

+ **W.P.(C) 5437/2007**

versus

% Date of Decision : July 03, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The Petitioner is aggrieved by the refusal of the Respondent to allot to the Petitioner an alternate plot in lieu of plot in Khasra No.329/327, Block 'C', Jheel Khurenja, Krishna Nagar in respect of which the Petitioner had been vested with leasehold rights and the possession of which the Respondent has failed and neglected to hand over to the Petitioner owing to encroachments on the said plot of land.

2. The facts necessary for appreciating the grievance of the Petitioner are as under.

3. A plot measuring about 1100 sq. yards bearing Khasra No.329/327, situated in Block 'C', Jheel Khurenja, Krishna Nagar, New Delhi was originally leased out by the Respondent for a period of 90 years jointly in favour of Shri Parsi and Shri Nanwa for residential purposes vide Lease Deed dated 02.06.1949 duly registered on 13.09.1949. Shri Parsi sold his half undivided share in the said plot to Shri Vinod Kumar and Shri Vakil Chand vide Sale Deed dated 15.04.1961, which was duly registered on 22.05.1961. The latter, in turn, sold the same to Shri Narain Dass vide Sale Deed registered on 22.04.1965. In the meanwhile, the other co-lessee of the said plot, namely, Shri Nanwa sold his undivided half share in the said plot to Smt. Pushpawati, the mother of the Petitioner, vide Sale Deed dated 12.11.1963. Thus, Shri Narain Dass and Smt. Pushpawati became co-lessees of the subject plot in equal shares. The said plot was duly mutated in their names by the Respondent.

4. In or about 1966 itself, Smt. Pushpawati, the mother of the Petitioner, filed Civil Suit No.214/1969 against Shri Narain Dass seeking physical partition of the plot.

5. On an alleged survey of the aforesaid plot conducted by the Respondent in or about 1979, it was found that the premises were, *inter alia*, being used for commercial and religious purposes contrary to the conditions of the Lease Deed. Show cause notices were issued by the Respondent to the lessees, pursuant to which the Lease Deed was cancelled by the order of the Commissioner (Lands) of the Respondent on 16.01.1980.

6. On 24.01.1980, by his judgment and order passed in the Civil Suit filed by Smt. Pushpawati, the mother of the Petitioner, being Civil Suit No.214/1969, the learned Sub-Judge held that an oral partition had already taken place between the said Smt. Pushpawati and Shri Narain Dass in terms of which Smt. Pushpawati had been given rectangular portion of the said plot, while Shri Narain Dass was already enjoying the triangular plot in which two rooms were in the tenancy of M/s. Venus Engineering Works, who were manufacturing radio parts, whereas the shed was in the tenancy of M/s. Public Soap Factory since 1969-70. The learned Sub-Judge accordingly dismissed the suit for partition filed by Smt. Pushpawati.

7. Sometime in the year 1981, Shri Narain Dass filed a civil suit bearing No.642/81 seeking a decree of perpetual injunction against the Respondent from taking possession of the plot in his possession through his tenants, viz., M/s. Venus Engineering Works and M/s. Public Soap Factory and obtained an *ad interim* stay against being dispossessed by the Respondent through his tenants.

8. Pursuant to the cancellation of the Lease Deed by the Respondent vide order dated 16.01.1980, the Estate Officer of the Respondent passed eviction orders against Shri Ashok Kumar, Smt. Dhanwanti, Shri Durga Mandir Samiti and Shri Hari Chand on 28.12.1981 and 30.12.1981. On 28.01.1982, the Estate Officer was pleased to direct the Tehsildar to take physical possession from the aforesaid unauthorized occupants. Aggrieved therefrom, the Durga Mandir Samiti preferred an appeal against the orders of eviction passed by the Estate Officer and obtained a stay of the said orders. In

or about August, 1982, however, the said appeal was dismissed being barred by time. The Respondent thereafter took over the physical possession of the demised premises from the unauthorized occupants, except the temple portion in the occupation of the Durga Mandir Samiti, which were sealed by the Respondent.

