

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

% *Date of Judgment:* 09.02.2011

+ **RSA No. 124/2010, CM Nos.11499/2010 & 11500/2010**

MOHD. ABDUL QADEER & ORS. Appellants
Through: Mr.Suresh Sharma, Advocate.

Versus

MOHD.RAZZAK & ORS. Respondents
Through: Mr. Pawan Mathur, Advocate
for DDA.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the 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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 22.2.2010 which had reversed the finding of the trial judge dated 11.8.2009 whereby the suit filed by the plaintiff seeking allotment of the alternate plot and a declaration to the effect that it was the plaintiff who is entitled to the allotment of alternate plot had been dismissed. The impugned judgment had decreed the suit of the plaintiff.

2. The plaintiff had contended that he was an allottee/tenant of stall No.23, Motor Market, Kabadi Bazar, Jama Masjid, Delhi at the

rent of Rs.7/- per month. He was in actual possession. In 1975-76 the officials of the DDA asked all shopkeepers including the plaintiff to surrender vacant possession of their respective shops to get alternate allotment of land in lieu of the same. Plaintiff had surrendered vacant possession of the land to the MCD and became entitled to the alternate allotment. DDA allotted a plot measuring 100 sq. yards bearing No.130 in Block D-1, Rewari Line Industrial Area, Phase-II, Mayapuri, New Delhi to the plaintiff. In March-April 1983 plaintiff came to know that this allotment in his name has been cancelled and in fact was allotted to defendant no.2 which was unwarranted as the defendant no.2 was not entitled to this alternate allotment.

3. The suit was contested by the DDA as also by the defendant no.2. Issues were framed. Oral and documentary evidence was led by the respective parties. Trial Court was of the view that the DDA had made alternate allotment to defendant no.2 only on the recommendation of the MCD vide Ex.PW-1/1A; the plaintiff had never been allotted any alternate plot; the scope of cancelling the same did not arise. His suit was accordingly dismissed.

4. In appeal, the findings of the trial judge were reversed. This was after a detailed scrutiny and re-appraisal of both the oral and documentary evidence. The first appellate Court was of the view that the allotment in favour of defendant no.2 is illegal; plaintiff is entitled to the allotment of the alternate plot; by way of mandatory injunction, defendant no.1/DDA had been directed to restore this allotment in favour of the plaintiff.

5. This judgment is impugned before this Court. The only contention raised before this Court is that the question of limitation

has not been gone into by the Courts below; it is contended that even as per the case of the plaintiff the alternate plot had not allotted to him in 1975-76; it is difficult to believe that he did not come to know till March-April 1983 about the alleged fraud committed by defendant no.2. It is submitted that the suit was barred by time and it was mandatory upon the courts below to have framed an issue on this score; provision of Section 3 of Limitation Act 1963 cast a duty upon the Court to go into this question which has not been examined. This has raised a substantial question of law. This is the only argument urged.

6. Perusal of the record shows that no issue on limitation had been framed; however, before the first Appellate Court this argument has been dealt with and has been answered as follows:

“Whether the suit came to be filed beyond the period of Limitation?

Learned counsel for DDA-respondent No.1 has contended that the letter of allotment having been issued in the year 1975, present suit filed in the year 1984 is barred by limitation.

On the other hand, learned counsel for appellants has contended that this contention is without merit. Learned counsel has referred to the evidence available on record and submitted that even if the letter of allotment is stated to have been issued in the year 1975, plaintiff learnt about the same in March/April 1983 and took up the matter with DDA by filing representation whereupon DDA withheld execution of lease deed in respect of the alternative site, and as such present suit can safely be held to have been filed within the period of limitation.”

7. The averments made by the plaintiff in the plaint had specifically pleaded that it was only in March-April, 1983 when he came to know about the alternate allotment of the defendant no.2 and he took up the matter with the DDA by filing appropriate representation which is dated 4.5.1983. He had filed documentary

evidence in support of his claim whereas the defendant no.2 had not produced any such document. The question of limitation has been adverted to and answered in the impugned judgment.

8. Learned counsel for the appellant has otherwise not assailed the merits of the findings. Substantial questions of law have been phrased on page L of the appeal; they read as follows:

“1.Whether the suit filed by the plaintiff (predecessor-in-interest of the plaintiff herein) on 02.2.1984 for declaration to cancel the allotment of plot in question and for consequential reliefs was grossly time barred and ought not to have been entertained in the first court itself.

2.Whether despite objection in the W.S. the Ld.trial court ought to have framed an issue on the point of limitation in the first court itself.

3.Whether the relief of possession claimed by way of an amendment application U/o 6 Rule17 C.P.C. ought to have been also declined the limitation having expired for the said relief also by efflux of time.

4.Whether by entertaining the suit for the reliefs grossly barred by time the court has done gross miscarriage of justice to the defendants (present applicants).”

9. The substantial question of law no.1,2 and 4 border on the question of limitation. Question of limitation has been answered by adverting to the averments made in the plaint which is supported by the documentary evidence including the representation dated 4.5.1983 filed by the plaintiff before the DDA that as soon as he learnt about the alleged allotment in favour of defendant no.2 he had represented to the DDA. That apart even after the framing of issues the defendant did not seek any amendment for recasting of the issues seeking an issue to be framed on the question of

limitation. That apart the appellate Court had answered this argument which finding calls for no interference. The substantial question No.3 of law is on the amendment permitted to the plaint. Admittedly after this order of amendment the same has not been challenged. No substantial question of law arises on this score either. Appeal as also pending applications are dismissed in limine.

INDERMEET KAUR, J.

FEBRUARY 09, 2011
nandan