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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 942/2013, C.M. APPL. 19653/2013, 19654/2013, 19655/2013,
19656/2013 & 19657/2013
% DECIDED ON:10.12.2013

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Ms. Shobhana Takiar, Advocate.

versus

SMT. BRIJ MOHINI Respondent
Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. This appeal by the Delhi Development Authority (“DDA”) challenges an order and judgment of a learned Single Judge, allowing the writ petition. The writ petitioner was aggrieved by the DDA’s refusal to allot an alternate plot to her in lieu of the plot in khasra No. 329/327, Block “C”, Jheel Khurenja, Krishna Nagar (the “*suit property*”) in respect of which she had been vested with leasehold rights and the possession of which, it was claimed, the DDA had neglected to hand over to her owing to encroachments on this plot of land.
2. Briefly, the facts of this case are that the suit property was originally leased out by the DDA for a period of 90 years jointly to Shri Parsi and Shri Nanwa, for residential purposes, by a lease deed dated 2.6.1949, registered on 13.9.1949. Subsequently, 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 by 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 writ petitioner, by 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 DDA. Subsequently, on the basis of a survey conducted by the DDA, in 1979, it was determined that the premises were being used for commercial and religious purposes contrary to the conditions of the lease deed. After show cause notices were issued to the co-lessees, the Commissioner (Lands) cancelled the lease deed on 16.1.1980.

3. Previously, in 1966, Pushpawati, the petitioner's mother, had filed Civil Suit No. 214/1969 against Shri Narain Dass seeking physical partition of the plot. On 24.1.1980, the learned judge held that an oral partition had taken place between the two co-lessees in terms of which Pushpawati had been given a rectangular portion of the suit property, 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. In these terms, the learned judge dismissed the suit for partition.

4. Subsequently, in 1981, Shri Narain Dass also filed a civil suit (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., Ms. Venus Engineering Works and Ms. Public Soap Factory and obtained an *ad interim* stay against being dispossessed by the DDA through his tenants.
5. However, pursuant to the cancellation of the lease deed by the DDA, the Estate Officer of the DDA 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 directed the Tehsildar to take physical possession from the aforesaid unauthorized occupants. Aggrieved by this action, 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. The appeal, however, was dismissed, and possession of the plots was subsequently taken by the Tehsildar.
6. In the writ petition, the petitioner claimed that Smt. Pushpawati had repeatedly made representations to the DDA and to the Lieutenant Governor that the cancellation of the lease deed was owing to the fault of her co-lessee and that her share had been utilized and managed within the terms of the lease deed. Accordingly, the Lieutenant Governor, by an order dated 19.1.1983, gave the following directions to the DDA:

“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.”

7. The petitioner further claimed that despite this direction from the Lieutenant Governor, no action was taken, and she was constrained to approach the Lieutenant Governor again. Subsequently, on 30.3.1983, the Chief Legal Advisor of the DDA noted this direction of the Lieutenant Governor instructing that half portion of the lease in favour of Smt. Pushpawati should be renewed. On 30.1.1983, the Vice-Chairman of the DDA approved this proposal as well. Despite this, no action was taken, and Smt. Pushpawati again approached the office of the Lieutenant Governor, who, on 9.9.1983, issued the following direction:

“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.”

8. The Finance Wing of the DDA accordingly advised that Pushpawati be charged a sum of Rs.4,29,408/- on account of misuser charges, restoration charges and a premium for the other half portion. However, since there was a stay for the other half portion of the land

on account of the proceedings initiated by Shri Narain Dass, the matter was re-examined. On the basis of the recommendation of the Vice-Chairman of the DDA, sub-division of the plot was allowed by an order dated 11.12.1984, and the lease for a half portion belonging to Pushpawati was restored without charging any misuse or restoration charges. This order was communicated to Pushpawati by a letter dated 5.1.1985. Despite this, she was not put in possession of the land. This is because, as the DDA claimed in its counter-affidavit, that although the DDA had planned to evict the encroachers and indeed did so, the temple portion, which occupies 330 sq. yards, could not be demolished on account of public resistance. Accordingly, the DDA relied upon a subsequent order of the Lieutenant Governor dated 7.6.1991, which, contrary to the earlier stance, after consideration of this issue, stated as follows:

“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 has been 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 or 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.”

