

46.

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

% Judgment Delivered on: 25.05.2010

+ W.P.(C) 9816/2009

HUMAN CARE MEDICAL CHARITABLE TRUST Petitioner

**Through : Mr. Sandeep Sethi, Sr. Adv. with
Mr. Anurag Jain, Adv. for the petitioner.**

versus

DDA Respondent

Through : Ms. Shobhana Takiar, Adv. for respondent DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

+ CM NO.5738/2010 IN WP(C).NO.9816/2009.

1. This is an application filed by the petitioner under Section 151 CPC seeking directions to the DDA to grant No Objection Certificate to the petitioner to create an equitable mortgage over the allotted land to enable the petitioner to avail of loan facility, which already stands approved by Allahabad Bank, Oriental Bank of Commerce, Bank of Baroda and SIDBI, for construction of a hospital, without prejudice to the rights and contentions of both parties and subject to the outcome of the present writ petition and also grant extension of time to construct over the plot.
2. The necessary facts for the disposal of the application are that in the year 1988 Human Care Medical Charitable Trust was duly registered as a Society under the Registration Act, 1860. The Trust acquired land from the DDA for construction of a public charitable hospital and for which the petitioner was allotted land measuring

9950 sq. mts., situated at Sector 6, Pappan Kalan, Dwarka, Delhi, on concessional rates in the year 1996. From the year 1996 to the year 2002 as per the writ petition, construction could not be completed for the reasons beyond the control of the petitioner and the petitioner applied for extension of time to complete the construction from time to time on payment of composition fees. DDA had not granted No Objection Certificate after the year 2007. The DDA has by a communication dated 2.6.2009 cancelled the allotment made in favour of the petitioner on two grounds, firstly, construction was not completed within the time allowed; and, secondly, on the ground that the President of the Trust has changed and, thus, in fact the land has been sold to a third person. Aggrieved by the communication dated 02.06.2009 present writ petition has been filed.

3. Learned senior counsel for the petitioner submits that the construction could not be completed within the time allowed for the reasons beyond the control of the society primarily on two grounds: firstly, an *inter se* dispute between the trustees and the President. Mr.Sethi, submits that the President of the Trust, Sh. Naresh Chandra, had misappropriate the money meant for construction of the hospital, which led to the filing of FIR No.367 under Sections 341/420/409/506 IPC P.S. Dwarka, and another FIR No.551/2005 under Section 380 IPC, P.S. Dwarka against him. Counsel further submits that after the registration of the aforesaid FIRs the hospital was sealed by the order of the DCP, South West, Delhi, and it is on account of this dispute that the construction activities came to a standstill. The second ground, which has resulted in delay in construction of the hospital is that the Ministry of Urban Development had issued a notification dated 12.7.2005 permitting additional FAR to the hospitals. On 10.8.2005, the society had sought permission from the DDA for grant of No Objection Certificate and revalidation of revised plans for which numerous letters were written to the DDA for utilization of additional FAR

permitted to hospitals under modified master plan and provisions of the bye-laws. Senior counsel also submits that despite request having been made in the year 2005, DDA neither granted permission nor rejected the same. Senior counsel next submits that the petitioners are carrying out construction in all earnestness and in a diligent manner, which is evident from the fact that the Society has spent more than Rs.35.0 crores on the construction of the hospital, which consists of four floors; height clearance certificate has been obtained from the Airport Authority of India on 18.2.2008 as also Fire clearance certificate on 30.9.2007 and Mr.Sethi submits that in view of the reasons stated above the petitioner is likely to succeed in the writ petition.

