

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

% *Judgment Reserved on: September 15, 2015*
Judgment Delivered on: September 23, 2015

+ **LPA 330/2010**

NARENDER KUMAR ABBOTT Appellant
Represented by: Mr.Arvind Kumar, Advocate with
Mr.Pradeep Mathur, Advocate

versus

UNION OF INDIA & ORS Respondents
Represented by: Mr.Ajay Digpaul, Advocate with
Ms.Rishika Katyal and Ms.Arati
Bansal, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Three writ petitions have been disposed of by a common order dated March 11, 2010. Only the appellant : Narender Kumar Abbott, has challenged the impugned decision, and thus we note the facts concerning WP(C) No.13219/2004 filed by the appellant which has been dismissed by the learned Single Judge.
2. Appellant pleaded that he was a displaced person, having migrated from Pakistan to Delhi after partition in the year 1947, and as a refugee he settled at Sir Ganga Ram Hospital Marg, New Delhi, where he constructed a residence for himself and his family. Pleading that on the floor of the Parliament Shri V.N.Gadgil made an assurance which popularly came to be

known as the Gadgil Assurance, he was entitled to be provided with a residential accommodation before he could be evicted from the site which he had occupied on Sir Ganga Ram Hospital Marg, which site belonged to the Government. He pleaded that he and various other persons made representations to the Union of India for implementation of the Gadgil Assurance and that ultimately the Supreme Court had to issue direction on April 03, 1996 to provide alternative accommodation to the appellant. That on September 23, 1999 the Supreme Court directed the appellant to vacate the site occupied by him at Sir Ganga Ram Hospital Marg. He pleaded that in the order dated September 23, 1999 the Supreme Court did not permit the Union of India to levy any damages. Walking backward in the past, appellant pleaded that on August 18, 1992 damages in sum of ₹88,119,94/- had been demanded and that on October 03, 1997 damages in sum of ₹1,84,807/- were demanded. He pleaded that on August 07, 1996, plot No.3 at site No.7, ad-measuring 200 Sq.yards in New Rajinder Nagar was offered to the appellant and pursuant thereto he took possession thereof. Appellant pleaded that he paid the premium demanded. He pleaded that thereafter on November 10, 2000 he wrote to the Union of India to execute a lease-deed. He pleaded that the Estate Officer of the Delhi Development Authority had initiated proceedings for recovery of damages under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Appellant pleaded that on August 23, 2001 a demand was raised by the Union of India in sum of ₹37,04,564/- on account of damages. A vague reference has been made in the writ petition to one Satwant Kaur by the appellant to plead discrimination. The prayer made in the writ petition was to quash the demand as per the notice dated August 23, 2001.

3. The appellant did not disclose, and a relevant fact was disclosed by the respondents in the counter affidavit filed, that way back on December 12, 1983 a plot at Rajinder Nagar bearing No.3 at site No.7, had been allotted to the appellant and for the site occupied by the appellant at Sir Ganga Ram Hospital Marg he had to pay nominal damages. The appellant was intimated that the damages were at concessional rates and that the appellant should surrender possession of the site occupied at Sir Ganga Ram Hospital Marg. Relevant would it be to highlight that the appellant was squatting on 1404 sq.yards land on Sir Ganga Ram Hospital Marg and for the period January 01, 1952 till March 31, 1981 nominal damages in sum of ₹140.40 per month were claimed. For the period April 01, 1981 onwards nominal damages claimed were in sum of ₹280.80 per month. Probably for the reason the appellant was occupying 1404 sq.yards land and was to shift to a plot of land ad-measuring 200 sq.yards, the appellant kept squatting at the site unauthorizedly occupied by him. The respondent informed that in a public interest litigation filed before the Supreme Court concerning removal of all kinds of encroachments in the Ridge area, since the site occupied by the appellant was in the Ridge area, on April 03, 1996 the Supreme Court directed that to all those to whom sites were not allotted as per Gadgil Assurance, the respondents would do the needful. On September 04, 1996 on being informed that the respondents had already made allotments of alternative sites, the Supreme Court directed that all those who were occupying sites in the Ridge area would vacate the sites. The Supreme Court reiterated its directions to clear all encroachments in the order dated September 23, 1999. The respondents brought to the notice of the learned Single Judge that in November 1997, all persons to whom alternative

allotments had been made in terms of Gadgil Assurance, and who continued to occupy the sites originally occupied by them when as refugees they migrated to Delhi, letters were written to pay damages. It was pleaded further that as regards the appellant the demand which had been challenged in the writ petition was validly raised because he continued to illegally occupy Government land at Sir Ganga Ram Hospital Marg, renamed as Poorvi Marg.

4. The reasoning of the learned Single Judge is short and simple. The appellant having been allotted an alternative site in compliance with the Gadgil Assurance was obliged to vacate the site occupied at Poorvi Marg. The respondents had discharged their obligations as per Gadgil Assurance when on December 12, 1983 a plot of land was allotted to the appellant in New Rajinder Nagar. The appellant had been intimated that if he continues to occupy the site at Poorvi Marg, damages would be charged from him. For the past damages for occupation of the site at Poorvi Marg were claimed at concessional rates.