9. The petitioner contended that Pushpawati's contention was that it is a matter of record that subsequent to the removal of encroachments by the Respondent on the plot in question upon cancellation of the lease deed by the Commissioner (Lands), further encroachments had taken place while the property was in the possession of the DDA, which cannot be attributed to her.

10. Irrespective of these contentions, it is undisputed that the Vice-Chairman of the DDA passed an order dated 26.12.1993 directing the demolition of land and related structures of the temple complex, and the fencing of the land to safeguard the DDA's interest, and finally, to put Pushpawati in possession of her share in view of the fact that the lease deed had been restored. However, as she expired on 21.11.1994, the present petitioner succeeded to her leasehold rights, and the plot was mutated in her name. In view of the outcome of the litigation initiated by Shri Dass (the details of which are not necessary here) the Deputy Director (LM), East Zone, DDA, prepared a note dated 8.5.1995, indicating that the petitioner may be allotted an alternative plot in the vicinity as directed previously by the Lieutenant

Governor, and that demolition be carried out on the suit property, though the temple ought not to be touched in such demolition activities.

11. Accordingly, the Director (Lands) of, DDA, by 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), DDA on 16.1.1996. Despite this, no action was taken by the DDA to comply with the directions and orders passed by its Vice-Chairman and the Lieutenant Governor. Indeed, 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 made a detailed order dated 6.1.2004 recommending 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-Jarnuna area or any suitable part of Delhi in lieu of her leasehold rights of 550 sq. yds. in the suit property. Despite this, though, the DDA did not allot any plot, and in its counter-affidavit in the writ petition, stated that there was no scheme in existence under which such an alternate plot could be allocated, or within which the petitioner could claim any rights.

12. Given this factual background, the learned single judge held in favour of the petitioner, directing the DDA to allot an alternate plot. The findings of the learned single judge were as follows:

“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 Kuinar, Smt. Dhanwanti, Shri Durga Mandir Samiti and Shri Han 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 ...

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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 right 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 (he 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 Suit. 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.”

Accordingly, the learned single judge directed that the DDA allot an alternative plot to the petitioner measuring 400 sq. yards in lieu of her leasehold rights in the suit property measuring 550 sq. yards.

13. Impugning this judgment and order of the learned single judge, learned counsel for the DDA contends that the land was originally

allotted to the petitioner's predecessor- in-interest free of encumbrance, and thus, any encumbrance that has resulted is, as against the DDA, against its terms and thus, actionable in terms of cancellation of the lease deed and all appurtenant rights. In such case, learned counsel argues, there can be no right to an alternate plot. Further, it is argued that the learned single judge failed to appreciate that the DDA acted at the behest of Smt. Pushpawati herself, in accordance with her complaint as to encroachments, and that the blame cannot now be placed on it for encroachments that resulted from the time when she was in possession. Quite to the contrary, it is argued that because of the *status quo* order passed in legal proceedings initiated by Shri Narain Dass, the DDA did not take possession of the plot, and thus, any encroachments, even after the formal eviction order was passed (at the behest of Pushpawati) cannot be attributed to the DDA, such that it is now put under an obligation to allot an alternative plot. Further, it is argued that the Lieutenant Governor never directed the allotment of an alternate plot after the death of Pushpawati, but rather, by the order of 7.6.1991, noted that the petitioner may avail alternate remedies against the encroachers directly as the DDA had exhausted all alternatives available to it. Further, it was argued that the file notings sought to be relied upon by the petitioner, on the basis of which the learned single judge reached her decision, never culminated in any decision as to vest any right in the petitioner. Such file notings, it is argued, are legally inadmissible.