4. It is next contended by learned senior counsel for the petitioner that the second ground for cancellation of the lease is that the property was allotted to the petitioner on concessional rates, however, the society has sold the property in a clandestine manner to earn profit as according to DDA the original members have been replaced by a new set of members, which shows that it is a clear case of change of hands. It is further contended that the second ground for cancellation is also arbitrary and without any application of mind. It is also contended that in reply to the show cause notice the petitioner denied that there was any violation of Clause 5 (a) of the Lease Deed and the lessee has not been sold, transferred, alienated or otherwise parted with the possession of the whole or any part of the land or any building and further there is no intention on the part of the lessee to violate Clause 5(a).
5. It is submitted by learned senior counsel for the petitioner that the allegation that the original members have been replaced by new set of members is totally arbitrary, unreasonable, baseless and without any merit as all the changes in the membership / governing body of the society are permitted by the rules and regulations of the society. It is further submitted that there is no condition in the lease deed

that new members cannot be added in the society without prior approval of the DDA.

6. It has been strongly urged by learned senior counsel for the petitioner that substantial construction has been carried out and the petitioner society has already invested Rs.35.0 crores on the construction. It is further submitted that in case the permission is not granted to mortgage the land with the three banks to enable the petitioner to secure financial assistance, it will not be possible for the petitioner to complete the building which would result in deterioration of the existing structure; and serious prejudice would be caused to the rights of the petitioner and to the benefit of none.
7. Learned senior counsel for the petitioner submits that the banks have imposed a pre-condition for grant of loan and thus the present application has been filed, seeking a direction to DDA to permit the petitioner to mortgage the land. It is further submitted that petitioner society is willing to file an undertaking to this court that on account of construction carried out on the land, in question or grant of permission to mortgage, no special equities will flow in favour of the petitioner and further the no objection granted and permission to mortgage shall in no way be treated as a waiver of the order of cancellation and will in no way dilute the same and the consequence which will flow therefrom in case the petitioner does not succeed in the writ petition.
8. Although no reply has been filed by the DDA, counsel for the respondent DDA submits that once the allotment made in favour of the petitioner has been cancelled, No Objection Certificate for mortgaging the land as also No Objection Certificate for carrying out construction over the plot cannot be granted. Counsel further submits that at the time when the allotment was made Sh. Naresh Chandra was the President and there is sufficient material on record to show that one Sh. Sanjay Khurana, who is an NRI, has paid a sum of Rs.2.35 crores to the Trust, which according to DDA is the price for purchasing the plot, in question.

9. Learned senior counsel for the petitioner while denying the allegations submits that Sh. Sanjay Khurana had only advanced this amount, as a loan to the Society, as in similar situations loan had been taken from NIDHI builders, HUDCO and others as well. Senior counsel further submits that transactions between Sh. Sanjay Khurana and the Trust are based on a written agreement and on the basis of the permission sought from the RBI. Senior counsel vehemently disputes that the Trust had been purchased by Sh. Sanjay Khurana. Senior counsel next submits that the objection raised with regard to sale of plot, on the basis of a transaction which is an eyewash, is incorrect in view of the fact that an FIR was lodged against Sh. Naresh Chandra and ultimately a settlement has been arrived at. The High Court in Criminal Miscellaneous No.1192/2007 had quashed the FIR filed against Sh.Naresh Chandra, subject to the condition that Sh. Naresh Chandra and his wife paid a sum of Rs.1.25 crores to the Trust. This itself would show that the President was thrown out due to his misdeeds and not with a view to sell the hospital.
10. It is contended by senior counsel for the petitioner that the amount received at the initial stage from Sh. Sanjay Khurana was utilized for the purposes of return of loan to HUDCO as also NIDHI builders and not that it was a sale consideration. It is further contended that in case the No Objection Certificate is not granted to the petitioner Trust the condition of the building will deteriorate.
11. Learned senior counsel for the petitioner submits that the petitioner society has a strong prima facie case and balance of convenience is also in its favour and is likely to succeed in the writ petition.
12. I have heard counsel for the parties and perused the annexures filed along with the writ petition.
13. The basic facts are not in dispute that in the year 1996 land was allotted to the petitioner society for construction of a hospital. The hospital could not be constructed during the period 1996-2002, however, during this period time was granted by the DDA for

carrying out construction subject to payment of composition fee of Rs.1,91,000/-. In the year 2003 the petitioner submitted revised plans to the DDA for approval along with a request for extension of time. On 12.9.2003 by a communication issued by the DDA extension was granted upto 24.4.2005 subject to deposit of composition fee of Rs.3,46,665/-. As the construction was not completed within the time allowed and on account of complaint received from the ex-President by a communication dated 2.6.2009 the allotment made in favour of the petitioner has been cancelled. The submission of learned senior counsel for the petitioner can be summarized as under:

