

25.05.1969. A perpetual lease deed of the plot was executed between Ram Dhan and the President of India on 17.02.1972. On 18.09.1978, Ram Dhan died without raising any construction on the said plot. The Petitioner herein – Mrs. Vijaya C. Gursahaney, on 26.10.1977, on the strength of a will executed in her favour by late Ram Dhan applied for grant of Letters of Administration to the District Judge, Delhi. Letters of Administration were granted in her favour by the District Judge on 07.05.1980 and thereafter the Petitioner applied to DDA for substitution of her name in place of deceased Ram Dhan. DDA issued a show cause notice for non-construction of the plot within the specified time. The Petitioner vide her reply dated 11.12.1982 requested DDA for mutation of her name in place of Ram Dhan, whereupon by a communication dated 12.08.1985, DDA asked the Petitioner to pay 50% unearned increase as per the terms and conditions of the perpetual lease deed. By its subsequent letter dated 19.06.1992, DDA asked the Petitioner to pay ₹ 6,51,020 towards 50% unearned increase. By another letter dated 17.09.1992, DDA again demanded payment of the aforesaid amount, stating therein that non-payment would result in cancellation of the lease.

3. Aggrieved by the aforesaid two letters, the Petitioner filed a Writ Petition before this Court, being W.P.(C) No.3696/92 challenging the impugned demand for 50% unearned increase. A Division Bench of this Court in its judgment dated 10.05.1994 found that the decision of the Respondents requiring the Petitioner to pay unearned increase was not legal and their communications dated 19th June, 1992 and 17th September, 1992 were required to be set aside. The Respondents filed SLP, being SLP No.34/95. The Hon'ble Supreme Court set aside the judgment passed by the Division Bench vide their order dated 26.08.2003, thereby directing the Petitioner to deposit 50% unearned increase. As regards the quantum of unearned increase, however, the Supreme Court recorded that both sides had arrived at a consensus that the Petitioner would pay a sum of ₹ 3,73,745/- to DDA towards 50% unearned increase. The Petitioner deposited a sum of ₹ 3,73,745/- towards unearned increase and the Respondents after receiving the aforesaid amount from the Petitioner mutated the plot in question in the name of the Petitioner vide their letter dated 10.02.2004.

4. The Petitioner requested the Respondents for extension of time for the construction of the aforesaid plot in December, 2006 and sent letters dated 26.12.2006, 05.01.2007, 05.07.2007, 26.08.2007 and 20.09.2007 for waiver of the composition fee, stating that she was liable to pay composition fee from the date of mutation only on the ground that the matter had remained undecided/subjudice for a long period of time. In March, 2008, the Petitioner requested the Member Secretary, Delhi Legal Services Authority to refer the dispute *qua* the composition fee with the Respondents to the Permanent Lok Adalat. In the meanwhile, the Respondents claimed a sum of ₹ 5,19,70,160/- from the Petitioner vide their letter dated 17.12.2007 as composition fee for non-construction of the plot in question. This demand was subsequently revised by the Respondents vide letter dated 27.09.2010 and the Petitioner directed to deposit ₹ 42,83,618/- on account of composition fee within 30 days from the date of the issue of the letter. The Petitioner thereupon addressed a letter to the Respondents dated 12.10.2010 to reconsider the case of the Petitioner for waiver of the composition fee in view of the pending litigation between the parties. In the meanwhile, the Petitioner received a communication from the

Member Secretary, Delhi Legal Aid not to deposit a sum of ₹ 42,83,618/- till the re-calculation of the composition fee, which it was stated was being re-calculated by the Respondents *qua* the aforesaid plot pursuant to the order of the Member Secretary dated 20.12.2010. The Respondents, however, again sent the demand for deposit of ₹ 42,83,618/- vide their letter dated May 16, 2011. Aggrieved therefrom, the Petitioner has preferred the present Writ Petition.

5. Counter-Affidavit was filed by the Respondent/DDA contesting the Writ Petition and stating therein that possession was handed over to the Petitioner on 18.07.1970 but the Petitioner failed to construct the plot in question. It is submitted that the composition fee policy of DDA circulated vide Circular dated 31.10.1995 in para 1.4 provided different contingencies where exemption can be given for payment of composition fee. It does not cover contingency of pending litigation. Pertinently, it is stated that the cases where litigation was involved directly or indirectly on account of allotment of plot with DDA or any other agency is covered. However, in the present case, litigation was not on account of allotment, it was on

account of non-payment of UEI (Unearned Increase), which was ultimately paid before the Hon'ble Supreme Court by the Petitioner. It is stated that this contingency is not covered under the guidelines for condonation of delay in construction and, therefore, no benefit of litigation is available to the Petitioner as per the existing policy of DDA.

