

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

Reserved on: 10.04.2013

Decided on: 16.05.2013

+ **LPA 1122/2004**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SH. B.L. PATNEY Respondents

+ **LPA 27/2005**

SHRI B.L. PATNEY (DECEASED THROUGH LR's)
..... Appellants

versus

DELHI DEVELOPMENT AUTHORITY & OTHERS.
..... Respondents

+ **W.P.(C) 21859/2005, C.M. NO. 14321/2005**

SHRI B.L. PATNEY (DECEASED THROUGH LR's)
..... Petitioner

versus

DELHI DEVELOPMENT AUTHORITY & OTHERS.
..... Respondents

.....Appearance

Through : Sh. V.K. Sharma with Sh. Neeraj Gupta,
Advocates, for Sh. B.L. Patney, respondent in LPA
1122/2004 and appellant in LPA 27/2005 and
W.P.(C) 21859/2005.

Sh. Rajiv Bansal with Sh. Devvrat Singh,

Advocates, for DDA – appellant in LPA 1122/2004 and respondents in LPA 27/2005 and W.P.(C) 21859/2005.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT

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1. The present common judgment will dispose off two appeals, one by Sh. B.L. Patney, being LPA No. 27/2005 and LPA No. 1122/2004 by the Delhi Development Authority, hereafter “DDA” and the other a Writ Petition, i.e. W.P.(C) 21859/2005 by Sh. B.L. Patney. The appeals impugn the common judgment and order of a learned Single Judge dated 01.11.2004 in W.P.(C) 1967/2003, (filed by one Sh. Khushdeep Bansal) and W.P.(C) 10928/2004, preferred by Sh. B.L. Patney.

2. The DDA had auctioned 83.61 square metres plot (Plot No.A-3/133, Paschim Vihar, New Delhi; hereafter “the plot”); Shri Patney participated in the auction. His bid at Rs.2,92,000/-, was the highest and was accepted on 18.01.1988. The full bid amount was paid on 17.02.1988. Pending completion of formalities for execution of the perpetual sub-lease document, possession of the plot was offered to Shri Patney, who went to the site on 14.06.1988. The concerned DDA official did not hand over possession since the area of the plot was 95.52 sq.meters, discovered after measurement that

day. Later, on 26.04.1989, DDA demanded a further sum of Rs.41,594.55/-, calculated for the excess area. Shri Patney paid the sum within the time demanded; DDA also demanded Rs.3,033/- towards interest, which again was paid in time. On 01.12.1989, possession of the plot was handed over.

3. The Lease Deed for the plot was not executed. Shri Patney, being aggrieved, approached the State Commission (Consumer Disputes Redressal Commission) [hereafter referred to as “the State Commission”], seeking compensation for deficiency in service, towards not measuring the plot, handing it over late, demanding interest, and for the delay in execution of the Lease Deed. He stated that there was no reason to charge interest for the additional demand, and interest from the date after 30 days’ of bid confirmation. The next deficiency pointed out was that at the time of auction, frontage of the plot was shown to be 20 ft. but at site it came to 17-1/2 ft. Further deficiency pointed out was that possession at site was delivered on 01.12.1989, i.e. after 23 months of the auction. On 24.01.1991, the State Commission awarded compensation in the sum of Rs.65,000/- to Shri Patney.

4. Seemingly irked at the proceedings before the State Commission, DDA did not execute the Lease Deed. After Shri Patney’s repeated requests, the DDA, on 06.08.1992 sent a draft Perpetual Lease Deed to him. This draft Lease Deed incorrectly described the plot dimensions. Shri Patney highlighted this to the DDA which did not remedy the mistake; this led to another complaint

to the State Commission. During pendency of this complaint, the Lease Deed was executed on 03.03.1994. Shri Patney noticed that the Lease Deed stipulated that he would construct a building after obtaining sanction within two years from the date of delivery of possession, i.e. 01.12.1989. As it was not possible to complete the task within the stipulated time, he, therefore, applied for extension of time to construct on the plot. DDA did not extend the time. On 16.07.1998, the State Consumer Disputes Redressal Commission directed DDA to grant extension of time for construction. Shri Patney was awarded compensation to the tune of Rs.1,00,000/-. This decision was challenged by DDA before the National Consumer Forum; its appeal was rejected on 29.04.1999. The DDA's Petition for Special Leave to Appeal against the decision of National Consumer Forum [SLP (C) No.15445/99] was dismissed on 31.01.2000. In the meanwhile, Shri Patney retired from service as Joint Chief Manager, Bank of India on 30.06.1992 and remained without a roof; he continued to live in a rented accommodation. The amount paid to DDA for purchase of the plot was Rs.3,36,000/-. In the meantime, the cost of construction soared; by the time the DDA's Petition was dismissed, 12 years elapsed.

