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

+ CS(OS) 227/2005

Reserved on: 22nd February, 2012

Decided on: 14th March, 2012

APEEJAY EDUCATION SOCIETY Plaintiff

Through : Mr.H.L.Tiku, Sr.Adv. with
Ms.Yashmeet, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Defendant

Through : Mr. Arjun Pant, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Plaintiff has filed this suit for recovery of ₹35,95,084.56 (Rupees Thirty Five Lacs Ninety Five Thousand Eighty Four and Fifty Six Paise Only) together with pendente lite and future interest @ 15% per annum and cost, against the defendant.

2. Plaintiff is a Society registered under the Societies Registration Act, 1860 and is engaged in educational activities. Plaintiff has been signed and verified by Mr. V.K. Berlia, Authorized

Representative of the plaintiff. Plaintiff intended to establish a Senior Secondary School at Drawka, New Delhi, accordingly, moved an application on 10th December, 1996 with the defendant, for allotment of a plot of land at Dwarka. Another letter dated 12th December, 1996 was sent to the defendant in this regard. Allotment Committee, in its meeting held on 17th January, 1997, considered the case of plaintiff for allotment of land for an Integrated School (Category 'B'). Vide letter dated 14th March, 1997 defendant informed the plaintiff that case for allotment of land to plaintiff was recommended, subject to production of original sponsorship letter from the Director of Education. Documents as desired by the defendant were duly furnished by the plaintiff.

3. Vide its letter dated 20th April, 1998 plaintiff further intimated the defendant that it was willing to submit sponsorship letter in respect of Integrated School (Category 'B'). Thereafter plaintiff, vide letter dated 27th April, 1998, requested the Dy. Director of Education for issuance of sponsorship for Integrated School (Category 'B'). Vide letter dated 6th August, 1998, plaintiff requested the defendant to allot 10 acres of land to enable the plaintiff to setup an Integrated Senior Secondary School with hostel and residential facilities for the students. However, no response to this letter was received by the plaintiff.

4. Vide allotment letter dated 20th February, 2001, defendant allotted a plot of land admeasuring 2 acres to the plaintiff on Perpetual Lease hold basis situated at Sector 23, Dwarka on the terms and conditions as stipulated therein. Plaintiff accepted the allotment of land and also undertook to pay the difference in the cost of land, if any, on demand. Again on 19th April, 2001 plaintiff wrote a letter to the defendant stating therein that it expected allotment of a plot of land admeasuring 4 acres for establishment of Senior Secondary School. Defendant by its communication dated 30th October, 2001 informed the plaintiff that as per the practice prevalent at the time of allotment of land for Senior Secondary School, only 2 acres of land was being allotted for a Senior Secondary School, thus, request for allotment of 4 acres of land was not acceptable. Accordingly, vide letter dated 31st December, 2002 plaintiff requested the defendant to hand over possession of the land already allotted. Since no reply to this letter was received, plaintiff vide letter dated 20th February, 2003 informed the defendant that it had deposited a sum of ₹1,69,18,045/- (Rupees One Crore Sixty Nine Lacs Eighteen Thousand Forty Five Only) in terms of the allotment letter and requested the defendant to hand over the possession of 2 acres of land.

5. Vide letter dated 2nd April, 2003, defendant informed the plaintiff that its request for restoration of land was not acceded to and further that the payment made by it was being processed for refund. Plaintiff was never informed by the defendant that allotment of the said land had been cancelled. Vide letter dated 24th April, 2003, plaintiff reiterated its willingness to accept 2 acres of land. Plaintiff further informed that the land allotted to it could not be cancelled, since it had deposited ₹1,69,18,045/- with the defendant. It was further stated in the letter that if the allotment had been cancelled, same be restored, subject to payment of restoration charges. Vide letter dated 4th December, 2003, defendant asked the plaintiff to furnish name of its bankers and account number, so that the cheque for refund of the said amount is drawn in favour of plaintiff. Vide letter dated 10th February, 2004, plaintiff again requested the defendant to restore the allotment of land but to no effect. On 2nd July, 2004 defendant returned ₹1,69,18,045/- through a cheque annexed with a letter, which was received by the plaintiff on 22nd July, 2004. Plaintiff sent letter dated 31st August, 2004 to the defendant, in compliance with Section 53-B of the Delhi Development Act, 1957 (hereinafter referred to as the “Act”) whereby called upon the defendant to pay interest @ 15% per annum from the date of deposit till the refund was made. It was