5. The innocently drafted writ petition has used the ruse of innocence to hide the vital truth. The vital truth being that on December 12, 1983 an alternative plot had been allotted to the appellant, allotment whereof had been accepted by the appellant. The appellant tried to project as if he was to be evicted pursuant to the orders passed by the Supreme Court on April 03, 1996, September 04, 1996 and September 23, 1999. Whilst it may be true that the appellant was forced to vacate the site at Sir Ganga Ram Hospital Marg pursuant to the orders passed by the Supreme Court on September 23, 1999, but as a matter of fact appellant's obligation to vacate the site came into existence when on December 12, 1983 the site at New Rajinder Nagar

was allotted to the appellant. Thus, the contention urged in the writ petition that since the Supreme Court did not put any condition on the appellant to pay damages for occupation of the site at Sir Ganga Ram Hospital Marg, the respondents could charge no damages, is a plea which has no legal foundation to stand on.

6. Concerning the orders passed by the Supreme Court it needs to be highlighted that in a public interest litigation registered as WP(C) 4677/1985 M.C.Mehta vs. UOI & Ors., taking cognizance of unauthorized occupation in the Ridge area since 1950 and existence of the Gadgil Assurance, the Supreme Court passed an order on April 03, 1996 that to all those who were entitled under the Gadgil Assurance to an alternative plot, allotment would be made and a status report shall be filed under cover of an affidavit within two weeks. On September 04, 1996 the Supreme Court noted that allotments to all those who were entitled under the Gadgil Assurance had been made and thus there was no justification for the occupants in the Ridge area to whom alternative allotments had been made to continue to occupy the sites occupied by them. The last order dated September 23, 1999 was passed declining any extension of time to the occupants in the Ridge area to continue to occupy the site in their occupation if alternative residential sites had been made.

7. In our opinion the appellant would not be entitled to any relief on account of two reasons. Firstly that the appellant has made gross suppression of material facts in the writ petition and has twisted some of the relevant facts. The appellant has not disclosed in the writ petition that on December 12, 1983 a plot of land ad-measuring 200 sq.yards had been allotted to him at New Rajinder Nagar and as per the term of the allotment

apart from paying the premium he had to pay damages for the site occupied at Sir Ganga Ram Hospital Marg and was liable to pay damages for the past occupation at concessional rates in terms of the circular dated May 25, 1970 issued by the Ministry of Works and Housing. The appellant falsely projected as if he was required to be allotted a plot under Gadgil Assurance pursuant to directions issued by Supreme Court on April 6, 1996 and September 23, 1999 by the Supreme Court of India. The two orders were passed by the Supreme Court in a public interest litigation concerning encroachments in the Ridge area in Delhi, which was a notified forest area and had to be maintained free from any construction. The appellant did not challenge the terms of the allotment of the plot of land to him at New Rajinder Nagar. The appellant has not challenged the policy under which damages are determined by the Union of India in respect of unauthorized occupation of Government land.

8. Suffice would it be to note that as per the Gadgil Assurance the refugees in Delhi who had migrated on the partition of the country to Delhi were to be given residential plots at concessional rates and unauthorized occupation by them on Government land had to be regularized till when alternative residential plots were allotted by charging a meagre sum. As per the policy of the respondents framed pursuant to the Gadgil Assurance, the appellant was allotted a residential plot on December 12, 1983. The appellant was obliged to vacate the site at Sir Ganga Ram Hospital Marg. The appellant did not do so. The appellant became liable to pay damages as per the policy of the Union of India where rate of damages got linked to the pre-determined market value of land in Delhi.

9. For record we need to note that the demand in sum of ₹37,04,565/-

raised on the appellant is in terms of a letter dated August 23, 2001, which reads as under:-

“I am directed to invite your kind attention to this office letter No.L-III/8/12(39)/171 dated 3.10.97 on the above subject and to say that you have been given physical possession of plot measuring 200 sq.yds at New Rajinder Nagar on 6.8.96. According to condition No.2 (iv) of the allotment letter No.L-III/8/12(39/83-887 dt.12.12.83, you are liable to pay the damages charges for the unauthorized use and occupation of Govt.land at Poorvi Marg till date. You are, therefore, required to pay damages as per details below:-

- 1) Amount demanded vide office letter dt.9.10.92 : ₹88,120.00*
- 2) 18% interest on the above amount item No.1 from 9.10.92 to 31.8.2001 and thereafter @ ₹1322/- P.M. : ₹1,41,146.00*
- 3) Amount demanded vide office letter dt.3.10.97 (item No.3 from 1.8.92 to 31.5.97) : ₹17,379.00*
- 4) 18% interest on amount item No.3 from 3.10.97 to 31.8.2001 and thereafter @ ₹261/- P.M. : ₹12,239.00*
- 5) Damages Charges for area 1525 sq.yds : ₹11,15,889.00
From 1.6.97 to 31.3.98 @ ₹13,39,800/-PA*
- 6) Damages charges for an area measuring : ₹23,29,784.00
1525 sq.yds. from 1.4.98 to 29.10.99
@ ₹1473,780/PA (i.e. one day before
Taking over possession)*
- 7) Ground Rent @ ₹2/-PA from 18-9-97 : ₹8/-
to 17-9-2001”*

