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

Date of Decision: 26.11.2013

\+ LPA 673/2012, LPA 878/2012, LPA 854/2012, LPA 859/2012, LPA 876/2012, LPA 6/2013, LPA 18/2013, LPA 866/2012, LPA 883/2012, LPA 22/2013, LPA 864/2012, LPA 882/2012, LPA 857/2012, LPA 21/2013, LPA 862/2012, LPA 880/2012, LPA 30/2013, LPA 871/2012, LPA 20/2013, LPA 861/2012, LPA 875/2012, LPA 11/2013, LPA 884/2012, LPA 874/2012, LPA 19/2013, LPA 867/2012, LPA 873/2012, LPA 17/2013, LPA 23/2013, LPA 872/2012, LPA 865/2012, LPA 879/2012, LPA 863/2012, LPA 7/2013, LPA 868/2012, LPA 802/2013, LPA 804/2013

DDA ..... Appellant
Through: Mr.Ajay Varma, Advocate

versus

MEENAKSHI CHOUDHRIE AND ORS ..... Respondents
MANMOHAN SINGH ..... Respondent
MADAN LAL JAIN ..... Respondent
CAPITAL LAND BUILDERS PVT. LTD ..... Respondent
GENERAL GARMENT (DELHI) PVT. LTD. ..... Respondent
USHA SERVICES & CONSULTANTS LTD. ..... Respondent
S.P.JAIN & COMPANY ..... Respondent
MEXIT (INDIA) P. LTD. ..... Respondent
DHARAM BIR ..... Respondent
S.P. SABHARWAL ..... Respondent
SEIKI AUTO (I) LTD. & ORS. ..... Respondent
ASHA VIRMANI & ORS. ..... Respondents
HARINDER SINGH ..... Respondent
PEAREY LAL ..... Respondent
S P VIRMANI & SONS P. LTD. & ORS. ..... Respondents
PAMA STEELS PVT. LTD. ..... Respondent
JYOTI METAL & ALLIED INDUSTDRIES PVT. LTD. & ORS.

..... Respondents
CARMAN AUTO (P) LTD. ..... Respondent
SHREE KISHAN ..... Respondent
MAA KALI STEELS PVT. LTD. ..... Respondent
PUSHKAR ENTERPRISES P. LTD. ..... Respondent
PATAMBER STEELS (P) LTD. ..... Respondent
JAIKISHAN DAS GUPTA & ORS. ..... Respondents
KEI METAL (P) LTD. ..... Respondent
SONAL UDYOG (P) LTD. ..... Respondent
DELHI INDUSTRIAL CORPORATION & ORS. ..... Respondents
SOUTH END INDUSTDRIES ..... Respondent
SHIB CHANDRA BANERJEE FAMILY TRUST ..... Respondent
ANA SALES PVT. LTD. ..... Respondent
ORIENT BUILDING & FURNISHING CO.P.LTD..... Respondent
S.K. AGGARWAL ..... Respondent
S TECH INFO (P) LTD. ..... Respondent
VINAYAKAM STEEL P. LTD. ..... Respondent
SHYAM SUNDER ..... Respondent
DESH INDUSTRIES ..... Respondent
HINDUSTAN CONSTRUCTION CO LTD ..... Respondent
RAJKAMAL PATTERNS PVT. LTD. & ORS. ..... Respondent

Through: Ms.Pooja Saigal with Ms. Mithila Sharma, Advocates in LPA 883/12
Mr.Sumeet Pushkarna with Ms. Sara Sundaram, Advocates for DJB
Mr.Keshav Dayal, Sr. Advocate with Mr. Aditya Kumar Choudhry, Mr.Nazish Fatima, Advocates for R-1 to 4.
Mr.Mr.Amit Mahajan, Advocate in items 883/12 & 20/2013
Ms.Manmeet Arora, Ms.Nidhi Parashar, Ms.Mansi Sharma, Advocates in LPA 872/2012
Mr.Sanjay Poddar, Sr. Advocate with Mr.Sunil Magon, Advocate in LPA 18/2013
Ms.Namrata Sharma, Advocate for Mr. B. Shekhar, Advocate for South MCD
Ms.Mansi Gupta, Advocate for R-2 in LPA 882/2012