stated therein that the defendant had enjoyed the sum of ₹1,69,18,045/- for about 17 months and was liable to pay interest. In the alternative, defendant was called upon to consider the case of the plaintiff for allotment of land in Dwarka, New Delhi.

6. Case of the plaintiff, in a nutshell, is that by unjustly retaining a sum of ₹1,69,18,045/- from the date of deposit, that is, 20th February, 2003 till the date of refund being 22nd July, 2004 defendant has deprived the plaintiff from using this amount, thus, was liable to pay interest @ 15% per annum from the date of deposit till the date of refund.

7. Defendant has filed written statement, wherein it has taken certain preliminary objections. It is alleged that suit is not maintainable since notice under Section 53-B of the Act was not served upon the defendant. It is further alleged that the suit was improperly valued for the purpose of court fee, inasmuch as plaintiff failed to disclose any cause of action. It is also alleged that a plot of land admeasuring 2 acres at Sector 23, Dwarka was offered vide demand letter dated 20th February, 2001 for construction of a Senior Secondary School and plaintiff was asked to convey its acceptance and deposit a sum of ₹1,69,18,045/- within 60 days without interest and within 6 months with interest. There was neither any consent conveyed nor payment was deposited by the plaintiff in terms of

Clauses 23 and 24 of the allotment letter, thus, the allotment was liable to be withdrawn. On 31st December, 2002 plaintiff requested for restoration of the allotment but the said request was rejected by the Competent Authority. Plaintiff of its own volition deposited a sum of ₹1,69,18,045/- on 24th February, 2003. Vide letter dated 2nd April, 2003, defendant informed the plaintiff that the suo moto payment deposited by it was being processed for refund. Vide letter dated 4th December, 2003, defendant asked the plaintiff to submit its banker's name and account number for the purpose of refund of the amount. Plaintiff did not respond to this letter. Ultimately, defendant remitted a sum of ₹1,69,18,045/- to the plaintiff on 2nd July, 2004. It is alleged that defendant was not liable to pay any interest on the said amount deposited by the plaintiff suo moto, inasmuch as, plaintiff had failed to furnish details of its bank account and for which reason the cheque could not be drawn and sent, resulting in delay in sending the refund cheque to the plaintiff. It is denied that the notice under Section 53-B of the Act was served on the defendant. It is also alleged that plaintiff's letter dated 31st August, 2004 was not a notice under the provisions of Section 53-B of the Act.

8. Plaintiff has filed replication, wherein it has denied the allegations as contained in the written statement and reiterated and reaffirmed the averments made in the plaint.

9. On the pleadings of the parties following issues were framed on 16th October, 2006:-

“1. Whether the plaintiff has served notice on the defendant under Section 53B of the DD Act? OPP

2. Whether the suit is not maintainable for want of notice under Section 53B of DD Act as alleged? OPD

3. Whether the defendant unjustly retained the amount of ₹1,69,18,045/- from February 20, 2003 till July 2, 2004? OPP

4. Whether the plaintiff is entitled to interest on the said amount of ₹1,69,18,045/-. If so, on what amount and at what rate? OPP

5. Relief.”

10. Plaintiff has examined its Authorized Representative Mr. Bharat Bhushan Sharma as PW1. As against this, defendant has examined the Director (Land), namely, Mr. Devesh Singh as DW1. I have heard learned counsel for the parties, perused the entire material placed on record and my issue wise findings are as under:-