9. It is the case of the Petitioner that Smt. Pushpawati had been repeatedly representing to the Respondent as also to the Lieutenant Governor of Delhi against the actions of the Respondent and the cancellation of the lease of the plot allotted to her owing entirely to the defaults committed by her co-lessee, namely, Shri Narain Dass. The then Lieutenant Governor by an order dated 19.01.1983 gave the following directions to the Respondent:-

“The position, in brief, is that there were two joint lessees of the plot. One of the co-lessees committed breach of the conditions of the lease and allowed unauthorized construction. Action was taken against the defaulting co-lessees and formal eviction orders passed. Obviously the co-lessee who had defaulted has to suffer and not the other lessee who has acted within the frame work of the law/lease conditions.

If there is no stay order from the court, the co-lessee, who has not defaulted should be put in possession and the lease executed in her favour eliminating the co-lessee who had defaulted and allowed unauthorized construction.”

10. The further case of the Petitioner is that despite the aforesaid directions passed by the Lieutenant Governor of Delhi no action was taken by the Respondent-DDA and Smt. Pushpawati was, therefore, constrained to once again approach the Lieutenant Governor with her

grievance. On 30.3.1983, the Chief Legal Advisor of the Respondent recorded that the Lieutenant Governor had desired that after obtaining orders for the sub-division of the subject plot in view of the peculiar circumstances of the case, lease in respect of half portion standing in the name of Smt. Pushpawati be restored and that she may be put in possession of the premises from which occupants were evicted and the possession was taken over by the Respondent by sealing the property. The aforesaid proposal for the sub-division of the plot in question was approved by the Vice-Chairman of the DDA on 30th April, 1983. Since however the grievance of Smt. Pushpawati was still not redressed, she continued to represent to the Lieutenant Governor. The Lieutenant Governor of Delhi on 9.9.1983 directed as under:-

“In no case the other occupant should be brought back to the scene. The other half of the land cannot but be allotted to the second occupant, Smt.Pushpawati, who has been put to a lot of trouble by the unauthorized activity of the occupant of the other half. The question really is only of the amount to be charged from Smt.Pushpawati.”

11. Consequent to the passing of the aforesaid order, the Finance Wing of the Respondent advised that Smt. Pushpawati be charged a sum of ₹ 4,29,408/- on account of misuse charges, restoration charges and premium for the other half portion of the plot of Shri Narain Dass. Since however there was a stay in Civil Suit No.642 of 1981 for half portion of the plot of Shri Narain Dass, the matter was re-examined. On the recommendation of the Vice-Chairman of the

Respondent, sub-division of the plot was allowed vide orders dated 11.12.1984 and the lease of half portion belonging to Smt. Pushpawati was restored **without charging any restoration charges or misuse charges.** *The said order dated 11.12.1984 passed by the Lieutenant Governor was communicated to Smt. Pushpawati vide letter dated 5.1.1985.*

12. The grievance of the Petitioner is that despite the fact that the plot had been sub-divided and the lease of Smt. Pushpawati was restored by the Respondent itself without charging any restoration charges or misuse charges, the said Smt. Pushpawati was not put in possession of the same owing to the subsequent encroachments on the said plot of land. According to the Petitioner, the Respondent has failed to put Smt. Pushpawati back in possession and for the aforesaid inaction of the Respondent it (the Respondent) seeks to rely upon a subsequent order dated 7.6.1991 passed by the Lieutenant Governor of Delhi, wherein it has been directed that the Respondent may terminate the lease if it considers feasible and evict the persons who have illegally encroached upon the subject land and it may then go to the Court to resume its possession and the said Smt. Pushpawati may file a criminal case for criminal trespass against the encroachers and/or may file suit for damages against the encroachers. To be noted at this juncture that this order dated 7.6.1991 is completely contrary to the stand already taken by the Respondent that Smt. Pushpawati was not to blame for the encroachments upon the said plot resulting in the restoration of the lease without charging any restoration charges or misuse charges. It also deserves to be noted at this juncture that the

contention of the Petitioner is that it is a matter of record that subsequent to the removal of the encroachments by the Respondent on the plot in question upon cancellation of the lease deed and the sealing of the premises by the Respondent in 1982, further encroachments had taken place on the subject plot of land *while the same was in the possession of the Respondent/DDA.*