Ms.Ruchi Jain, Advocate for SDMC in LPA 867/2012
Mr.Dhiraj Sachdeva, Advocate for R-1 in LPA 673/2012
Mr.Arjun Pant, Advocate for NCT of Delhi
Mr.Naresh Sharma, Advocate for LPA 673/2012
Mr. R.Chakraborty, Advocate in LPA 23/2013
Mr.R.Chakraborty, Advocate in LPA 6/2013
Mr.Kapil Kumar, Advocate for SEIKI
Mr.Harpreet Singh, Mr.Rajesh Gupta, Advocates for Mohan Co-operative Industrial Estate Ltd.
Mr.Sunil Fernandes, Standing counsel for BSES RPL with Mr.Deepak Pathak and Ms.Insha Mir, Advocates
Mr.Dev Bhardwaj and Mr.Anubha Bhardwaj, Advocates for R-2/MCD in LPA 673/2013
Mr. Puneet Saini, Advocate for the respondent
Mr.D.P.Mohanty with Ms.Sanjana, Advocates for respondent /HCC
Ms.Pooja Kalra, Advocate for R-2/SDMC
Mr.Sameer Jain with Mr.Siddharth Jain and Mr.Sandeep Bajaj, Advocates for respondent in LPA 880/2012.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S.RAVINDRA BHAT (Open Court)**

1. The present appeals are directed against a common judgment and order of the learned Single Judge of 8th May, 2012. By the impugned

judgment, the learned Single Judge partly allowed the respondents' (hereinafter referred to as 'petitioners') writ proceedings initiated under Section 226 of the Constitution of India. It was contended by the petitioners in those proceedings that the appellant/Delhi Development Authority (hereinafter referred to as DDA) could not claim charges in respect of the period when the plots allotted to them (i.e. the petitioners) had not been constructed upon.

2. The brief facts are that the writ petitioners are the allottees of the sub-lessee in the Mohan Co-operative Industrial Estate registered under the provisions of the Societies Registration Act (hereinafter referred to as 'The Society').

3. The Society was allotted a land in 1963 for the purpose of development and allotment of individual plots to be enjoyed on sub-lease basis to its members. A perpetual lease deed dated 11.2.1971 was followed by a sub-lease dated 7.1.1972. One of the conditions governing the lease and the sublease was the timely construction of buildings/industrial property upon the concerned plots allotted to each sub-lessee. It is a matter of record and not a serious dispute that due to lack of facilities and amenities that make up for the fuller enjoyment of such property,

constructions could not be carried out by the individual sub-lessees for a considerable period of time. Consequently, the DDA granted several extensions relieving the sub-lessee/individual plot holders of the obligation to construct upon their properties; in default of which, the plot owners would face cancellation of the allotment. This is of course in the nature of a condonable breach, subject to payment of composition fee. As stated earlier, it is a matter of record that on several occasions, DDA granted extension to the plot owners having regard to the realities on the ground - these were on 31.8.1997 (extension granted was up to 31.12.1998); on 17.1.1989 (granted up to 31.12.1989); 1.1.1990 (granted up to 31.12.1990), 3.6.1991 (extension granted up to 31.12.1991) and last being on 21.3.1996 for a period upto 31.12.1992.

4. In this background of circumstances, the DDA sought to call upon the plot owners to pay composition fee by individual notices as well as through public notice. This led to a series of proceedings being filed (some in 1999 and some from 2001 onwards).

5. In one of these proceedings, i.e. WP(C) no.79/98, (where the writ petitioner's complaint was that the DDA acted in an arbitrary fashion in

seeking the recovery of composition fee), the Court directed a joint inspection of the entire society land on 12.4.1999. This inspection was carried out by senior officials of the DDA and other local authorities such as MCD, and the erstwhile DVB (electricity service provider). The findings and the observations of the Inspection Committee were placed on record. The petitioners relied upon the said observations in the inspection report as well as the report of the Lok Adalat subsequently conducted on 26.12.2000. The Lok Adalat had considered the record of the DDA, especially the file notings, related documents and the minutes of the meeting of the concerned Committee dated 19.2.96 which recommended the last inspection up to 31st December, 1992.