Issue Nos. 1 and 2

11. Both these issues require common discussions and are being decided together. Vide letter dated 31st August, 2004 (Ex. PW1/31), plaintiff called upon the defendant to pay interest @ 15% per annum from the date of deposit till the date of refund, that is, from 21st February, 2003 till 22nd July, 2004, on the amount of ₹1,69,18,045/-, amounting to ₹35,95,084.56 paise within two weeks of receipt of the letter. It has been specifically mentioned therein that in case defendant fails to do so, plaintiff will be compelled to knock the doors of Court. Ex. PW1/31 reads as under:-

**“Re : Your letter No.
F.18(64)/96(12)/3071 dated 02.07.2004**

Dear Sir,

This has reference to your letter No. F18(64)96/IL/3071 dated 2.7.2004 enclosing therewith Cheque No. 328262 dated 16.6.2004 drawn on State Bank of India, Vikas Sadan, New Delhi which letter was received by us on 22.7.2004 and are surprised to note its contents.

In this connection, we would like to inform you that as per diverse correspondence exchanged, it is evident that we after acceptance had deposited the amount of ₹1,69,18,045/- calculated, conveyed and demanded by you.

We vide our letter dated 20.2.2003 not only informed you about deposit of the said amount but also called upon you to handover the possession of 2 Acres of land allotted to us.

We were surprised to receive your letter No. F.18(64)/98/IL/21 dated 2.4.03 stating that our request for restoration has not been acceded when no such request was made by us. Besides, it was also stated that the payment made by us is being processed for refund.

It is a matter of record that an amount of ₹1,69,18,045/- remained with DDA & enjoyed by it from 21.02.2003 till 22.07.2004. It is incorrect on your part to claim on the one hand that we had deposited the amount suo moto (factually incorrect) & on the other hand enjoy the said amount & take 17 months to refund the same. This is nothing but only an unjust enrichment on your part. You have made full use of the money without fulfilling your obligations.

We, without prejudice to our rights and contentions, have in the meantime deposited the cheque sent by you.

By this letter, we call upon you to pay to us interest @15% per annum from the date of deposit to the date of refund of the said amount of ₹1,69,18,045/- unjustifiably withheld and retained for over 17 months amount to ₹35,95,084.56 within 2 weeks of receipt by you hereof. If you fail to comply with the requisition, we will be compelled to knock the doors of court. Alternatively, should you consider to allot the said land in Dwarka, please let us know immediately so that we remit the payment.”

12. Receipt of Ex. PW1/31 has not been denied by the defendant in the written statement. At the time of admission/denial of the documents, defendant has admitted the receipt of Ex. PW1/31.

13. Section 53-B of the Act reads as under:-

“53-B. Notice to be given to suits. (1) No suit shall be against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is in injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.”

14. A perusal of sub-section (1) of Section 53-B of the Act clearly indicates that the notice shall explicitly state the cause of action, nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff. If a letter/notice fulfills these ingredients, the same would tantamount to a notice under Section 53-B of the Act. Indeed, Ex. PW1/31 has not been termed as a notice under Section 53-B of the Act, but the fact remains that non-mentioning of a Section in the notice under which it is sent or for that matter a wrong nomenclature of a document would not be sufficient to discard the same, if it contains such averments sufficient enough to fulfill the ingredients as envisaged in a particular Section under which a notice is issued. In *Lal Chand Goel vs. Delhi Development Authority*, 34(1988) DLT 364, plaintiff had sent a notice to the Delhi Development Authority, as envisaged under Section 53-B of the Act but had termed the notice to be under Section 80 of the Code of Civil Procedure, 1908. In this context, it was held that mentioning of a wrong Section or non-mentioning of a Section in the notice under which it is sent will not be material unless a prejudice is shown to have been caused to opposite party, on that account. In this case, defendant has not taken a plea that any kind of prejudice has been caused to it on

account of non-mentioning of the Section in Ex. PW1/31. If Ex. PW1/31 is read as a whole, it indicates that it contains explicitly the cause of action, nature of relief sought, the amount of compensation claimed as also the name and place of residence of the plaintiff. Thus, in my view, Ex. PW1/31 tantamounts to a notice under Section 53-B of the Act.