13. It is also a matter of record that subsequently the Vice-Chairman of the Respondent was pleased to pass an order dated 26.12.1993 directing the demolition of land, etc. of the temple complex and fencing of the land to safeguard the interest of the Respondent and to handover possession to Smt. Pushpawati in whose favour lease had been restored. Smt. Pushpawati unfortunately expired on 21.11.1994 and the Petitioner succeeded to the leasehold rights of the said Smt. Pushpawati. The plot was duly mutated in her favour. In the meantime, the co-lessee Shri Narain Dass had already succeeded in having his Civil Suit (Civil Suit No.642 of 1981) decreed against the Respondent on 3.10.1992 and the appeal against the said order and decree was dismissed by the Additional District Judge vide order dated 26.8.1993. Taking note of this fact, the Deputy Director (LM), East Zone of the Respondent pursuant to the directions of the Vice-Chairman of the Respondent prepared a comprehensive note dated 8.5.1995 to the effect that the Petitioner may be allotted an alternative plot in the vicinity as already ordered by the Lieutenant Governor and demolition should be carried out on the subject plot, but the temple ought not to be touched for demolition.

14. Pursuant to the aforesaid developments, the Director (Lands) of the Respondent vide his proposal dated 11.1.1996 requested for a decision for allotment of alternative plot to the Petitioner. This was seconded by the Commissioner (LD) of the Respondent on 16.1.1996. Despite this, no action was taken by the Respondent to redress the grievance of the Petitioner and comply with the directions and orders passed by its own Vice-Chairman and the Lieutenant Governor of Delhi. The Petitioner continued representing to the Respondent and also approached the Permanent Lok Adalat – DDA with a representation dated 6.1.2004 requesting that an alternative plot of land be allotted to her. The Presiding Judge, Permanent Lok Adalat passed a detailed order dated 6.1.2004 recommending therein that the case was a fit case where the Petitioner had to be allotted alternative plot of 550 sq. yds. or any plot of requisite size in the trans-Jamuna area or any suitable part of Delhi in lieu of her leasehold rights of 550 sq. yds. in the subject plot.

15. It emerges from the record that thereafter the Petitioner made a number of representations to the Respondent, *inter alia*, dated 24.5.2006, 28.6.2006, 5.7.2006, 12.7.2006, 23.8.2006 and 8.11.2006, but to no avail. In the meantime, the matter remained pending with the Permanent Lok Adalat. During the pendency of the proceedings before the Permanent Lok Adalat, the Respondent issued a communication dated 18.1.2006 to the Petitioner intimating that the request of the Petitioner for allotment of an alternative plot in lieu of the subject plot cannot be acceded to and the Petitioner was requested to take recourse to law to have the said plot vacated. The Respondent

thereafter addressed a further communication dated 23.3.2007 reiterating that the Respondent had turned down the request of the Petitioner for restoration of the vacant possession of the plot since the claim that the unauthorized occupation was during the possession of the Respondent had not been substantiated. This naturally resulted in the closure of the proceedings before the Permanent Lok Adalat – DDA, which were eventually closed on 19.6.2007. The present writ petition was thereafter instituted praying for the issuance of a writ, order or direction for quashing the communications dated 18.1.2006 and 23.3.2007 addressed by the Respondent to the Petitioner.