10. Demand raised on the appellant in said letter in sum of ₹82,120/- as per letter dated October 09, 1992 cannot be challenged by the appellant because he never questioned the demand raised under cover of the said letter, and we note that the break-up thereof is as under:-

1. Damages for 1404 sq.yards from 1.1.1952 to 31.2.1981
@ ₹140.40 per month : ₹49,280/-
2. Damages for 1404 sq.yards from 1.4.1981 to 20.5.1991
@ ₹280.80 per month : ₹34,164/-
3. Damages for 1524.57 sq.yards from 21.5.1991 to 31.8.1992
@ ₹304.90 per month : ₹4,675.94

11. Demand in sum of ₹1,41,146/- in the letter dated August 23, 2001 is the interest payable on the sum of ₹88,120/- payable as per the demand letter dated October 09, 1992, and the appellant would be prohibited from challenging said demand of interest because we have already held that the appellant would be prohibited from challenging the demand in sum of ₹88,120/-. Demand in sum of ₹17,379/- on the appellant is in terms of an earlier demand dated October 03, 1997 for damages payable for the occupation of the site at Sir Ganga Ram Hospital Marg from August 01, 1992 till May 30, 1997. The appellant is bound to pay damages as per the policy, which has not been challenged. Demand in sum of ₹12,239/- is by way of interest on the demand for damages in sum of ₹17,379/-, and since the former is payable, so would be the latter. Demand in sum of ₹11,15,889/- is for the period June 01, 1997 to March 31, 1998 and we find that it is in sum of ₹11,15,889/-. The basis of the demand is the policy circular that for the period in question damages would not be concessional but with reference to the market rate of land in the area based on pre-

determined rates. Since the policy in question which has resulted in the demand in sum of ₹11,15,889/- has not been challenged, the demand has to be sustained. Demand in sum of ₹23,29,784/- is once again for continued occupation of the site at Sir Ganga Ram Hospital Marg and is with reference once again to the market rate of the area based on pre-determined rates. Since the policy in question which has resulted in the demand has not been challenged, the demand has to be sustained.

12. During arguments in the appeal, and in respect of which argument the appellant has filed written submissions, the first issue argued was regarding Gadgil Assurance, which assurance we find was complied with by the respondent qua the appellant way back on December 12, 1983. The appellant has not pleaded in the writ petition as to what was wrong with the letter of allotment dated December 12, 1983, clause 2(iv) whereof clearly intimated to the appellant that for continued occupation of the site at Sir Ganga Ram Hospital Marg he would have to pay damages. There is no pleading in the writ petition that said letter of December 12, 1983 was not received by the appellant. In the oral argument addressed before us it was urged that said letter was not received by the appellant. A plea arising out of a fact cannot be argued if it is not a part of the written pleadings. The premium charged from the appellant for the allotment of the plot at New Rajender Nagar is as per the rate in the year 1983. When the appellant filed the writ petition he was aware of said fact. The appellant was also aware of the letter dated August 23, 2001 and we find that in said letter there is a reference to the demand being raised in terms of condition No.2(iv) of the letter of allotment dated December 12, 1983. In spite thereof the appellant drafted a very innocent writ petition. The oral arguments concerning

appellant not receiving the letter dated December 12, 1983 are noted by us for record and rejected on account of there being no pleading in the writ petition that said letter was never received by the appellant.

13. Second contention advanced was that as per the decision of the Supreme Court reported as (1987) 1 SCC 444 Shiv Sagar Tiwari Vs. UOI & Ors. no penalty could be levied except by way of proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. A plea which overlooks the fact that no penalty has been levied upon the appellant. The so called damages are actually occupation charges leviable as per policy, and as noted in paragraph 11 above are at fairly concessional rates.

14. The third argument that damages charged were discriminatory, and in respect of which plea parity was claimed with Satwant Kaur, we find no pleadings to juxtapose appellant's case with that of Satwant Kaur. Near plea that vis-a-vis Satwant Kaur the appellant has been discriminated against is neither here nor there. The appellant had to specifically plead the specific facts to show parity.

15. The fourth contention advanced was that damages which are barred by limitation cannot be recovered. There are no pleadings in the writ petition to said effect. If appellant had pleaded that recovery of damages were barred by limitation, the respondent could have pleaded the dates on which the demands were raised. We need to speak a word more. The law concerning limitation when a public authority recovers damages for unauthorized occupation of Government property is that a time barred demand cannot be created. Meaning thereby that assessment of damages has to be within the period when a sum is payable. Had the appellant pleaded that the demands raised were barred by limitation, the respondent

could have pleaded the dates when the demands were created.

16. It was then pleaded that interest imposed is excessive. The interest being demanded is as per policy and since the policy has not been challenged, the interest would be payable.

17. The appeal is accordingly dismissed with costs upon the appellant and in favour of respondent No.1.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 23, 2015
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