15. In *K.R. Builders Pvt. Ltd. vs. Delhi Development Authority* and Anr. 144 (2007) Delhi Law Times, 741, a Single Judge of this Court has held as under:-

“40. Notice has to be seen as a whole and so also the plaint. In *State of Madras v. C.P. Agencies and Anr.*, AIR 1960 SC 1309 the Supreme Court following its earlier decision, in *Dhian Singh Sobha Singh v. Union of India*, AIR 1958 SC 274 on the interpretation of Section 80 of the Code observed that though the terms of that section should be strictly complied with but that did not mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from commonsense. The Court further observed as under:

‘The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he

should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise relief asked for.’

41. The provisions of Sub-section (1) of the Section 53-B are similar to Section 80 of the Code. I, therefore, do not find any fault in the notice and in my view it meets the requirements of Sub-section (1) of Section 53-B of the Act.”

16. For the foregoing reason, I am of the view that Ex. PW1/31 meets the requirement of sub-section (1) of Section 53-B of the Act. Both the above issues are, thus, answered in favour of plaintiff and against the defendant.

Issue Nos. 3 and 4

17. Both these issues require common discussions and are being decided together. Allotment letter has been proved as Ex. P-4. Clauses 23 and 24 of the allotment letter read as under:-

“23. If the above terms and conditions are acceptable to you, the acceptance thereof with attested undertaking be sent to the undersigned along with the bank challan in favour of DDA for ₹1,69,18,045/- (₹1,65,00,000/- as premium ₹4,12,500/- as ground rent and annual license fee/ground rent of play ground ₹5,500/- and documentation charges ₹45/-) within 60 days from the date of issue of the allotment-cum-demand letter. The said amount can also be deposited in the bank counter situated in DDA office complex and copy of the same may be sent to this office for

having deposit the demand along with acceptance letter undertaking within 60 days from the date of issue of demand-cum-allotment letter within 60 days of issue of demand-cum-allotment letter the allottee shall be required to make the entire payment. Thereafter 18% interest shall be chargeable upto 6 months from the date of issue of the demand-cum-allotment letter.

24. In case the payment and acceptance letter with re-required undertaking is not received within the speculated period stated above, it will be presumed that you are not interested in the allotment of the land and the offer of allotment will stand withdrawn.”

18. In terms of Ex. P-4, ₹1,69,18,045/- was to be deposited within 60 days without interest and thereafter with interest @ 18% on or before expiry of 6 months. It has been specifically mentioned in Clause 24 that offer of allotment will stand withdrawn for non-compliance, which included non-payment. The amount demanded vide letter of allotment was not deposited within 6 months. Subsequently, defendant has not issued any demand letter to the plaintiff. Instead of complying with the terms and conditions as stipulated in the Allotment Letter, plaintiff made a request for allotment of 4 acres of land instead of 2 acres of land but this request was declined by the defendant. Thereafter, no fresh letter of demand had been issued by the defendant. This shows that plaintiff

of its own had deposited ₹1,69,18,045/- on 20th February, 2003, that is, after about more than one year of letter of allotment. Vide letter dated 2nd April, 2003 (Ex. P-6), defendant had informed the plaintiff that payment made by it suo moto vide challan no. 18126 was being processed for refund. As per the defendant, a sum of ₹1,69,18,045/- was deposited on 24th February, 2003 by the plaintiff suo moto and was liable to be refunded. A perusal of letter dated 2nd July, 2004 (Ex.P-8) written by the defendant to the plaintiff makes it clear that the amount deposited by the plaintiff, was refunded vide cheque no. 328262 dated 16th June, 2004 drawn on State Bank of India for ₹1,69,18,045/-. This cheque was sent through this letter Ex. P-8, meaning thereby that the amount was refunded after more than one year and four months. Even if, this amount had been deposited by the plaintiff suo moto and without any specific demand raised by the defendant, there is no justification on the part of the defendant to retain this amount for more than one year and four months. It is not a case that defendant was unaware of such deposit as vide letter dated 2nd April, 2003 (Ex. P-6) defendant had informed the plaintiff that the amount of ₹1,69,18,045/- was deposited by the plaintiff suo moto, thus, was being processed for refund. This letter was issued within two months of the plaintiff depositing the said amount with the State Bank of India. Defendant was supposed to refund the