16. In the counter-affidavit filed by the Respondent, it was submitted that the writ petition raised disputed questions of fact and hence the writ court was not the appropriate forum to decide the controversies between the parties. It is not disputed by the Respondent that Shri Narain Dass and Smt. Pushpawati became joint lessors of the plot in question in equal unspecified shares on their purchasing the same from the erstwhile owners. It is, however, stated that in the year 1966 Smt. Pushpawati had filed a suit for permanent injunction, being Suit No.563 of 1966 in the Court of the Sub-Judge, First Class, Delhi against Shri Daulat Ram and Shri Jai Singh with respect to her share measuring 550 sq. yds. of the plot in question, claiming that the Defendants be restrained from carrying out any sort of construction or encroachment over the plot. An application under Order I Rule 10 CPC was filed by the Panchayat of Village Jheel Khurenja, Shahdara for impleadment contending that a Mandir existed at the site and Smt. Pushpawati had purchased the land subject

to the rights of Mandir, being the property of Village Gaon Sabha. The Sub-Judge, First Class, Delhi, vide order dated 20th December, 1966 allowed the said application for impleadment and held that the Gaon Sabha of Village Jheel Khurenja was a necessary party for the effective and proper adjudication of the matter.

17. It is stated by the Respondent that it is thus evident that there was an encroachment by the Mandir on the land of Smt. Pushpawati and admittedly the land was encroached by various occupants as well as by the Mandir during the time she was in actual physical possession of the said plot. In fact, no construction was carried out by her and the plot which was lying vacant was encroached upon, for which she filed the suit for permanent injunction aforesaid. The suit was, however, dismissed in default on 15.5.1967. It is stated that thereupon another suit was filed by Smt. Pushpawati for partition against Shri Narain Dass, being Suit No.214 of 1969, in the Court of the Sub-Judge, First Class, Delhi. The said suit was dismissed vide judgment dated 24th January, 1980. However, it was observed in the said judgment that the Plaintiff was the owner of a separate plot measuring 550 sq. yds., which is the rectangular plot shown in the plan filed by her. A complaint was also filed by Smt. Pushpawati for misuse on her leasehold plot for various commercial and religious purposes and on account of unauthorised constructions. A survey was accordingly got conducted and it was found that the plot was in fact being used for commercial and religious purposes in violation of the terms and conditions of the Lease Deed. Accordingly, the Lease Deed was cancelled on 16.1.1980 and the matter was referred to the

Estate Officer for passing of eviction orders against the unauthorized occupants, namely, Shri Ashok Kumar, Smt. Dhanwanti, Durga Mandir and other occupants, which eviction order was eventually passed on 28.1.1982. An appeal therefrom was dismissed by the Appellate Court as time barred in August, 1982.

18. It is further stated in the counter-affidavit that on various representations filed by Smt. Pushpawati, the matter was re-examined by the then Vice-Chairman, DDA in December, 1984 and it was decided that subject to the approval of the Lieutenant Governor, as a special case, the Lease Deed of her portion may be restored to Smt. Pushpawati. The said proposal was approved by the Lieutenant Governor on 11.12.1984. After the Lease Deed was restored, various demolition programmes were fixed for eviction of the unauthorized occupants between 1985 to 1988. It is stated that various occupants were also evicted, however the temple portion could not be demolished, which is on an area of 330 sq. yds. because of the resistance from the public at the site. Again on the representation of Smt. Pushpawati, the matter was re-considered and a survey was carried out to find out as to whether any other vacant plot of the same size in the same locality was available or not. However, no other vacant plot of the same size in the same locality was available in the area. Finally, after considering the merits of the matter at length in the year 1991, the then Lieutenant Governor on 7.6.1991 passed the following order:-

“This matter was discussed with VC and Commissioner (Lands).

It appears to me that when the lease of the land was given to the applicant, it was allowed to be encroached upon and obviously for a very long period of time which is clear from the construction of a temple by a Mandir Samiti and residential houses by a few others. The DDA had gone out of the way to render help to this lady but was faced with resistance and it had to retrace its steps.