5. Shri Patney's woes did not end there; in August 2002, DDA put up for auction plots in Paschim Vihar. Plot No.A-3/133, Paschim Vihar (purchased by Shri Patney) was also put to auction. One Khushdeep Bansal, the writ petitioner in W.P.(C) No .1967/2003, was the highest bidder; his bid was accepted. The Lease Deed was

executed in his favour and DDA, after demolishing the boundary wall constructed by Shri Patney, delivered possession of the plot to Shri Khushdeep Bansal on 05.12.2002. A Perpetual Lease Deed was executed in the latter's favour on 09.12.2002. He applied to the Municipal Corporation of Delhi for sanction to erect a building. On 07.02.2003, requisite sanction was granted. He commenced construction of a building. At this stage, the first successful bidder, Shri Patney, on becoming aware of this development, protested to the Vice-Chairman, DDA. On learning what had happened, DDA cancelled Shri Khushdeep Bansal's bid through letter dated 27.02.2003. It was stated that plot in question was already sold by DDA and was under litigation. He was informed that the bid amount deposited by him would be refunded shortly. On receipt of this cancellation notice dated 27.02.2003, Khushdeep Bansal filed W.P.(C) 1967/2003 claiming that it should be quashed. DDA tried to resolve the issue, first by offering another plot to Shri B.L.Patney and thereafter to Khushdeep Bansal. Both were adamant. B.L. Patney filed W.P.(C) 10928/2004 claiming that vacant possession of plot No.A-3/133, Paschim Vihar, New Delhi be directed to be handed over to him. Compensation in the sum of Rs.42,13,000/- was claimed against DDA; further directions for an inquiry into the matter and consequential criminal and administrative action were sought. DDA did not file any return or counter affidavit in this petition; it did so in Shri Bansal's writ petition, W.P.(C) 1967/2003.

6. In the impugned judgment, the learned Single Judge noticed

that the justification for re-auctioning the plot by DDA was that its property register had been seized by C.B.I. It did not have exact details of unsold plots. When, in 2001 it carried out an exercise to identify vacant plots, it presumed that all vacant plots were unsold; that was why plot No.A-3/133, Paschim Vihar, New Delhi was auctioned. DDA admitted its mistake. The Single Judge directed an inquiry into this episode, which to put it, is a complete fiasco. During the proceedings, Sh. Patney was asked his willingness to accept an alternative plot at the same rate in any zone; he, however, refused. He insisted upon allotment of the same plot, but agreed to compensate Sh. Khushdeep Bansal for the structure built; Sh. Khushdeep Bansal refused the offer. The impugned judgment noticed that both Sh. B.L.Patney and Shri Khushdeep Bansal were not at fault. The Single Judge held that:

“25. Superior right in law claimed by Shri B.L.Patney is that having sold the plot to him, DDA was left with no title. He, who has no title can create no title in favor of a third party was the argument.

26. Legal case of Shri B.L.Patney is far superior to Shri Khushdeep Bansal. Indeed, having sold the plot to Shri B.L.Patney and having received the entire sale consideration, further having executed the perpetual lease deed in his favor, DDA was left with no right, title or interest in the land, save and except, interest of a superior lessor to receive ground rent. This interest alone was capable of being transferred. Legal claim of Shri Khushdeep Bansal is much weak.”

After analysing principles of equity and the court’s duty to balance various factors, the impugned judgment held that:

“35. Upholding the action of DDA to withdraw the plot from Shri Khushdeep Bansal and put Shri B.L.Patney in possession thereof, would require valuation of the superstructure and making Shri B.L.Patney to pay Shri Khushdeep Bansal for the same. Further, due to persistent defaults of DDA, Shri B.L.Patney would require to be further compensated in addition to the compensation he has already received from the State Commission. Shri Khushdeep Bansal would be required to be put in possession of another plot and he would be required to be compensated by DDA for escalation in the cost of construction. I intend to mould my order accordingly.

