ₹5,400/- per sq. mtr. per 100 FAR for total FAR of 200 determined by the DDA in the year 2002 and DDA on the request of the petitioners recomputed the rate for the total FAR of 100. Even though DDA then wanted to demand at the land rates of 2005 but this Court directed determination at the land rates of the year 2002. Thus, the rate of ₹6,075/- per sq. mtr. with FAR of 100 which now has the imprimatur of this Court is nothing but the equivalent of the rate initially demanded by DDA of ₹5,400/- per sq. mtr. per 100 FAR for total FAR of 200. In these circumstances, it cannot be said that there was any error in the rate computed by DDA initially in the year 2001-02. It is owing to the disputes raised by the petitioners that the same was not paid. Thus, it cannot be said that the date of allotment can be said to be anything later than the year 2002.

33. I find that this Court in *Parmod Kumar Vs. Lt. Governor of Delhi* MANU/DE/1876/2008 was also concerned with the question as to the date from which ground rent becomes payable. It was held therein also that the same is payable from the date of allotment but the said rule cannot be

applied strictly in all situations and its application has to be contextual. Finding DDA to be in default in that case, it was held that it could not be permitted to take advantage of its own default.

34. However, in the present case as aforesaid no fault has been found in the rate determined by DDA in the year 2001-02. The challenge by the petitioners to the said rate has been unsuccessful. Notwithstanding the petitioners here having not paid the premium demanded in the year 2002 and also not paying any part of the premium in terms of the order dated 1st October, 2002 in W.P.(C) No.6317/2002, DDA has not cancelled the allotment which it was entitled to and the petitioners are still being given benefit thereof. In the circumstances, the date of allotment cannot be deferred from that as per the demand-cum-allotment letter of the year 2002.

35. The factum of DDA having delivered the possession of the first plot in the year 2006 would also be irrelevant in this regard. As aforesaid, it is the traders who have been reluctant to take possession and to shift out their trade from the non-conforming area notwithstanding the direction of this Court in the PIL aforesaid. Except for a bare plea, there is nothing to show that

possession was demanded in pursuance of the demand-cum-allotment letter of the year 2002 or denied by DDA. Thus, it cannot be said that DDA was not in a position to deliver possession. If an allottee delays taking possession, he cannot avoid the liability for ground rent from the date of allotment.

36. Rule 42(1) of the Rules aforesaid makes the allottee of Nazul land, notwithstanding the perpetual lease having not been executed in favour of the allottee, a lessee of the President of India on the terms and conditions prescribed by the Rules and “contained in the lease deed to be executed”. The same is also indicative of the rights in land vesting on allotment and not on execution of the lease deed. It was so held by this Court in *K.K. Birla Academy Vs. DDA* 115 (2004) DLT 361. Once rights are vested on the date of allotment, the liability for ground rent with effect therefrom cannot be disputed.

37. The next question which arises for consideration is as to interest. As aforesaid, the order dated 4th December, 2008 permitted the petitioners to pay at the rate of ₹6,075/- per sq. mtr. with interest at the rate of 6% per

annum from the year 2002; in consonance therewith the petitioners are found liable to pay the pre-determined rate of ₹6,075/- per sq. mtr. with interest at the rate of 6% per annum from the last date of payment as per allotment of the year 2002 and till the date of payment which is informed to be 29th December, 2006 / 27th November, 2006.

38. W.P.(C) No.4415/2007 and W.P.(C) No.2317/2007 are accordingly disposed of with the following directions:

- (i) The petitioners are found liable to pay for the respective plots allotted to them at the rate of ₹6,075/- per sq. mtr. with FAR of 100;
- (ii) The said premium is found payable by the petitioners in terms of order dated 4th December, 2008 (supra) within 60 days of 26th August, 2002 / 2nd September, 2002;
- (iii) The petitioners are liable to pay interest at the rate of 6% per annum till the date of actual payment i.e. 29th December, 2006 / 27th November, 2006;

- (iv) The petitioners are found liable to pay ground rent also with effect from expiry of 60 days from 26th August, 2002 / 2nd September, 2002 and would also be liable to pay interest on ground rent in accordance with the policy of the respondent DDA;
- (v) The petitioners are directed to pay the amounts aforesaid within eight weeks of today; respondent DDA is directed to supply its calculation of amounts so due upon the petitioners so approaching DDA;
- (vi) The respondent DDA to put petitioners in possession of the plots within six weeks of payment aforesaid and compliance of other formalities;
- (vii) Upon the petitioners failing to make payments within the time aforesaid, it shall be open to the respondent DDA to cancel the allotment;
- (viii) The petitioners are not found entitled to the other reliefs claimed;

- (ix) However, the dismissal / disposal of these petitions would not come in the way of the petitioners, after taking possession, making claims if any maintainable against the respondent DDA for non compliance of its obligation qua infrastructure development etc.

