

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LETTERS PATENT APPEAL NO. 795 OF 2010**

DELHI DEVELOPMENT AUTHORITY Appellant
Through Mr. Pawan Mathur, advocate.

VERSUS

JAYSHREE BAGLEY AND ANOTHER Respondents
Through Mr.D.S.Narula, advocate.

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 ?
3. Whether the judgment should be reported in the Digest ?

ORDER
% 6th January, 2011.

C.M. No. 19934/2010

This is an application for condonation of delay of 129 days in preferring the appeal.

Mr. D.S. Narula, learned counsel for the respondents has no objection to the condonation of delay. Accordingly, the delay in filing the appeal is condoned.

The application stands disposed of.

LPA No.795/2010

Delhi Development Authority (the appellant, for short) assails the judgment dated 19th May, 2010, quashing their communication dated 2nd November, 2009 and direction/mandamus to process the application of Ms. Jayshree Bagley and Mr. Mukul Taliya (the respondents, for short) for conversion of leasehold rights into freehold rights in respect of plot no.B-

35, Friends Colony, New Delhi admeasuring 209.032 sq. mts (the property, for short). Possession of the property was handed over by DDA to its original owner/allottee Ms. Rambati on 18th March, 1980 and a lease deed was executed on 24th August, 1980.

2. The respondents herein, Ms. Jayshree Bagley and her son - Mukul Taluja had filed the said application for conversion into freehold rights with the appellant-DDA on 20th December, 1999 and had deposited the conversion charges as per the calculation made therein. The respondents filed Writ Petition (Civil) No. 14143/2009 after waiting for nearly ten years, when they received letter dated 28th October, 2009 from DDA [the date is wrongly mentioned in the impugned judgment as 2nd November, 2009] which reads :

“I am directed to draw your kind attention to the above cited subject and to say that your conversion application is under process and you are fully aware that the above cited property was allotted to the legal heirs of late Shri Bharat Singh. The matter is adjudicated and your conversion can only be processed after the decision of the competent court.”

3. DDA has produced the original record relating to the said property. Few undisputed facts as culled out from the file may be noticed.

(a) Agricultural land belonging to one, late Mr. Bharat Singh was acquired in the year 1959. Mr. Bharat Singh expired on 26th June, 1967. Late Mr. Bharat Singh is survived by three legal heirs, namely, Mr. Kesri, Ms. Rambati and Ms. Attari. Land & Building Department, Delhi Administration recommended alternative allotment of three residential

plots in favour of the said three legal heirs of late Mr. Bharat Singh in South Delhi vide following details :

“ (i) Shri Kesri S/o late Shri Bharat Singh : Vide letter No. F.32(19)3/74/L&B/Alt./23045 dated 22.11.1976 for allotment of an alternative residential plot measuring 400 sq. yards.

(ii) Smt. Rambati W/o Shri Gopi Chand, D/o late Shri Bharat Singh vide letter No.F.32(19)4/74/L&B/Alt./45663 dated 22.12.1978 for allotment of an alternative residential plot measuring 250 sq. yards

(iii) Smt. Attari D/o. late Shri Bharat Singh : Vide letter No. F.32(19)6/74/L&B/Alt./34583 dated 21.11.1979 for allotment of an alternative residential plot measuring 250 sq. yards”

(b) Pursuant to this recommendation, Mr. Kesri was allotted plot no. B-7/124A, Safdarjung Development Area admeasuring 294.44 sq.mts. and possession was handed over on 5th May, 1979 and lease deed was executed in his favour on 13th June, 1979. Mr. Kesri, it appears, transferred the said plot in favour of third persons, Mr. S. S. Sundaram and Ms. S. Lalita.

(c) Ms. Rambati in turn sold/transferred her rights, title, interest in the said property in 1980 by way of Power of Attorney and other documents in favour of Mr. Vijay Taluja, ex-husband of respondent no.1 and father of respondent no.2. A General Power of Attorney was executed in favour of Mr. R. L. Taluja son of Mr. Vijay Taluja.

(d) Land & Building Department, Delhi Administration, by their letter dated 25th October, 1983 informed the appellant-DDA that the allotment of plots in favour of Mr. Kesri, Ms. Rambati and Ms. Attari stood withdrawn and according to the policy, the three legal heirs were entitled to one plot and not three separate plots. As Ms. Attari had not been allotted any plot,

no allotment was made to her. Aggrieved, Ms. Attari filed Writ Petition (Civil) No. 875/1984 for allotment of an alternative plot. It was stated at Bar by the counsel for the appellant that the writ petition has been dismissed and the order has attained finality.