I am told that there is a vacant piece of about 110 meters between the built up areas which she may occupy in case she is inclined to otherwise it should be resumed by the DDA.

The lady has been shown enough generosity by the DDA but as a matter of fact we cannot go any further and invite opposition where it is not entirely warranted. There are, thus, only the following options:-

1) The DDA may terminate the lease if it considers it feasible and evict the persons who have illegally encroached upon this land and then it may have to go to Court to resume its possession because it may be very difficult to resort to demolition of the house which have already come up and are there for a very long time. This aspect may be examined although I am not very sanguine about its efficacy.

2) The lady has on her own either of the two options open to her:-

a) She may file a criminal case for criminal trespass on the encroachers, namely the Mandir Samiti and the residents who have built up their houses illegally and/or

b) File a suit for damages so that she may be able to recover financial compensation on account of the encroachments.

Beyond this I do not think the DDA has any other alternative. If necessary, she may be suitably informed of the decision.”

19. It is further stated in the counter-affidavit that the matter did not end here and on the representation of Smt. Pushpawati the file was again put up for demolition of walls and rooms of the temple complex so that half of the plot be handed over to Smt. Pushpawati. However, the demolition could not be carried out due to heavy resistance of the public at site. The request of Smt. Pushpawati was examined but the alternative plot could not be allotted as the case is not covered under any policy wherein alternative plot could be allotted to her. On the basis of representation filed by Smt. Krishnawati, wife of late Shri Narain Dass, the Competent Authority restored the plot on 8.6.1996 subject to the recovery of misuse charges to the tune of ₹ 1,85,768/- with respect to the portion of late Shri Narain Dass. Again on the representation of the Petitioner, the matter was examined by the Vice-Chairman on 7.2.2000 and it was opined that admittedly the land was encroached when it was with Smt. Pushpawati and that DDA had earlier tried to remove the encroachments merely by way of goodwill gesture than for discharging legal responsibility. Finally, it is stated even as late as on 23rd September, 2005 the Commissioner (Land Disposal) had inspected the site and after that a meeting was held with Principal Commissioner and Vice-Chairman and only thereafter it was finally decided that DDA had already discharged its obligations to the lessee and once the possession was given to the lessee it was the responsibility of the lessee to safeguard the same and to remove the encroachments on the said plot.

20. I have heard Mr. Anil Sapra, learned senior counsel for the Petitioner and Mr. Arun Birbal, learned counsel for the Respondent-DDA. Counsel have also taken me through the documents on record and the relevant file notings from the records of the DDA.

21. Mr. Anil Sapra, learned senior counsel for the Petitioner in the factual backdrop set out in the writ petition contended that despite the fact that on the recommendation of the Vice-Chairman of the Respondent, sub-division of the subject plot was allowed by the Hon'ble Lieutenant Governor vide his orders dated 11.12.1984 and the lease of half portion belonging to Smt. Pushpawati was restored without charging any restoration charges or misuse charges and the same was communicated to Smt. Pushpawati vide letter dated 5.1.1985, Smt. Pushpawati/the Petitioner was not put in possession of the plot owing to subsequent encroachments on the said plot of land, that is, encroachments which had taken place on the said plot of land while the same was in possession of the Respondent-DDA after the cancellation of the lease on 16.1.1980. In this context, Mr. Sapra has drawn my attention to three notings on the records of the DDA. The first noting of the Respondent-DDA is dated 29.9.1983, which records that the area in occupation of the Mandir authorities is 219.72 sq. yds. Mr. Sapra pointed out that as per order dated 20th December, 1966 passed by the Civil Judge in Civil Suit No.563 of 1966 filed by Smt. Pushpawati, the area in occupation of the Mandir building is stated to be 150 sq. yds. thus, quite evidently, **the Mandir building had expanded from 150 sq. yds. to 219.72 sq. yds. after the DDA took over the possession of the land in 1983.**