36. Since Shri Khushdeep Bansal has constructed upon the plot and if the plot is allowed to remain with him, he would have no claim. No further equities would be required as far as he is concerned. Shri B.L.Patney could be allotted another plot and appropriately compensated for the rise in cost of construction. I, therefore, deem it appropriate to confirm the allotment in favor of Shri Khushdeep Bansal.

37. Not only have officers of DDA either acted with spite or if there is no spite, with culpable negligence. I have noted above the pleading of DDA in the counter affidavit filed in W.P.(C) No.1967/2003. DDA admitted that on 20.12.2002 it had doubts whether it could auction the plot to Shri Khushdeep Bansal. If this was so, DDA could have immediately asked him to keep his hands off. DDA allowed Shri Khushdeep Bansal to proceed ahead. On 30.12.2002, he applied for sanction of the building plan to MCD. Sanction was granted on 7.2.2003. Had DDA acted promptly, Shri Khushdeep Bansal could have been informed not to effect any construction and since by December, he had not effected any, issue would have been otherwise. Further, DDA admits that on 10.1.2003, it traced out the file of Sri B.L.Patney. Even on that date, Shri Khushdeep Bansal had not commenced construction

because it was on 7.2.2003 that MCD granted him necessary approval. There is no reason why, immediately on 10.1.2003 or a day or two thereafter DDA did not write a letter to Shri Khushdeep Bansal. This shows how DDA functions.

38. Officers of DDA have acted with malice or gross negligence. Its officers cannot be allowed to function as they do. Cases of double allotment are witnessed in this Court time and again. DDA shifts the blame on computer error. I simply cannot understand as to why DDA cannot program their software to see that these situations do not arise. But who reforms DDA? It continues to act as in the past.

39. Officers of DDA who learnt at least on 10.1.2003 that the plot in question was already sold but did not act are certainly responsible. Action has to be taken against them. Further, had DDA correctly measured the plot when it was put to auction in the year 1988, problem would not have arisen because Sri B.L.Patney would have got the lease deed executed without a problem. Delay took place because over a year was spent on raising additional demand since plot size was more than what was put on auction. The officer of the DDA, who indicated a lesser plot size has also contributed and he too must be penalised. Further, the officer who prepared the lease deed incorrectly giving the dimensions of the plot and contributed to further delay should also be penalised. Thereafter, the officer of DDA who put a term in the lease deed requiring Shri B.L.Patney to construct upon the plot within two years of its possession, forgetting that possession was handed over in 1989 but lease deed was executed in the year 1994, knowing that Shri B.L.Patney could not have constructed on the plot without a lease deed, he too has contributed by his negligence. Officer of the DDA who cleared auction of the plot at the second stage is also responsible because after the property register was seized by C.B.I., it was his

duty to at least get a photocopy thereof. I find it rather strange that DDA would think that vacant plots are unsold and belong to it.

40. Shri B.L.Patney has claimed Rs.42,13,000/- as compensation. The details thereof are as under :

(i) Interest @ 15% from 1988 till 1.7.2004 on deposit made him Rs.7,35,000/-

(ii) Compensation for rent paid @ Rs.2000/- per month Rs.3,78,000/-

(iii) Escalation charges in the cost of construction Rs.10,00,000/-

(iv) Conveyance and out of pocket expenses for litigation Rs.1,00,000/-

(v) Compensation for harassment and torture Rs.20,00,000/-

41. Compensation for past deficiency in service till 1998 have been granted to him under two orders of the State Consumer Forum. There is undoubtedly increase in the cost of construction. For this, Shri B.L.Patney has not received any compensation from DDA. There is no evidence placed on record that he is paying rent. On the contrary in para 37 of the writ petition, it is stated that the petitioner is an old man of 73 years of age. He is residing in a house rented by his son. It may be true that had Shri B.L.Patney constructed his own house, his son would have shifted with him, but then it is the son who would have saved on rent.

42. CPWD Schedule of Rates has been held to be a good guide to determine the cost of construction. The indices issued by CPWD reveal that the cost index in January,1990 was 506. It rose to 1076 in January,2000. Provisional figures for December,2003 show that the cost index has arisen to 1211. On the cost index of 506

for January,1990, CPWD Schedule shows that cost of construction for a three storeyed house would be Rs.198.65 per sq.ft. This would be for an ordinary construction. On the cost index of 1211, the cost of construction for a three storeyed building would be Rs.450/- per sq.ft.