6. The learned Single Judge after considering the submissions of the parties and the position taken by the DDA, held that in the circumstances of the case, the DDA ought not to recover or demand composition fee for the period up to 31.12.99. At the same time, the learned Single Judge allowed the DDA to collect composition fee from the period 1.1.2000 i.e. after reckoning the three year period given for construction for some time in 1997.

7. The relevant findings of the learned Single Judge in the common impugned order are as follows:-

> *"9. Having deliberated upon the submissions advanced in the light of the decisions cited and the material on record, I find that respondent's Lok Adalat order (Annexure P-7) does not have binding effect in view of the decision in Jalour Singh (Supra) but the cogent recommendation made therein can always be taken into consideration.*
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> *10. In any case, not only in the inspection conducted by the respondent's Lok Adalat but even in the Joint Inspection Report of 24th September, 1999 (Annexure P-17), it was found that the basic infrastructure in the Mohan Co-operative Industrial Estate was lacking i.e. trunk sewer and trunk water mains were in the process of being laid and the power supply was recently commissioned in July, 1999.*
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> *11. The averments made in respect of aforesaid Joint Inspection Report of 24th September, 1999 (Annexure P-17) are contained in paragraph No. 16 of the writ petition and in the corresponding paragraph of the counter affidavit, it is merely stated by the respondent – DDA that it is a matter of record and needs no reply. In such a situation, the respondent cannot fall back upon the 'no objection certificates' issued in respect of A Block of the Mohan Cooperative Industrial Estate. Pertinently, none of the 'no objection certificate' pertain to B block of Mohan Cooperative Industrial Estate i.e., relating to the subject matter of these petitions.*
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> *12. In view of the ratio of the decision in **Hamdard** (supra) and the Joint Inspection Report of 24th September, 1999 (Annexure P-17), and particularly in view of the stand of*

respondent – DDA in its counter affidavit of the basic amenities being available when the counter filed i.e. in May, 2001, it becomes apparent that the basic amenities to enable raising of construction on plots in 'B' Block of Mohan Cooperative Industrial Estate were not available prior thereto. It cannot be ignored that the respondent –DDA had issued a Public Notice (Annexure P-3) giving the deadline of 30th June, 2001 to complete the construction while making it clear that no further extension would be given beyond the aforesaid date.

13. Viewed in the afore-noted perspective, respondent – DDA is precluded from charging the composition free from the petitioners up to 31st December, 1999 and for calculating composition fee, 1st January, 2000 would be treated as the fourth year after expiry of three years of perpetual sub-lease."

8. It is urged on behalf of the DDA that the learned Single Judge fell into error in proceeding to enter what essentially was a policy choice and in directing the DDA to recover composition fee on a particular basis. The learned counsel relied upon the licence agreement of 24.7.1963, and especially the following provisions:-

"I. The President hereby grants, for a period of three years commencing from the Twenty fourth day of July one thousand nine hundred and sixty three (and the time so specified shall be of the essence of the contract) a licence to the Society to enter upon the said land only for the purposes of making surveys and taking measurements and levels for preparing a lay-out plan with the necessary designs and specifications dividing the said land into streets, open spaces, plots, etc, and, and after the

> *sanction of the lay-out plan by the proper municipal or other authority, to enter upon the said land to carry out and complete and the Society hereby undertakes to carry out and complete within the said period of three years to the satisfaction of the Chief Commissioner at its cost and expense, development including metalling of streets, provision of sewers and drains, water and electric mains, amenities and other conveniences in and on the said land; in accordance with the said lay-out plan, and also in and on the land beyond and outside the said land for the proper use and enjoyment of the said land in accordance with the directions of the Chief Commissioner which he may in his absolute discretion issue in this behalf.*

9. It was thus contended that the primary responsibility of developing and creating facilities and other amenities for the proper or fuller enjoyment of the property allotted to the sub-lessee was upon the Society. The learned counsel also submitted that the failure on the part of the civic agencies such as MCD or the DJB or the DVB, could not in any manner restrict its right to recover composition fee in accordance with existing policies that bound both the allottee and the DDA.