W.P.(C) No.2844/2008

39. The petitioner herein was allotted plot No.256, Block-C, ad-measuring 50 sq. mtrs. vide demand-cum-allotment letter dated 21st August, 2002 and deposited a sum of ₹2,70,290/- on 30th April, 2004 being 50% of the then demand in accordance with the order dated 1st October, 2002 in W.P.(C) No.6317/2002 (supra). No counter affidavit has been filed by the respondent DDA in this petition.

40. The counsel for the petitioner has contended that since the total demand on 21st August, 2002 of ₹5,40,290/- was for the FAR of 200 and the petitioner has deposited 50% thereof being ₹2,70,290/- and further since now the permissible FAR is 100 only, the entire premium stands paid and the only question for consideration in this case is whether the petitioner is

liable for any interest with effect from expiry of 60 days with effect from 21st August, 2002 and till the date of payment till 30th April, 2004. He has in this regard relied on a public notice stated to have been issued by the respondent DDA in the “Indian Express” newspaper of 9th April, 2004 whereby the allottees were given last chance to remit the amount due from them by 30th April, 2004. He has thus contended that the petitioner having made the payment by the said date is not liable for any interest. Though no copy of the said public notice has been filed along with the petition but the counsel for the petitioner at the time of hearing has handed over a photocopy though not of the newspaper. The counsel for the respondent DDA states that without newspaper being produced, the publication of the public notice cannot be believed.

41. I am of the opinion that even if such an advertisement is believed to have been issued by the respondent DDA, the same would not affect the liability if otherwise in law of the petitioner in as much as the advertisement nowhere states that the same was an opportunity to pay without interest. Merely because the date was extended for payment would not disentitle the

respondent DDA to interest if otherwise entitled to.

42. The counsel for the respondent DDA has also contended that the petitioner cannot claim a right to pay the rate of ₹5,400/- per sq. mtr. per 100 FAR which was determined for the total FAR of 200, for reduced total FAR of 100. It is contended that the said argument has already been negated in the earlier round of writ petitions and the rate as in 2002 for the FAR of 100 was determined at ₹6,075/- per sq. mtr. It is thus argued that the petitioner is liable for making payment at the rate of ₹6,075/- per sq. mtr. for FAR of 100.

43. I find merit in the contention of the counsel for the respondent DDA. It is not as if the petitioner had made the entire payment in terms of the demand letter dated 21st August, 2002; the payment of ₹2,70,290/- was made in terms of the order in W.P.(C) No. 6317/2002 to ward off cancellation and which payment was without prejudice to the rights and contentions of the parties. In the subsequent round of litigation culminating in the order dated 4th December, 2008, the rate for FAR of 100 was determined at ₹6,075/- per sq. mtr. The petitioner cannot be treated differently from the others.

44. The other aspects raised in this petition are covered by the discussion hereinabove under W.P.(C) No.4415/2007 & W.P.(C) No.2317/2007.

45. The writ petition is accordingly disposed of with the directions:

- (i) The petitioner is found liable to pay for the plot allotted to him at the rate of ₹6,075/- per sq. mtr. with FAR of 100;
- (ii) The said premium is found payable by the petitioner in terms of order dated 4th December, 2008 (supra) within 60 days of 21st August, 2002;
- (iii) The petitioner is liable to pay interest on ₹2,70, 290/- at the rate of 6% per annum till the date of actual payment i.e. 30th April, 2004 and on the balance, till the date of payment thereof;
- (iv) The petitioner is found liable to pay ground rent also with effect from expiry of 60 days from 21st August, 2002 and would also be liable to pay interest on ground rent in accordance with the policy of the respondent DDA;
- (v) The petitioner is directed to pay the amounts aforesaid within eight weeks of today; respondent DDA is directed to supply its

calculation of amounts so due upon the petitioner so approaching DDA;

- (vi) The respondent DDA to put the petitioner in possession of the plot within six weeks of payment aforesaid and compliance of other formalities;
- (vii) Upon petitioner failing to make payments within time aforesaid, it shall be open to respondent DDA to cancel the allotment;
- (viii) The petitioner is not found entitled to the other reliefs claimed;
- (ix) However, the dismissal / disposal of this petition would not come in the way of the petitioner, after taking possession, making claims if any maintainable against the respondent DDA for non compliance of its obligation qua infrastructure development etc.