6. I have heard the learned counsel for the parties and perused the Circular dated 08.04.2010. Vide the said Circular, the DDA reviewed the policy decision of 50% increase in the rates of composition fee of terminal year in the cases where extension is to be granted beyond 25 years and approved a cap of 50% of the current market value of the plot in question of the relevant year. Other terms and conditions contained in its earlier Circular dated 04.01.2007 were to remain the same. Learned counsel for DDA submitted that the demand for ₹ 5,19,70,160/- was raised by DDA pursuant to the Circular dated 04.01.2007, which was subsequently modified on the coming into force of the Circular dated 08.10.2010 to ₹ 42,83,618/- only.

7. Learned counsel for the DDA in the course of her submissions contended that no benefit of litigation is available to the Petitioner as

per the existing policy of the Respondents. Reference in particular was made by her to Circular No.F.No.AO(Proj)Misc./Composition/Pt I/36 dated 31.10.1995 containing the guidelines for calculation of composition fee for delay in construction for the years 1995-96 to 1999-2000 and the exemption clause contained therein being Clause 1.4, which reads as under:-

“1.4 EXEMPTIONS: The exemption from the levy of annual composition fee in the policy will be available as follows:

- (i) Where construction is not possible because the plot has been cancelled by DDA – actual period of cancellation of plot.*
- (ii) Where construction is not possible because of the specific orders of non-construction of a statutory authority e.g. Registrar, Courts etc. – actual period of operation of such orders.*
- (iii) Where size of the plot attracts the provisions of ULCR Act, 1976 and exemption has been applied to the competent authority but is pending – maximum exemption of 3 years.*
- (iv) **Death of the allottee and subsequent delays in mutation**, sickness of the allottee from chronic and incurable disease which results in physical disablement to construct house – 3 years maximum.*
- (v) Where due to exigencies of service condition, lessee is out of country after allotment of plot – maximum period of 5 years.*
- (vi) Where the lessee/sub-lessee has been transferred outside Delhi. This facility would be available to all Central/Delhi Admn./All India Service/the Public Sector Undertakings officials posted in Delhi including defense Personnel – maximum period of 5 years.*

(vii) *The exemption given in (vi) above is also extended to lessee/sub-lessee who are house wives and whose husband could claim benefit as per (vi) above had they themselves been lessee or sub-lessee.*

The benefit of the above clauses will not be cumulative i.e. the maximum benefit that can be availed in a case, where all the above factors are present would be 3 years in the case of allottees following under categories (iii) and (iv) above and 5 years in the case of category (v), (vi) and (vii). First 3 or 5 years as the case may be shall be considered for exemption.

An allottee would be entitled to exemption as provided above subject to his furnishing documentary evidence.”

8. Relying upon a judgment of the Supreme Court in ***Rajasthan Housing Board and Others vs. Krishna Kumari, (2005) 13 SCC 151***, learned counsel contended that the maxim *actus curiae neminem gravabit* was squarely attracted to the present case. The relevant portion of the said judgment for the facility of reference is reproduced hereunder:-

*5. This Court in a number of decisions has repeatedly emphasised that in view of the legal maxim “actus curiae neminem gravabit” which means that an act of court shall prejudice no man, has held that the claimants/allottees who have obtained stay will not be justified in seeking waiver of claim of interest over the arrears which remain unpaid because of the stay granted by the court. In **Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459]** this Court observed in para 13 as follows: (SCC p. 466)*

“13. In view of the legal maxim ‘actus curiae neminem gravabit’ which means that an act of court shall prejudice no man, NDMC is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court.”

