

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

+ **LPA No.470 of 2004 & CM 5367/2004, CM No.5369/2004**

% Reserved on: 9th August, 2012
Pronounced on: 24th August, 2012

DDA . . . Appellant

through : Mr. Rahul Bhandari,
Advocate along with Mr.
Rajiv Bansal, Advocate and
Mr. Devvrat Singh,
Advocate.

VERSUS

SHAKUNTLA DEVI & ORS. . . Respondents

through: Nemo.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI (Acting Chief Justice)

1. This intra-court appeal is preferred by the appellant-DDA questioning the validity of the orders dated 15th September, 2003 passed by the learned Single Judge in the writ petition preferred by the petitioner on the very limited ground. In fact, as would be noted hereinafter the impugned order decides the controversy raised in the writ petition in favour of the DDA hererin still at the end certain direction of refund of the respondent is given and the appellant is aggrieved by those directions only. Refund of the premium paid by the respondent against the allotment of plot along with interest @ 15%. As we

are concerned of the justness of these directions only, it is not necessary to state the facts in detail and the purpose would be served by stating the facts in capitulated form.

2. The predecessor-in-interest of the respondent No.1, Shri Radha Krishan, husband of the respondent No.1 had purchased a plot bearing No.B-4/35, Safdarjung Development Area, New Delhi in a public auction held on 27.1.1964. He paid the full amount whereupon Lease Deed dated 20.12.1965 was executed in his favour. As per Clause II (3) of the Lease Deed, Shri Radha Krishan was required to carry out construction within a period of two years from 20.12.1965. Admittedly, he did not do so for number of years. Sometime in the year 1978, Shri Radha Krishan raised the issue about physical possession when DDA threatened to cancel the Lease Deed by issuing notice that Shri Radha Krishan had not carried out the construction. Be as it may, on the representation of Shri Radha Krishan, DDA agreed to extend the period of construction. However, even thereafter, construction was not carried out due to the reasons entirely attributed to the purchaser as some disputes had arisen in M/s. Army Brush Factory, a partnership firm of Shri Radha Krishan. In any case, in failure to carry out construction on the plot, show cause notice dated 14.3.1984 was issued and thereafter, cancellation order was issued on 16.2.1985. After the cancellation, the plot was re-auctioned to a third party on 29.5.1986 and Lease Deed was executed in favour of the said party on 15.7.1986 who got the plot converted into freehold and even constructed the same.

3. Much thereafter, Shri Radha Krishan filed Suit in November, 1987 for declaration that the cancellation of the plot was illegal and without jurisdiction. This suit was dismissed vide orders dated 29.4.1993 on the ground of limitation as prescribed under Section 53(b)(2) of the Delhi Development Act, 1957 (hereinafter referred to as 'the Act'). No appeal was preferred against this judgment and the said judgment became final.
4. However, after one and a half years, legal heirs of Shri Radha Krishan, viz., present respondent filed writ petition (out of which, the present appeal arises) seeking a declaration that the cancellation of the Lease Deed was illegal, he be compensated with the market price of the plot or in alternate, be given some other plot. This writ petition is dismissed, *inter alia*, observing as under:

"Learned counsel for the petitioners contends that the petitioners be given an alternative plot. I am unable to accept this claim of the petitioners. The petitioners who are the legal heirs of late Shri Radha Krishan only derive rights from the said deceased allottee. The said Shri Radha Krishan did not construct on the property for 19 years for one reasons or the other during which period of time a number of notices were issued to him and the lease was also cancelled and restored. The final opportunity was given to Shri Radha Krishan when he even failed to construct the property in 1984. A show cause notice was issued on 14.3.1984 to Shri Radha Krishan to which a reply dated 9.4.1984 was sent. A reading of the reply does not show any satisfactory explanation. Not only this, in the reply, the prayer made is for extension of the further six months' period of time. Admittedly, the construction as not made during this six months' period nor was any further extension sought. The cancellation order was thus issued on 16.2.1985 much after the expiry of six months' period.

Insofar as the issue of the service of the cancellation order is concerned, it is apparent that Shri Radha Krishan had left the place wherefrom he was communicating without giving an alternative address for which the respondent cannot be blamed. The cancellation order was thus pasted. The plot was re-allotted in 1986 and lease deed executed. Thus, much water has flown since the cancellation which would even otherwise dis-entitle the petitioners to get any relief of any alternative plot at prices in 1965 or otherwise."

5. After recording the above, the findings on the basis of which rejecting the prayer for allotment of alternate plot, which was the only relief pressed at the time of hearing, the learned Single Judge stated that insofar as premium paid by Shri Radha Krishan is concerned, the same was only refunded by the DDA and opined that this relief can be granted to the respondents. The order, thus, culminated in issuing the following directions:

"In my considered view, the only relief which can be granted to the petitioners at this stage is to direct the refund of the amount of premium paid for the plot in question along with interest @ 15% per annum from the date of cancellation of the lease till date of payment in view of the unauthorized retention by the respondent."

6. As pointed out, it is this direction which is challenged before us. The respondent having challenged the order of the learned Single Judge holding that the cancellation was valid and further that the respondents are disentitled for any relief of alternative plot.

7. Next submission made by the learned counsel for the appellant is that once there was a valid cancellation of the plot on justified ground, in terms of lease, the respondents are not entitled to refund premium paid either. Our attention is drawn to Clause III, which is to the following effect:

"III. If the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calendar month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this Lease has been obtained by suppression of any fact or by any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the Lessor, whose decision shall be final, any breach by the Lessee or by any person claiming through or under him or any of the covenants or conditions contained herein and on his part to be observed or performed then and in any such case, it shall be lawful for the Lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the residential plot hereby demised and the buildings thereon, to re-enter upon and take possession of the residential plot and the buildings and fixtures thereon, **and thereupon this Lease and everything herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.**

Provided that, notwithstanding anything contained herein to the contrary, the Lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the rent which shall be in arrears as aforesaid together with interest at the rate of six per cent per annum."

8. The aforesaid Clause is amply clear which does not entitle the Lessee even to get a refund of the premium paid. At present,

this Clause was not brought to the notice of the learned Single Judge. Be as it may, in view of the aforesaid clause, the direction to the aforesaid claim cannot be sustained and therefore that part of the impugned order dated 15.9.2003 which is extracted above is set aside holding that the respondents are not entitled to any refund of any premium either.

9. Appeal is allowed the aforesaid terms. No orders as to cost.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

AUGUST 24, 2012

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