(e) By Order dated 31st December, 1983, Lt. Governor was pleased to cancel the lease in respect of the plot no. B-7/124A, Safdarjung Development Area allotted/leased to Mr. Kesri. As noticed above, by the said date Mr. Kesri had already transferred his rights in favour of Mr. S.S. Sundaram and Ms. S. Lalita. There is inter se litigation which is pending between Mr. S.S. Sundaram and Ms. S. Lalita and DDA in respect of the said cancellation. We are not concerned with the said litigation.

(f) However, as far as property no. B-35, Friends Colony, New Delhi is concerned, the appellant-DDA did not cancel the allotment/lease in favour of Ms. Rambati. No letter or communication was written by the appellant-DDA in respect of the said property either to Ms. Rambati or the respondents herein. There has been complete silence and lack of communication. The Original file produced by the appellant-DDA reveals that the file was processed for cancellation of the allotment of the property but it was decided to await the decision of the court in the case of plot no. B-7/124A, Safdarjung Development Area, New Delhi and no final order of cancellation was passed.

4. The property has been constructed upon and the respondents are in possession of the said property since 1980 onwards. The appellant-DDA rose from slumber after more than 20 years when the respondents filed their application seeking conversion of leasehold right into freehold right in 1999. The application remained pending for want of decision till the

letter dated 28th October, 2009 quoted above was issued by the appellant-DDA.

5. It may be interesting to note that after the application for conversion into freehold was filed in 1999, the matter was put up through proper channel to Director (RL), Commissioner (LD), Vice Chairman, and the then Lt. Governor for consideration/approval. The Lt. Governor in his note dated 27th February, 2002 has stated that the proposal for cancellation of allotment of plot no.B-35, Friends Colony, New Delhi did not hold any ground and the plot had been allotted to Ms. Rambati. The said order further recorded that the other two legal heirs, Ms. Attari and Mr. Kesri were entitled to equal rights on the property no.B-35, Friends Colony, New Delhi.

6. Till date, neither, Ms. Attari or Mr. Kesri has staked any claim or right in respect of the plot no. B-35, Friends Colony, New Delhi. As noticed above, Mr. Kesri has already sold the plot allotted to him in Safdarjung Development Area and has received consideration. Ms. Attari had filed a Writ Petition (Civil) No. 875/1984 for allotment of alternative plot but the said writ petition has been dismissed and the order has become final. She has not staked any claim in the plot no.B-35, Friends Colony, New Delhi. Their names have not been substituted or added in the lease deed.

7. The Respondents herein have already constructed upon the property and have been in possession for nearly last 30 years. The appellant-DDA did not communicate or write to them or Ms. Rambati that Mr. Kesri or Ms. Attari have any right on the plot. Allotment of the plot at Safdarjung Enclave in favour of Ms. Kesri was cancelled in 1983 but no steps have been taken in respect of the plot/property in question by the appellant-DDA since 1983. This prolonged delay has been to prejudice of the respondents. If the appellant-DDA had taken action in 1983 for joint

allotment in favour of Ms. Rambati, Mr. Kesri and Ms. Attari, the respondents could have taken legal action or obtained documents from Ms. Attari and Mr. Kesri in 1983 or soon thereafter. Asking the respondents herein to now obtain no objection certificates or consent from Mr. Kesri or Ms. Attari when the land prices have increased manifold is completely unjustified and unwarranted. The appellant, if they wanted to take action, should have acted with promptitude and diligently. Inaction and silence on the part of the appellant for nearly 30 years will cause hardship and punish the respondents. There is no litigation or claim by Ms. Attari or Mr. Kesri. They have not filed any litigation or even written letters to DDA staking any claim in the property. Learned counsel for the respondents have agreed that they shall furnish an indemnity bond to appellant-DDA and indemnify them against loss or damage if Mr. Kesri or Ms. Attari stake any right or make any claim/or initiate any litigation. The statement made on behalf of the respondents is taken on record and the respondents will be bound by the same.

8. In view of the aforesaid, we do not find any reason to interfere with the impugned Order dated 19th May, 2010. The appeal filed by the appellant-DDA is dismissed subject ofcourse to the respondents furnishing indemnity bond in terms of the statement.

No costs.

SANJIV KHANNA, J.

CHIEF JUSTICE

**JANUARY 06, 2011.
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