9. The short question which arises for consideration in the present case is whether the period of litigation between the Petitioner and the DDA from 1992 to 2003 can be excluded for the purposes of payment of composition fee. A query was put to the counsel for the parties as to whether the matter was governed by any decision of this Court or of the Hon’ble Supreme Court, to which both counsel stated that no precedent in this regard was within their notice. However, it cannot be disputed and indeed in the Counter-Affidavit filed by the DDA it has not been disputed that sub-clause (iv) of clause 1.4 of the Circular of the DDA dated 31.10.1995 covers those cases where upon the death of the original allottee, there is litigation amongst the legal heirs of the original allottee. A case in point is the judgment of the Division Bench in ***DDA vs. Sudhir Chandra Aggarwal and Anr., 120 (2005) DLT 76 (DB)***, where the Court after examining clause 1.4 of the Circular of DDA unequivocally held that the discretionary power of the Vice-Chairman, DDA, who was required to take an

administrative decision with regard to the condonation of delay in the construction of a building with or without composition, as the circumstances of the case warrant, was not circumscribed by sub-clause (iv) of clause 1.4 reproduced hereinabove, the only caveat being that the facts must be such as would entitle the Vice-Chairman, DDA to exercise such a power. In the said case, the original allottee Shri Chandra Bhan Aggarwal expired on 30.06.1973 and as a result of disputes between his legal heirs it was not possible to carry out the construction. In the circumstances, this Court held as follows:-

“9. In view of pendency of the proceedings, one person could not have made an application to DDA and / or all the persons too could not have made an application as there were certain disputes pending between the legal heirs of late Shri Chandra Bhan Aggarwal. The parties were before the Court and after the mutation attained finality, the question was for mutation and the application thereof was allowed only on 29.04.2002. These facts were required to be taken into consideration and, in our view, considering these aspects, learned Single Judge has disposed of the matter and the said decision requires no interference.

10. Learned senior counsel for the appellant / DDA further submitted that the discretion, which was exercised by the Vice-Chairman, DDA was final and the Court cannot substitute its own finding in case where the discretion is vested in the authority. It may be noted that if the authority has failed to exercise its discretion under misconception that clause 1.4 limits the power to grant maximum period of 3 years, it cannot be said that

Court is not required to interfere with the same. Thus, the very basis of the exercise of the power is erroneous. It is not that this Court sits as an appellate authority over such an administrative decision, but if on an incorrect interpretation of the clauses being clause 2.1 and clause 1.4, the decision is taken by the administrative authority, then learned Single Judge was right in interfering with the same and issuing necessary directions.

11. We find no merits in the appeal. Hence, the appeal and the application are dismissed.”

10. In view of the aforesaid law laid down by this Court, indubitably the Vice-Chairman has the power to condone the delay without composition where there are internecine disputes amongst the legal heirs of the original allottee and to direct the DDA to take account of the period spent in litigation. The logic behind this is simple. It is only when mutation is effected by the DDA after resolution of the pending litigation that it would be possible for the legal heirs to pursue their application for extension of time to carry out the construction. The present case, in my considered opinion, stands on an even better footing, in that the litigation was pending between the DDA and the Petitioner in respect of a demand raised by the DDA for mutating the plot in the name of the Petitioner. There is no gainsaying that till the mutation was effected, the Petitioner could

not have pursued his application for extension of time for construction.

11. I am fortified in coming to the aforesaid conclusion from sub-clause (iv) of Clause 1.4, which provides for exemption in the case of *“death of the allottee and subsequent delays in mutation”*.

There is nothing in the said sub-clause to show that the application of the said sub-clause is restricted to delays in mutation of the plot to the legal heirs of the original allottee and not to the transferees of a plot. Delays in mutation would in my view be equally applicable to legal heirs of the original allottee and those who have stepped into the shoes of the allottee as a result of transfer, sale etc. To hold otherwise would be inequitable and unfair for it would mean that while the period of litigation between the legal heirs of the original allottees is to be excluded for the purpose of calculation of composition fee, the transferees of the original allottee are to be kept deprived of such benefit and must bear the brunt of the delay in mutation, even if it is for no fault of theirs.

12. Yet another aspect of the matter is that in the instant case, it cannot be said that the litigation between the Petitioner and the DDA

was a frivolous one. A Division Bench of this Court held in favour of the Petitioner, rejecting the DDA's claim for unearned income of ₹6,57,020/- and imposing costs upon the DDA. On appeal, the Supreme Court though held in favour of the DDA, yet, the Petitioner was required to deposit only a sum of ₹ 3,73,745/- instead of the sum of ₹ 6,51,020/- which was the initial demand of the DDA for unearned increase.

13. In view of the aforesaid, the demand raised by the DDA for the amount of ₹ 42,83,618/- on account of composition fee is quashed and the DDA is directed to re-calculate the composition fee for the period after the mutation of the plot in favour of the Petitioner and to issue a fresh demand thereafter. The re-calculation shall be done by the DDA and the fresh demand letter issued to the Petitioner within a period of eight weeks from today.

14. Writ Petition stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

March 05, 2013
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