43. Shri B.L.Patney would, therefore, be entitled to two reliefs :-

(a) He is entitled to be put in possession of a plot measuring 95.52 sq.mtr.

(b) He would be entitled to be compensated for the increase in the cost of construction.

44. For a plot size of 95.52 sq.meter, permissible coverage is 66%. A two and half storeyed construction can be erected on the building. Shri Patney would be entitled to construct at least 650 sq.ft. covered area on the ground floor and first floor and 325 sq.ft. area on the second floor. He would thus be entitled to construct 1625 sq.ft. Difference in the cost of construction between January,1990 to December,2003 would be Rs.251.35 per sq.ft. Taking Rs.250/- as increase in cost of construction per sq.ft. and multiplying the same with 1625 sq.ft. area which could be constructed by Shri B.L.Patney, the increased cost of construction comes to Rs.4,06,250/-.

45. Mandamus is accordingly issued to DDA to forthwith allot a plot of near same size to him. If a plot of 95.52 sq.meter cannot be identified, plot of nearest size be identified and allotted to him. In no case, the plot would be less than 95.52 sq.meter. If the size of the plot identified is beyond 95.52 sq.meter, no excess amount would be charged if the variation is up to 5 sq.meter. Beyond that, Shri B.L.Patney, would pay at the rate per sq.meter determined on his bid amount and not the current market value or the current pre-determined rate. The plot would preferably be in the same area or nearest

to Paschim Vihar. In no case the plot would be in an undeveloped area.

46. Further mandamus is issued to DDA to pay to Shri B.L.Patney a sum of Rs.4,06,250/- being the cost escalation.”

7. Both the DDA and Shri Patney have preferred appeals against the said impugned judgment and order. It was argued on behalf of DDA that the learned Single Judge, after noticing that even though Sh. Patney had a legally indefeasible case, and yet proceeding to balance the equities between him and Sh. Bansal, should not have proceeded to direct payment of compensation for the escalation of cost of construction. It was argued that the DDA had expressed willingness to abide by directions to grant allotment of an alternative plot, which was adequate restitution in the circumstances, and any further order to pay for escalation in cost of construction was unwarranted.

8. Learned counsel for Sh. Patney, (who died during the pendency of proceedings and is represented by his heirs and legal representatives) on the other hand, argued that the impugned judgment is in error, in that it proceeded to uphold Sh. Bansal's right to the said plot. Learned counsel sought to highlight the fact that the DDA's claim to have put the plot to auction innocently the second time over was suspect and that the circumstances surrounding Sh. Bansal's allotment were suspicious. Counsel emphasized the fact that Sh. Patney was concededly kept out of possession and all the complaints made to the Consumer Forum were successful, in each

round of litigation. Clearly his right was superior, in law and equity, since he had paid the full value of the plot, but was still kept out of it on flimsiest of excuses, and what is more – was made to suffer the mortification of having to see another person being allotted and handed over possession of the property to which the vendor, DDA ceased to have any title.

9. In W.P.(C) 21859/2005, late Sh. Patney challenged an order of the DDA, dated 12/16th September, 2005 by which DDA cancelled allotment of the plot to him. It was urged that the grounds on which the DDA bases its order are unreasonable, and betray malice on the part of that institution and its officials, who wanted to somehow harm late Shri Patney for asserting his rights. It was argued that the basis for the decision, i.e. alleged concealment of facts at the time of auction, could not have been invoked over 17 years after the acceptance of the bid, the contract being entered into between the parties, and execution of the lease deed. It was further submitted that the allegation regarding ownership of a plot disentitling the late Sh. Patney to participate in the auction, is baseless. Counsel submitted that Sh. Patney's wife had entered into an agreement to sell in respect of a plot in Vikas Puri, and his son, who was not a dependant, was the General Power of Attorney holder in respect of that property. The title to that property did not vest in either the son or Smt. Patney. Counsel relied on the judgment of the Supreme Court reported as *Suraj Lamp & Industries Private Limited v State of Haryana* 2012 (1) SCC 656.