amount within a reasonable time period. By no standard an unusual period of more than one year and four months can be termed as reasonable period. The plea taken by the defendant that the amount could not be refunded earlier, since plaintiff failed to intimate the name of the bank and account number of the plaintiff cannot be accepted. Even otherwise, this letter dated 4th December, 2003 Ex. PW1/28 was written by the defendant after an unreasonable delay of eight months of Ex. P-6. In any case, it cannot be held that the defendant could not have refunded the amount without the particulars as demanded vide Ex. PW1/28. Admittedly, no such details were provided by the plaintiff but despite this the amount was refunded through a cheque but only in the month of July, 2004. Refer to letter dated 2nd July, 2004 (Ex.P-8) of the plaintiff. This shows that the amount could have been refunded even without the alleged particulars demanded by the defendant from the plaintiff. In my view, defendant ought to have refunded the amount within a reasonable time from the date of deposit and by not doing so, it has deprived the plaintiff from the use and enjoyment of the amount so deposited, inasmuch as, defendant had enjoyed the use and benefit arising out of the amount so deposited all this while, thus, is liable to pay interest.

19. In K.P. Jain & Ors. vs. D.D.A. 143(2007) Delhi Law Times 468 (DB), it has been held that when a party wrongly retains the money payable to another person and said party is wrongly deprived from use and benefit of money because of failure of debtor to pay, interest can be awarded to wronged party. Inflation every year reduces the purchasing power of money, which gets diminished. Interest is paid to compensate the person to whom payment is to be made as a result of fall in value or purchasing power of money. In the said case, DDA had unjustly retained the money which it was liable to refund to the appellant. It was held that DDA was liable to pay interest for the delayed refund of the money. A time period of 'six months' was considered reasonable for verification and scrutiny of the documents and processing the case for refund and conversion of the property from leasehold to freehold. Court awarded interest @ 7% per annum for the delayed period of refund.

20. In Ghaziabad Development Authority vs. Union of India, IV(2005) SLT 654, the Supreme Court awarded interest 12% per annum to meet ends of justice as the authority was found to be at fault. This judgment was noted in K.P.Jain (Supra) while awarding interest at the rate of 7% per annum.

21. In Krishna Bhagya Jala Nigam Ltd. vs. G. Harischandra Reddy and Anr., AIR 2007 SC 817, Arbitrator had awarded interest @ 18%, but the same was reduced to 9% by the Supreme Court. It was held that after economic reforms in our country the interest regime has changed and the rates have substantially reduced. This prompted the Supreme Court to reduce the interest from 18% to 9% per annum.

22. For the foregoing discussions, I am of the view that defendant is liable to pay interest to the plaintiff for delayed refund and further that interest @ 9% per annum would be adequate. Interest will be payable after the expiry of six months from the date of deposit the amount, i.e., 24th February, 2003 till payment is made. Meaning thereby that the defendant shall pay interest to the plaintiff @ 9% per annum with effect from 24th August, 2003 till 2nd July, 2004. Both these issues are answered in favour of the plaintiff and against the defendant in the above terms.

Issue No. 5

Relief

23. In view of the findings returned on the aforementioned issues, a decree is passed in favour of the plaintiff and against the defendant directing the defendant to pay interest @ 9% per annum to the plaintiff w.e.f. 24th August, 2003 till 2nd July, 2004. Parties

shall bear their own costs of the proceedings. Decree-sheet be drawn accordingly.

A.K. PATHAK, J.

March 14, 2012
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