10. The learned counsel for the DDA argued that the question as to whether the amenities did not exist as alleged by the writ petitioner was essentially one of the fact and the learned Single Judge would have been better advised not to return any finding on such disputed questions of fact. It was underlined in this regard that this caution ought to have

been borne in mind especially given the circumstance that out of 337 allottees or sub-lessees, more than 240 had constructed upon the plots in 1999 itself, thus giving lie to the contentions of the writ petitioners that the plots in question could not be constructed upon. The learned counsel also relied upon the inspection note dated 24.9.99 submitted to the Court and urged that an overall reading of the said document would demonstrate that the writ petitioners' submissions about the lack of amenities were only an afterthought to escape payment of composition fee. The learned counsel particularly relied upon the contents of the report to say that some fault was attributable to the Society which had to share a substantial part of the blame for the delay in developmenst.

11. In these circumstances, the learned counsel submitted that the learned Single Judge could not have restricted the DDA's right to recover the composition fee on the basis of the instant policies.

12. Lastly, learned counsel relied upon the policy enabling the DDA to grant relief in terms of the clause 1.4 of the revised guidelines for the imposition of composition fee (notified through Office Order F. No. AO(Proj)Misc./Composition/ Pt. 1/36 dated 31.10.1995), and submitted that exemption could be granted only in respect of those identified

contingencies and not otherwise. Creating more heads would really amount to the Court extending itself to what in essence is, a pure administrative or policy-making function.

13. In this context reliance placed the judgment in *Hamdard (Wakf) Laboratories (India)* v. *Delhi Development Authority*, WP(C) Nos. 4043/98, 2872 and 3412/2001 and 7372/2002 (decided on 22.11.2004), identifying the relevant circumstances that the Court calls upon to decide the case. The learned counsel also submitted that the impugned order is in clear error in proceeding to consider the report of the Lok Adalat which can never be the basis for a decision on merits. In this regard, reliance was placed upon *State of Punjab & Anr.* v. *Jalour Singh & Ors*, 2008 (2) SCALE 52.

14. The learned senior counsel for the respondents submitted that the impugned order does not call for any interference as it properly balanced the interests at stake. Refuting the DDA's contention that : in fact the Society or some of its members were to be blamed for the delay in development and creation of amenities, counsel submitted that the very circumstance of the DDA having granted repeated extensions (the last being in 1996 itself) evidenced the acceptance of the ground

realities and the lack of fault on the part of the sub-lessees. It was further submitted that even though the Lok Adalat report is not binding upon the Court, nevertheless, it has persuasive value inasmuch as the concerned presiding officer of the Lok Adalat had the benefit of examining the concerned files especially in respect of the last extension granted on 21.3.96.

15. It was argued that the submissions with regard to construction of a large number of plots and the inabilities of the other sub-lessee has to be considered in the overall context of the circumstances and the peculiar realities prevailing at the ground level. The learned counsel urged in this regard that there was no consistent development of the entire society which was even noticed by the learned Single Judge. It was also argued that the DDA's reply in writ proceedings was bereft of any particulars – an aspect which was taken note by the learned Single Judge.

16. The above narrative would disclose that this Court is called upon to pronounce upon a very narrow dispute i.e. the liability of the writ petitioners to pay composition fee for the period between 01.1.1993 to 31.12.1999. Concededly, the DDA was allowed to grant extensions

and it granted not one but four repeated extensions. Moreover, a significant aspect which cannot be overlooked is that the last extension granted was on 21.3.96, and like in previous four cases, each of which was effective prospectively, the last extension though made on 21.3.1996 was granted up to 31.12.1992. Whilst this Court has no doubt about the competence of the DDA to limit the grant of a certain benefit to a particular date and though the last extension granted was only upto 31st December, 1992, no answers are forthcoming nor are there materials on record able to justify why the benefit of extension of time in the present instance was, though the last extension granted was only upto 31st December, 1992, for a period almost four years prior to the issuance of the order itself. Crucially, even the DDA's counter affidavit and other pleadings are silent on this aspect, which surely could have thrown some light on whether the developments had indeed taken place to such an extent as to warrant denial of benefit w.e.f. 01.1.1993.