W.P.(C) No.2911/2008

46. The petitioner claims that in the draw-of-lots held on 10th July, 2002, it was found successful for allotment of plot No.208, Block-C, ad-measuring 50 sq. mtrs. but no demand-cum-allotment letter was received by it inspite of

repeated visits to the office of the respondent DDA; that on enquiries in January and February, 2007, it was learnt that the said plot had been offered to somebody else. The writ petition has been filed in April, 2008 seeking mandamus to the respondent DDA to allot the said plot to the petitioner and for restraining the respondent DDA from allotting the same to any other person.

47. Notice of the petition was issued. Though no interim order granted.

48. The respondent DDA in its counter affidavit has stated that the petition suffers from delay and laches and is without any explanation whatsoever for the delay of six years in approaching the Court. On merits, it is stated that the Lieutenant Governor had on 3rd June, 1999 constituted a Committee under the Chairmanship of Divisional Commissioner, GNCTD for shifting of chemical traders from the walled city; a list of 883 eligible chemical traders was received from the office of Deputy Commissioner, GNCTD for allotment of plots at Holambi Kalan (Narela); the name of the petitioner Prem Dyes and Chemicals with the address Shop No.780, Katra Kirana, First Floor, Tilak Bazar Chowk, Delhi did not feature in the list of

883 eligible chemical traders received from the office of Deputy commissioner GNCTD; however, the petitioner had in one of its letters addressed to respondent DDA given the address of its registered office as of 146-A/A-1, Lawrence Road, Delhi and which address featured in a list of 226 persons sent by the office of the Deputy Commissioner, GNCTD under the heading “List of Dealers whose names have been deleted after the Survey”; that a total list of 1109 traders had been initially prepared and which after survey was reduced to 883 since 226 names were deleted; however name of one M/s Prem Dyes Chemicals having address as 2210/10, Aggarwal Market, Katra Tobacco, Tilak Bazar, Delhi existed in the list of 883 eligible traders at serial No.604 and it was the said M/s Prem Dyes & Chemicals, Aggarwal Market, Katra Tobacco, Tilak Bazar, Delhi which was found successful in the draw-of-lots and to whom the allotment of the plot claimed by the petitioner had been made; that the 883 persons found eligible were also required to have deposited a sum of ₹20,000/- in accordance with the directions in W.P.(C) No.3678/1999 (PIL) aforesaid; that subsequently it was realized that M/s Prem Dyes and Chemicals, Aggarwal Market, Katra

Tobacco, Tilak Bazar, Delhi had not made the said deposit and the said deposit of ₹20,000/- had been made by the petitioner and thus the allotment in favour of M/s Prem Dyes and Chemicals, Aggarwal Market, Katra Tobacco, Tilak Bazar, Delhi also was cancelled; that the petitioner though found to have deposited ₹20,000/- would still not be entitled to allotment having not featured in the list of 883 eligible traders forwarded by the Divisional Commissioner, GNCTD.

49. The petitioner inspite of repeated opportunities has not filed any rejoinder to the aforesaid counter affidavit.

50. The counsel for the respondent DDA has rightly contended that the petitioner if at all aggrieved, is aggrieved from the decision of the GNCTD of not finding the petitioner eligible for allotment of a plot and has not raised the said grievance in this petition.

51. There is thus no merit in the petition. The same is dismissed.

W.P.(C) Nos.13226/2009, 13257/2009, 13262/2009, 13269/2009 & 13280/2009

52. The counsels have stated that the controversy in these petitions is the same. Each of the said petitioners upon being found eligible was allotted a

plot of land and also claims to have in the year 2008 deposited ₹5,10,540/- with the respondent DDA. The relief claimed in the petitions is of delivery of possession of the plots, of development of the area etc.

53. Notices of the petitions were issued and the applications for interim relief restraining the respondent DDA from cancelling the allotment in favour of the petitioners dismissed as not pressed.

54. The respondent DDA in its counter affidavit in each of the petitions has stated, that the Division Bench of this Court in PIL (supra) had vide order dated 14th September, 2001 directed each of the chemical traders to deposit a sum of ₹20,000/- in the Registry of this Court within two weeks towards costs for disbursement to the victims of Lal Kuan fire and had imposed a condition that unless such costs were deposited and proof of deposit thereof shown to the allotting agency, no allotment of space shall be made; it was further provided that if allotment was made without furnishing proof of payment of the said costs of ₹20,000/-, the Commissioner, MCD shall be held responsible; the MCD was also directed to seal the premises of the traders who did not deposit the costs. It is yet further the case of the

respondent DDA that the allotments made were subject to the allottee being required to furnish proof of deposit of the said costs of ₹20,000/- in the Registry and it was also a term of allotment that if it was discovered at any stage that the allotment had been obtained by suppression of any facts or misrepresentation, the allotment will be cancelled. It is yet further the case of the respondent DDA that during the verification of documents, it came to the notice that each of the said petitioners had not deposited the costs of ₹20,000/- in the Registry of this Court within the specified time and as such the allotment in their favour was liable to be cancelled and thus the petitioners were not eligible for allotment of alternative plot and the allotment made in their favour liable to be cancelled.