22. Mr. Sapra next drew my attention to a noting made in the file of the Respondent-DDA dated 27.9.1999 as per which “.....*the plan indicates that in possession of Mandir is approximately 336 sq. yds. and the balance 214 sq. yds. is in possession of Shri Khajan Singh and others. It is old structure and built up single storey.*”

23. My attention was also drawn to a communication dated 16.1.2001, which reads as follows:-

*“No.F.11/8/99/HP-II
Govt. of NCT of Delhi
Home (Police-II) Department*

*5, Sham Nath Marg, Delhi-54
Dated, the 16/1/2001*

To,

*The Commissioner (LD)
Delhi Development Authority
INA Vikas Sadan
New Delhi.*

Sub: Unauthorised encroachment of Khasra No.329-327, Village Jheel Khuranja.

Sir,

I am directed to refer to your letter No.S.5(36)79/Pt./Vol.II/307 dated 30.10.2000 on the above cited subject and to say that the matter has been examined and on perusal of the layout plan it has been observed that out of the plot area of 550 sq.yards, area that is with the Mandir is 336 sq.yards and the remaining area 214 sq.yards is under possession of Shri Khajan Singh & Others.

You are, therefore, advised that at the first instance the action on the land other than that belongs to mandir may be taken. Only there after you may please approach this Government for a decision on temple complex.

Yours faithfully

*(G.L.MEENA)
Deputy Secretary (Home) ”*

24. On the basis of the aforesaid, learned senior counsel for the Petitioner contended that quite evidently large scale illegal encroachments had taken place on the plot of Smt. Pushpawati after DDA took possession of the same. He urged that the Petitioner could not be faulted for these illegal encroachments and at the most it could be said that the Petitioner was entitled only to 400 sq. yds. of land, i.e., 550 sq. yds. leased to the Petitioner less 150 sq. yds. in the possession of the Mandir/Gaon Sabha at the time of the purchase of the same. He further contended that as per the Respondent's own counter-affidavit, the Respondent had time and again conducted demolition programmes for the removal of commercial and residential structures in the presence of the then Director and as many as 18 times the demolition programme was undertaken, but the temple could not be removed due to heavy resistance by the local people at the site. In such circumstances, for the Respondent to now turn round and contend that the Petitioner may file a criminal case for criminal trespass on the encroachers, namely, the Mandir Samiti and the residents who have built up their houses illegally would result in

gross injustice to the Petitioner. The rights of the Petitioner had crystallized as soon as the plot had been sub-divided and the lease of Smt. Pushpawati was restored by the Respondent itself without charging any restoration charges or misuse charges. Had the Petitioner been responsible for misuse of the said plot, it is inconceivable that the Respondent would not have imposed restoration charges/misuse charges upon the Petitioner. The Respondent had failed to put Smt. Pushpawati back in possession despite this unambiguous position on account of the illegal encroachments upon the plot of land while the same was in the possession of the DDA. The Respondent was conscious of this fact as is evidenced by the order dated 26.12.1993 passed by the Vice-Chairman of the Respondent directing the demolition of the land of the temple complex and fencing of the land to safeguard the interest of the Respondent and to handover possession to Smt. Pushpawati in whose favour lease had been restored. It was further mentioned that the temple ought not to be touched for demolition. Subsequently, a comprehensive note dated 8.5.1995 was prepared by the Deputy Director (LM), East Zone of the Respondent to the effect that Smt. Pushpawati may be allotted an alternative plot in the vicinity and the Respondent should charge damages from the unauthorized occupants including the Mandir Committee. Despite the said directions having been issued as far back as in 1995, the grievance of the Petitioner remained unredressed.

