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

+ LPA 884/2015 & CM Nos. 30032-30033/2015 & CM No. 30035/2015

M/S S P MUKHERJI MARKET (JUNK MARKET) ASSOCIATION

REGD AND ORS

..... Appellants

Through: Mr. P. Chokraborty, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Kamal Kant Jha, Sr. Advocate for
R-1.

Ms. Shobhana Takial, Advocate for
DDA.

Mr. Rajan Sabharwal, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **16.12.2015**

1. The appellant is aggrieved by the order of the learned Single Judge dismissing the writ petition by impugned order dated 18.08.2015.

2. The learned Single Judge—as is evident from the reading of the order—was of the opinion that the directions sought were identical with the cause of action in W.P.(C) No 1563/2013 which was permitted to be withdrawn. The said W.P.(C) No. 7245/2015 was disposed of in the following terms:-

“Since the present petition has been filed on the same cause of action as W.P.(C) 15623/2015 which was dismissed as withdrawn, this Court is of the view that present writ

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petition is not maintainable in view of the judgment of the Supreme Court in Sarguja Transport Services Vs. State Transport Appellate Tribunal, Gwalior and others, AIR 1987 SC 88 wherein it has been held as under:-

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R. 1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition.....”

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In view thereof, present writ petition and applications are dismissed."

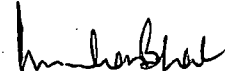
3. Mr. P. Chakraborty, learned counsel appearing on behalf of the appellant urges that in the impugned order, the learned Single Judge erroneously invoked the principle of *res judicata*. He points out that the previous order did not precede any *lis* and that even the judgment dated 25.10.2004 in W.P. (C) No. 1202/1997, directed the Delhi Development Authority to develop the land before taking up the matter of relocation of the petitioners to a permanent site. Counsel urged that the materials on record in the form of responses by the Delhi Development Authority under the Right to Information Act (RTI) itself demonstrated that the land use of the plot occupied by the appellants had been changed. Consequently, the Single Judge fell into error in dismissing the writ petition.

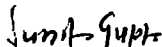
4. W.P.(C) No. 1202/1997-which was disposed of by judgment dated 25.10.2004 articulated the grievances of the several individuals-who had earlier occupied the Jama Masjid area. Upon formulation of a policy to clear the area, such occupants –including members of the appellant's association were evicted but permitted to occupy the present site. They had approached the Court in W.P.(C) No. 1202/1997 claiming that the increase in licensing fee from ₹ 25 per month was excessive and arbitrary. The learned Single Judge while disposing of the writ petition upheld the increase but at the same time noted that since the occupants were in the premises for a long period of time and had continued to be so on temporary relocation, it would be appropriate for the DDA to consider the matter of their relocation

to a permanent site and thereafter consider their claims for allotment of land on leasehold basis and on license basis.

5. As is evident from the said order, there was no mandate that the DDA had to necessarily redevelop the Jama Masjid area within a time frame. Undoubtedly, the DDA has taken steps to change the land use; the area under the occupation of the appellants is no longer a green area but a commercial area. At the same time, however, the directions sought by the appellant are in the nature of a mandamus to compel DDA a) to redevelop the area; b) offer them a permanent allotment on lease hold basis as a matter of policy. This Court is of the opinion that even though the appellant may be strictly speaking justified in that the principles of *res judicata* did not apply, nevertheless the relief sought of a direction to allot developed plots, without re-development schemes having been finalised and without any compulsion to do so in regard to this site in law, is something that the Court could not have granted in exercise of writ jurisdiction.

6. In these circumstances, the Court is of the opinion that the conclusion of the learned Single Judge not to entertain the writ cannot be faulted. The appeal is accordingly dismissed.


S. RAVINDRA BHAT, J


SUNITA GUPTA, J

DECEMBER 16, 2015

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