55. Each of the said petitioners has along with the petitions itself filed photocopy of the receipt of payment of the said costs. However, the said receipt is in the form of acknowledgment by this Court of letters addressed to the Registrar enclosing a cheque / demand draft of ₹20,000/- towards costs aforesaid. The petitioners in their rejoinder to the counter affidavit of respondent DDA have reiterated that they have deposited the said costs

instead of within two weeks of 14th September, 2001, in or about January, 2002 and the very fact that their names were included in the list of 883 eligible candidates forwarded by the Divisional Commissioner, GNCTD to the respondent DDA showed that the delay by them in making the deposit has been condoned. They have further contended that after the allotment in their favour and deposit of the demanded amounts by them, such plea could not be taken belatedly.

56. The counsel for the respondent DDA during the hearing has also contended that the allotment in favour of each of the said petitioners has been cancelled. The counsel for the petitioners has rejoined by contending that there is no intimation of such cancellation to the petitioners.

57. Even during the hearing, no document effecting cancellation has been produced. Till the filing of counter affidavit, admittedly no cancellation had been effected. In the circumstances, the oral plea of cancellation cannot be given any credence.

58. The order dated 14th September, 2001 of the Division Bench of this Court is unequivocal, “those of the chemical traders who did not deposit the cost of ₹20,000/- in this Court within two weeks thereof were to be not entitled to allotment”. However, the fact remains that notwithstanding the petitioners herein having not deposited the costs of ₹20,000/- within two weeks of 14th September, 2001, their names were included in the list of eligible allottees and allotment letters were issued to them, of course conditional upon furnishing proof of deposit of the said costs. The demand-cum-allotment letters to these petitioners are of the year 2008, in pursuance of the draw-of-lots held on 8th February, 2008 and not of 2002 as in the case of the other petitioners. The petitioners as aforesaid had six years prior thereto deposited the costs, though after the time prescribed therefor.

59. There is nothing on record to suggest that the premises in the non conforming area where the said petitioners have been carrying on business were sealed for the reason of non payment of costs within two weeks or that any action was taken against the Commissioner, MCD for allotment in favour of the said petitioners notwithstanding their having not paid the costs.

The MCD and GNCTD are not before this Court.

60. I have wondered whether this Bench can in the face of the order dated 14th September, 2001 of the Division Bench either extend the time for payment of costs till the costs were so paid and / or whether the case for such extension at all is made out.

61. The costs were required to be paid by the traders by way of compensation to the victims of fire. There was nothing sacrosanct in the time given of two weeks for deposit of the costs. The time having been fixed by the Court can always be extended by the Court. From the proof of cheques submitted by the petitioners to this Court and no action having been taken against them of sealing their shops, it appears that all concerned were satisfied that the costs were deposited by the petitioners. It is also not as if the costs to be deposited within two weeks were to be disbursed to the victims of fire. The Court had directed the same to be kept in a fixed deposit for disbursement in accordance with the directions of the Court.

62. In the entirety of the circumstances, I do not deem it appropriate to relegate the petitioners to now approach the Division Bench for extension of time. The petitions have remained pending before this Court for the last over two years and at this stage to now direct another proceeding is not deemed appropriate. It is felt that interest of justice would be served by imposing penalty on the petitioners for not depositing the costs within time.

63. Accordingly, it is directed that upon the petitioners depositing penalty of ₹40,000/- each in this Court within two weeks of today and furnishing proof of payment thereof to the respondent DDA, shall be entitled to delivery of possession and other rights in the respective allotted plots. The said amount of ₹40,000/- deposited by each of the petitioners be utilized in compensation to the victims of the fire if still being disbursed under directions in W.P.(C) No.3678/1999 and if the said process is over, be remitted to the Delhi High Court Legal Services Authority for utilization for tendering legal aid to victims of other such incidents as of fire.

64. Though other questions as in other petitions have not been raised in these petitions but to avoid further litigation, it is deemed expedient to clarify that these petitioners would also be bound by what has been held hereinabove; save that the year of their allotment is of 2008 and amounts due from them shall be computed accordingly.

65. The petitions are disposed of with the aforesaid directions. The petitioners having agitated the grievance of non development of the alternative area allotted to them notwithstanding the order dated 4th December, 2008 in the earlier round of writ petitions though by the other traders, are also burdened with costs of ₹15,000/- each payable to the respondent DDA within four weeks of today.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 4th, 2011

‘gsr’

(corrected and released on 27th August, 2011)