- (1) Delay in carrying out the construction is on account of reasons beyond the control of the petitioner including the dispute with the ex-President, which resulted in sealing of the hospital on 6.9.2005 and de-sealed on 30.4.2007.
- (2) The matter was also delayed on account of the fact that additional FAR was provided to the hospitals by the notification issued by the Ministry of Urban Development and permission sought from DDA is still pending.
- (3) Rs.35.00 crores already spent on the construction of hospital, fire clearance certificate obtained.
- (4) Petitioner has a strong prima facie case and is likely to succeed. Even in case the petitioner does not succeed merely because construction carried out over the plot will not cause any prejudice to the rights of the DDA. Petitioner is willing to give an undertaking to the Court that no objection for construction as well as for mortgage will not amount to condoning the violations, as alleged by DDA.

14. The arguments of counsel for the DDA can be summarized as under:

- (1) In view of the cancellation having been passed the petitioner would have no right over the land and granting extension of time and no objection for mortgage would amount to waiver of

the objections taken by the DDA and cancellation order passed.

15. The short question, which comes up for determination before this Court, at this stage, is that what would be the effect in case the application is allowed and petitioner is permitted to construct over the plot and also if petitioner is granted permission to mortgage the land.
16. No doubt by an order dated 2.6.2009 the allotment made in favour of petitioner stands cancelled. While issuing notice in the matter on 6.7.2009 operation of the cancellation letter dated 2.6.2009 has been stayed. The interim order continues till date. The certificate from the architecture as also the photographs placed on record show that the superstructure stands completed. There is no reason to disbelieve the petitioner that substantial amount has been spent on the construction which has only added to the value of the plot. By seeking permission to construct over the plot, the value of the plot is further likely to increase. However, this permission cannot be granted to the prejudice of the DDA and their rights are also to be protected simultaneously. Even as of today there is no stay of construction over the plot, in question. Accordingly to balance the equities and in the interest of justice the present application is allowed with the following directions:
 - A) DDA shall issue a No Objection Certificate and allow construction over the plot subject to payment of composition charges within six weeks of receipt of this order.
 - B) Permission and payment shall be without prejudice to rights and contentions of both parties.
 - C) Grant of permission shall in no way be treated as a waiver and shall be subject to final order passed in the writ petition.

- D) In case the petitioner does not succeed in the writ petition, no special equities shall flow in favour of the petitioner merely because construction has been carried out/completed. Petitioner, as agreed, shall not raise the said plea.
- E) DDA shall grant permission to mortgage subject to the inherent rights of the DDA as per the terms of the lease, within six weeks of receipt of this order.
- F) The permission to mortgage shall be without prejudice to the rights and contentions of the DDA and shall in no way dilute the rights of the DDA and in case the petitioner does not succeed in the writ petition all the consequences of the cancellation shall follow, including the rights of re-entry as per the terms of the lease, and the DDA shall be entitled to take all steps available and the permission to mortgage shall be subject to the aforesaid condition and condition of the lease.
- G) The order passed by this Court shall be brought to the notice of the banks and at the first instance and fresh approval granted shall be placed before the DDA for grant of permission to mortgage.
- H) Petitioner shall file its undertaking within four weeks of receipt of this order.

17. With the aforesaid directions application is disposed of.

W.P.(C)No.9816/2009.

18. List for hearing on 15.9.2010.

19. Dasti.

G.S. SISTANI, J.

May 25, 2010

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