25. *Per contra*, it is contended by learned counsel for the Respondent that the property was leased out by the Delhi

Improvement Trust to the allottees in June, 1949. No objection was ever raised by any of the allottees on the allotment. The liability of the Delhi Improvement Trust/DDA thus came to an end. The predecessor-in-interest of the Petitioner came into the picture only in the year 1966, when she purchased half undivided share in the land. It was for the co-lessees/allottees to protect the possession of their property. The Respondent-DDA cannot be asked to handover an alternative plot to an allottee or their subsequent transferees for having failed to protect their possession. It is further contended that the findings arrived at by the Civil Court in Civil Suit No.214/1969 show that there had been a partition between Smt. Pushpawati and Shri Narain Dass. Smt. Pushpawati opted for the rectangular portion of the subject plot. The area which fell in her share had a Mandir built on it and she cannot, therefore, asked for an alternative plot thereafter, more so as the case of the Petitioner is not covered by any policy for allotment of alternative plot. It is also contended that the Petitioner has not attached any order or intimation of DDA permitting her alternative allotment. The Petitioner in fact places reliance on certain internal file notings of DDA, which have not been communicated to the Petitioner. No reliance can be placed by the Petitioner on such file notings and as per the settled law such file notings can create no legal right in favour of the Petitioner. The present writ petition is, therefore, misconceived.

26. Learned counsel for the Respondent-DDA also contended that the allegation of discrimination against the Petitioner is also misconceived. The case of Smt. Pushpawati has been treated in

exactly the same manner as that of the co-lessee Shri Narain Dass. Shri Narain Dass all through protected his own possession of his area of the land. DDA merely restored the lease in favour of Shri Narain Dass of his area after the decision of the Civil Court in his favour. In the case of Smt. Pushpawati also, the DDA restored the lease. In fact, the restoration of lease in favour of Smt. Pushpawati is prior in time to that of Shri Narain Dass. The Respondent-DDA, as a special case, tried to help Smt. Pushpawati but met with resistance by the local residents. It cannot be penalized for not doing something which it was not required to do. As such, Smt. Pushpawati was advised to resort to legal machinery against the encroachers as per law. Last but not the least, disputed questions of fact were involved in the present case and resort to the writ court, therefore, was not appropriate.

27. Having carefully considered the matter from all angles, I am of the view that the present is a fit case for grant of relief to the Petitioner and to put a quietus to the dispute which has prevented the Petitioner from enjoying her leasehold plot ever since the lease was cancelled by the Respondent-DDA on 16.1.1980. The Petitioner has asserted in the petition that pursuant to the cancellation of the Lease Deed by the Respondent vide order dated 16.1.1980, the Estate Officer of the Respondent had passed eviction orders against Shri Ashok Kumar, Smt. Dhanwanti, Shri Durga Mandir Samiti and Shri Hari Chand on 28.12.1981 and 30.12.1981, and had directed the Tehsildar to take physical possession from the aforesaid unauthorized occupants on 28.1.1982. The Respondent had thereafter taken over the physical possession of the said demised premises from the

unauthorized occupants except the temple portion in the occupation of Durga Mandir Samiti. The aforesaid facts have not been disputed by the Respondent-DDA in the counter-affidavit or in the course of arguments before this Court. Thus, it stands established that with effect from 28.1.1982, the physical possession of the premises vested with the Respondent-DDA except the temple portion in the occupation of Durga Mandir Samiti. **The said portion as evidenced from the order of the Civil Judge dated 20th December, 1966 was to the extent of 150 sq. yds., which as noted above, as per the records of the DDA itself had increased to 219.72 sq. yds. by 29.9.1983 and 336 sq. yds. by 27.9.1999. The Petitioner quite obviously cannot be blamed for the aforesaid encroachments which took place while the premises were in the possession of the DDA, which as a matter of fact are stated to be still in the possession of the DDA despite the restoration of the lease in favour of the Petitioner vide order dated 11.12.1984 passed by the Lieutenant Governor, which was duly communicated to Smt. Pushpawati vide letter dated 5.1.1985.**