10. The DDA resists the claim in this petition, and contends that the terms of the tenders clarified that bidders could participate on condition that they, or their dependants, including spouse(s) did not own a plot or residential flat exceeding 66 square metres. It was submitted that Shri Patney concealed the true facts; his wife owned a 104 square metre plot in Vikas Puri, and had entered into an agreement to purchase it; his son was the General Power of Attorney holder. In view of the Division Bench rulings of this Court, in *Dal Chandra Sharma & Anr. v. Delhi Development Authority* (LPA No. 240/2007 decided on 30.09.2008) and *Delhi Development Authority v Jai Kanwar Jain* (LPA No. 134/2009, decided on 02.04.2009), it was argued that entering into an agreement to sell, or conveyance through power of attorney is deemed a transfer.

11. This Court has considered the records and materials taken into account by the learned Single Judge, while deciding the two writ petitions. There can be no two opinions about the fact that Sh. Patney was subjected to intense harassment; after paying the full consideration, he was subjected to unimaginable hardship, in regard to payment of extra consideration, demand of interest on it, execution of lease deed, defect in the lease deed, etc. He had to seek repeated judicial redress through consumer forum, which upheld his claims. He was forced to approach the court when the plot was allotted and handed over to Sh. Bansal, who started construction. Taking into consideration the totality of these facts, this Court does not entertain any doubt that the learned Single Judge correctly directed payment of

compensation to Sh. Patney. The DDA's appeal is held to be without merit.

12. So far as Sh. Patney's appeal goes, this Court recognizes that in law, his insistence that the plot for which he had submitted the bid, and which had been paid for fully, should have gone to him. Yet, the intervening circumstance where a third party, i.e. Sh. Bansal, without knowledge or notice acquired rights, and proceeded to construct on the plot, too cannot be ignored. The learned Single Judge performed a difficult and delicate task in balancing the competing equities arising out of the claims of these two individuals, and ultimately held that Sh. Patney should be handed over an alternative plot. During the hearing, it was urged that it may not be possible to hand over a plot in Paschim Vihar. However, the DDA cannot be allowed to profit from the lapse of time which occurred due to pendency of its appeal. The directions of the learned Single Judge shall be complied with, and a plot in Paschim Vihar, or a developed plot as near to that locality, shall be handed over to Sh. Patney's legal representatives, within eight weeks from today.

13. As far as the grievance in W.P.(C) 21859/2005 is concerned, the admitted facts are that late Sh. Patney's wife was not a transferee of the 104 square metre Vikas Puri plot; she had entered into an agreement to purchase it. Sh. Patney's son was the General Power of Attorney holder. There is no allegation that the money given to the Vendor belonged to Sh. Patney. Another important aspect is that there was no ownership right, in the sense that title to the property had not

been vested in either of the two, i.e. Sh. Patney's wife or their son. Speaking of the nature and legal effect of these types of transactions, the Supreme Court held, in *Suraj Lamp & Industries Private Limited* that:

“17. XXXXXX XXXXXX XXXXXX

10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party.

18. It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53-A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale

does not create any interest or charge on its subject-matter.

Scope of Power of Attorney

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law.....”

14. The judgment in *Suraj Lamps (supra)*, to this Court’s mind, is a complete answer to the DDA’s contention as regards Sh. Patney’s ineligibility when he tendered his bid for the plot. The materials on record nowhere reflect that his wife or his son had perfected title to the property; so long as an unregistered agreement to sell, or any other arrangement existed, without conveying title, the individual could not be said to “own” the property. The declaration of law in *Suraj Lamps (supra)*, in this Court’s opinion, precludes the DDA from contending that such transactions nevertheless amount to sale, having regard to what was termed as “ground realities” which exist. For the same reason, it is held that the decisions rendered by Division Benches are no longer good law.

15. As a result of the above discussion, it is held that both appeals – of DDA as well as Sh. Patney (LPA No. 27/2005 and LPA No. 1122/2004) have to fail. They are consequently dismissed. However,

the DDA is directed to ensure that the directions of the learned Single Judge, to hand over a plot to Sh. Patney's heirs is complied with at the earliest opportunity, and in any event, within 8 weeks from today. W.P.(C) 21859/2005 filed by Sh. Patney succeeds; the order impugned in that petition, stating that Sh. Patney was ineligible, and purporting to cancel the allotment made to him, is hereby quashed. In the circumstances, there is no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

MAY 16, 2013