14. Before addressing the issues that arise in this case, this Court notices that there is a factual dispute between the parties as to whether the

DDA took possession of the suit property on 28.1.1982, as is claimed by the petitioner. For its part, the DDA claims that it “*is an admitted fact that DDA due to injunction did not take possession of land in question till 20th February, 1987.*” This fact is seemingly important in order to determine whether the encroachments that took place on the suit property resulted when the DDA was in possession and thus, whether these encroachments, which have now resulted in the petitioner not being able to resume possession, are attributable to the DDA or not. This being a disputed question of fact, this Court is not inclined to return a finding, and importantly, neither is such a finding necessary. Rather, the Court must consider whether a right or interest is created in favour of the petitioner (or in favour of Smt. Pushpawati) by the DDA as regards the allotment of an alternate plot. The DDA’s submission that there exists no scheme under which the petitioner is entitled to an alternate plot is undoubtedly correct. However, at the same time, the Court must determine whether the communications and representations made by the DDA have created an actionable right in favour of the petitioner.

15. First, it is undisputed that on the basis of the recommendation of the Vice-Chairman of the DDA, sub-division of the suit property was allowed, and the lease for a half portion belonging to Smt. Pushpawati was restored without charging any misuse or restoration charges. This order was communicated to her by a letter dated 5.1.1985. This was subsequent to the concurrence of the Lieutenant Governor (by his orders dated 19.1.1983 and 9.9.1983), the Chief Legal Advisor of the DDA (by his note dated 30.3.1983), and the Vice-Chairman of the

DDA (by his acceptance of the Chief Legal Advisor's note dated 30.1.1983) on the issue of returning her to possession, without payment of any misuse or restoration charges. The DDA, in the present appeal memorandum, as also in the original writ petition, candidly accepts that its actions of attempting to evict the encroachers and take action against the Durga Mandir Samiti were at the behest of Pushpawati's complaints, who informed the DDA of such encroachments. At no point was it contended, or is it clear from the record, that such encroachments were in any way attributable to the fault of Smt. Pushpawati. The issue of whether the DDA took possession of the plot or not need not be gone into by this Court, as the fact that Ms. Pushpawati's possession was disturbed by the DDA is clear (as then only would the DDA's subsequent internal discussion on resuming her possession arise, which the DDA does not contest). Thus, at no rate were such encroachments attributable to Smt. Pushpawati such that her leasehold rights could be interfered with by the DDA. Indeed, file notings, by themselves, as the Supreme Court noted in *Sethi Auto Service Station v. DDA*, (2009) 1 SCC 180, do not create or vest rights in third parties. Neither is that the case in the present circumstances. Rather, the DDA, by its letter dated 5.1.1985, after extensive internal deliberations, communicated to Smt. Pushpawati, its *decision* to resume her possession of the suit property.

16. It is this decision of the DDA, and not the file notings and internal discussions that preceded it, that vested in Smt. Pushpawati an interest in resuming possession of the suit property, which is enforceable as against the DDA. Equally, given the factual dispute as to whether the

encroachment by the Durga Mandir Samiti was during the time Smt. Pushpwati was in possession of the suit property (and thus, plausibly her fault), the finding of the learned single judge that at best the interest in the suit property, which measures 550 sq. yards, can be reduced by the measure of encroachment by the Samiti, i.e. 150 sq. yards, a point which was conceded to by the learned senior counsel for the petitioner. Indeed, the *volte face* of the DDA, which had by a written communication (after various representations) informed Smt. Pushpawati that she would be put back in possession of half portion of the suit property, cannot be countenanced. Not only had the DDA, by its order dated 5.1.1985, recognized that the eviction of Smt. Pushpawati was incorrect, but moreover, no misuse or restoration charges were imposed on her (as opposed to Shri Narain Dass), which further indicates her neutrality in the matter of the encroachments upon the suit property. Rather, such prevarications of the DDA, after an actionable interest has been created by it in favour of a third party, if permitted, would undermine the sanctity of 'decisions' of government authorities, and render at nought the legal and equitable rights of such parties. Such conduct is archetypally arbitrary, and is liable to be interfered with under the Court's Article 226 jurisdiction. Equally, while it is the DDA's case that the writ petitioner cannot be allotted the suit property itself, this cannot not defeat her right to an alternative plot, so as to ensure that her rights are not frustrated for no fault of hers, especially as she was wrongly evicted from the property in the first place.

17. For the above reasons, this Court is of the opinion that the judgment and order of the learned single judge do not call for any interference. The appeal is accordingly dismissed; the appellant DDA shall pay costs quantified at Rs.25,000/- to the DHCLSC.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

DECEMBER 10, 2013