28. The contention of the counsel for the Respondent-DDA that neither the file notings nor the acceptance thereof by the Permanent Lok Adalat of the DDA could be treated as decisive, is also wholly untenable in the light of the facts of the present case. The reliance placed by the Respondent's counsel on a Division Bench judgment of this Court in LPA No.1054/2004 titled *Delhi Development Authority vs. Sunil Madnani* decided on 14th December, 2012 is also misplaced. In the said case, it was held as follows:-

*“9. As far as the file notings are concerned, it has been held in **Sethi Auto Service Station v. DDA** (2009) 1 SCC 180 that internal notings are not meant for outside exposure and notings in the file culminate into an executable order affecting the rights of the parties only when it reaches the final decision making authority in the department, gets his approval and the final order is communicated to the person concerned. Similarly, in **Jasbir Singh Chhabra v. State of Punjab** (2010) 4 SCC 192, it was held that issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favoring a particular person, someone may suggest a particular line of action; however, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The said views were recently approved in **Union of India v. Vartak Labour Union** JT 2011 (3) SC 110.”*

29. In the present case, what the Petitioner seeks to rely upon are not the file notings of the Respondent-DDA but the entire process of decision-making which culminated in the final order passed by the decision-making authority in the department to sub-divide the plot in question and restore possession of the share of Smt. Pushpawati to Smt. Pushpawati upon sub-division. **This order was duly communicated to Smt. Pushpawati vide communication dated 5.1.1985.** Upon communication thereof, the rights of Smt. Pushpawati which had already crystallized were given due recognition by the Respondent-DDA. **The fact that the decision-making authority of the Respondent did not choose to impose even restoration charges or misuse charges upon Smt.**

Pushpawati for the restoration of leasehold rights also leads to the interference that the Respondent had woken to the fact that the lease of Smt. Pushpawati had been wrongly cancelled. The subsequent fact that the lease of the co-lessee Shri Narain Dass was restored on payment of misuse charges on 16.5.1996 further shows that Smt. Pushpawati was not to blame for the cancellation of the leasehold rights. This has been duly recorded in the order of the Lieutenant Governor dated 9.9.1983 as also the fact that Smt. Pushpawati was put to a lot of trouble by the unauthorized activity of the occupant of the other half of the subject plot. Thus, in my view, there can be no justification for Smt. Pushpawati to be penalized for the illegal encroachments consequent upon the cancellation of the Lease Deed by the Respondent and which encroachments mushroomed during the period between the cancellation of the Lease Deed and the restoration of the same. This being so, there is no denying the fact that Smt. Pushpawati has been dealt with unfairly and arbitrarily by the Respondent. At the most, she can be held not entitled to the 150 sq. yds. of land occupied by the Mandir Samiti at the time when she purchased the land in question. This has been fairly conceded to by learned senior counsel for the Petitioner.

30. In view of the aforesaid discussion, the prayer made in the present writ petition is allowed by quashing communications bearing No.S.5(36)79/OSB/Pt./Vol.II/178 dated 18.1.2006 and No.S.5(36)79/Pt./Vol.II/3071 dated 23.3.2007 addressed by the Respondent to the Petitioner intimating that the request of the Petitioner for allotment of an alternative plot in lieu of plot in Khasra

No.329/327, Block 'C', Jheel Khurenja, Krishna Nagar cannot be acceded to. The Respondent is directed to allot an alternative plot to the Petitioner of 400 sq. yds. in lieu of her leasehold rights in plot measuring 550 sq. yds. in Khasra No.329/327, Block 'C', Jheel Khurenja, Krishna Nagar, Delhi. The allotment shall be made by the Respondent to the Petitioner in Jheel Khurenja or in its vicinity within 60 days of the receipt of this order and the Petitioner put in possession thereof within 30 days thereafter.

31. Writ petition stands allowed in the above terms.

REVA KHETRAPAL
(JUDGE)

July 03, 2013
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