17. The contention of the DDA today that based upon these averments in paragraph 22 ground 'C' of the counter affidavit that a majority portion of the Society had been developed and built upon to the extent of 90%

or that 249 allottees had built plots, in the opinion of the Court, cannot be accepted facially. The report, to the extent it is relevant, is reproduced below:

"DVB- The report of DVB vide letter No.XD/NZD/2/268 dated 17.9.99 copy enclosed together with the annexures containing the background of the case as per letter dated 13.1.98. Electricity services-

1.0) Initially request for electrification of block 'A' MCIE was received in the year 1965. But the scheme did not materialise as the payments were not remitted by the association/plot holders. Subsequently requests for Block 'A' B-I, B-I Extn. and B-II were received from time to time.

1.1) However, subsequently, on realisation of 50% of party payable share towards electrification scheme of 14 nos. plots located in Block 'A' were released for execution in June, 1984.

2.0) Thereafter, the electrification of 'B' Block respective plots measuring 1000 sq. yards and above was also sorted out for granting connections on LV as per the resolution No.511 dt. 14.1.98 by DVB, refer Ann. I together with its enclosures.

2.1) Summarily, the schemes prepared for the electrification from time to time for meeting the demand of power did not materialise for reasons resting with the plot holders."

18. The above portions of the inspection report have been heavily relied upon heavily by the DDA to contend that the fault primarily would be on the Society and the plot holder concerned for the non-development of the area leading to denial of amenities.

19. The reasoning given by the learned Single Judge accepted the petitioner's contention on an overall consideration of the joint

inspection report, lack of particulars in the pleadings of the DDA and the very circumstance in which the appellant/DDA itself had granted inspections (the last one being on 21.3.96). This Court is of the opinion that having regard to the materials presented before the Court, the findings cannot be faulted. The DDA's contention in this regard that it alone has the last word on policy, whilst as a proposition of law is correct, it cannot be viewed in isolation of the facts before the Court. The DDA's right to recover composition fee of charges undoubtedly is to be within the parameters of its policy. What is in issue here is ether the inconsistence in adhering to that policy despite certain external circumstances can be called arbitrary or unreasonable. It is not as if the DDA with good reason was oblivious to the concern of the plot holders that the amenities had not been developed to the fullest or to the requisite level for the fuller enjoyment and use of the allotted lands. By granting extensions no less than five times, the DDA accommodated the plot holders who were caught up in the crossfires of the workings of the agency itself. However, it is inconsistent for the DDA to now hold, and without any further material or rationale, that composition fee would be recoverable w.e.f. 1.1.93 in the circumstances of this case.

Thus the finding of the learned single judge was reasonable and the Court does not find any reason to interfere with the same.

20. Next is the DDA's contention that clause 1.4 of its composition fee policy of 1995 limited the scope for grant of relief, and that this again is a matter of policy. Nevertheless, if on an appreciation of the materials on record, the Court in proceeding under Article 226 of the Constitution is convinced that the discretion exercised by the DDA in refusing composition fee was unreasonable, such an exemption clause regarding limited choice would not create an impediment to granting relief. It is not as if the policy is immutable; neither is it carved in stone nor is it a statutory one, such that it could compel the Court to cut down nature of the relief which it could grant, once the attendant circumstances justified it. Consequently, this argument fails to persuade to this Court, and the distinction sought to be drawn between the facts of this Court and those in Hemraj's case, in the opinion of this Court, are of no consequence. Undoubtedly, the Court was concerned with the fault of the DDA, which led to the property owner being unable to enjoy the plot. In this case, there are a series of circumstances, i.e. the failure of the civic agency such as MCD, DVB and the

latters/successor, in making available the basic amenities such as electricity and sewerage in the concerned areas where the plot owners were given their sub-lessee, which distinguish it from Hemraj's case. Having regard to all these facts, the Court is not persuaded by the DDA's submission that the limited relief granted by the Single Judge was not warranted.

21. In view of the above discussion, the Court holds that the DDA's appeals are meritless and consequently, the same are dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

NOVEMBER 26, 2013
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