

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

+ **RSA No.213/2010**

% **9th September, 2016**

MUNICIPAL CORPORATION OF DELHI (S & J.J. DEPTT)Appellant
Through: Mr. Parvinder Chauhan, Advocate.

Versus

SMT. DARSHANA RANI Respondent
Through: Mr. Vinod Batra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/Municipal Corporation of Delhi/defendant impugning the concurrent Judgments of the courts below; of the Trial Court dated 16.11.2005 and the First Appellate Court dated 6.1.2010; by which the courts below have decreed the suit for declaration and injunction filed by the respondent/plaintiff and declared the Demand Letter of the appellant/defendant dated 29.2.1988 as illegal. Appellant/defendant has also been restrained from interfering in the peaceful possession of the respondent/plaintiff of the allotted plot of 75 sq. yards at shop no.3/2,

Khichripur, Local Shopping Centre. Appellant/defendant has also been directed to allot one more plot of 75 sq. yards to the respondent/plaintiff.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that she was carrying on the business of running a coal depot as a tenant in a private premises at Patparganj Road in which she was a tenant. This tenanted premises was acquired by the Slum and JJ Department of the Municipal Corporation of Delhi and hence respondent/plaintiff was given an alternative allotment of a plot of 200 sq. yards at Seelampur. Respondent/plaintiff requested for change of the site from Seelampur to Khichripur and which change was allowed by the appellant/defendant vide Letter dated 18.1.1976. The respondent/plaintiff claims that she was sanctioned two plots of 75 sq. yards each at Khichripur but the appellant/defendant sanctioned only one plot being plot no. 2 of 75 sq. yards of which she is in possession. Respondent/plaintiff claims allotment of two plots of 75 sq. yards each, i.e, one more plot of 75 sq. yards in terms of the document of Junior Town Planner of appellant/defendant dated 24.12.1976, Ex.PW1/5. Respondent/plaintiff also relies upon Letter/Noting of the appellant/defendant dated 19.6.1978 Ex.PW1/7 to claim allotment of the second plot of 75 sq. yards. Respondent/plaintiff by the suit plaint pleaded that possession of the second plot was illegally not given to her inspite of following up the matter and hence she

should be given second adjoining plot no.1 of 75 sq. yards. In the plaint, it is further pleaded that since 1978 respondent/plaintiff has been representing for allotment of the second plot. It is further pleaded that the appellant/defendant has wrongly cancelled the allotment of the allotted plot no. 2 vide Letter dated 1.1.1988, Ex.PW1/16 allegedly on account of non-payment of license fee, but, the cancellation of allotment is illegal for the reason that never any kind of license fee was determined as payable by the respondent/plaintiff and also that no show cause notice was issued to the respondent/plaintiff before cancellation of the allotment for non-payment of the licensee fee. It is further pleaded that respondent/plaintiff deposited a sum of Rs.10,000/- towards license fee with the appellant/defendant on 6.5.1988, Ex.PW1/15 and this payment of license fee should therefore be taken as the basis for setting aside the cancellation of the allotment made with respect to plot no.2 of 75 sq. yards.

3. Appellant/defendant contested the suit and pleaded that there was no allotment of the second plot of 75 sq. yards and that respondent/plaintiff was allotted only one plot of 75 sq. yards in terms of the Letter dated 6.7.1977, Ex.PW1/6. It was also contented by the appellant/defendant that the Office Order dated 24.12.1976, Ex.PW1/5 would not help the respondent/plaintiff for the reason that this letter was never communicated to the respondent/plaintiff with the further fact that the internal Noting dated 24.12.1976 only talks of

reservation for allotment of the second plot but not of the actual allotment of the second plot in favour of the respondent/plaintiff, much less by the competent authority. It is argued that the already allotted plot no. 2 has been rightly cancelled because for over 10 years respondent/plaintiff did not pay the license fee of Rs.354.20/- per month which was fixed as per the Allotment Letter dated 6.7.1977 Ex.PW1/6, and hence on account of non-payment of this licensee fee appellant/defendant was justified in cancelling the allotment of the plot. It is also the stand of the appellant/defendant that payment of licensee fee subsequently on 6.5.1988, Ex.PW1/15 after cancellation of allotment cannot alter the factum that license stood already cancelled for non-payment of licensee fee for over 10 years.

4. After pleadings were complete, the trial court on 31.3.2004 framed the following issues:-

- “1. Whether the plaintiff is unauthorized occupant over the Government land and has no right, title or interest to file the present suit? OPD
2. Whether the plaintiff has suppressed the material facts? OPD
3. Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP
4. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP
5. Relief.”

5. The courts below have held in favour of the respondent/plaintiff for decreeing the suit that the document issued by the office of the appellant/defendant dated 24.12.1976, Ex.PW1/5 binds the appellant/defendant and thus the appellant/defendant cannot argue that two plots were not to be allotted to the respondent/plaintiff. It is also held by the courts below that since 1978 respondent/plaintiff had been representing for allotment of the second plot and hence she is entitled to allotment of the second plot for which the respondent/plaintiff has proved her correspondence before the trial court as Ex.PW1/6 to Ex.PW1/9, Ex.PW1/10, PW1/11 and Ex.PW1/14. So far as the aspect of license fee is concerned, it is held by the courts below that licensee fee was not categorically fixed because the senior official of the defendant who deposed as PW3 could not state that what was the license fee fixed. Effectively, the courts below have held that the licensee fee was not finally determined and hence there cannot be cancellation of allotment of plot on account of non-payment of license fee which has been finally determined. The courts below have also held that there cannot be cancellation of plot without issuing of show cause notice because DW1 has deposed that he has not brought the rule/procedure regarding cancellation of allotment and which was not available in their office.

6. This second appeal was admitted for hearing by a learned Single Judge of this Court on 21.8.2013. Earlier on 14.1.2013 the following substantial questions of law were framed:-

- “(i) Whether a judgment and decree can be passed by the Courts which is against the public policy formulated by an Authority of the Government?
- (ii) Whether the party who is in occupation of a land acquired by the Government authority in accordance with law is entitled to any alternate allotment despite the fact that it happens to be only a licensee when the licensor has claimed the compensation only?”

7. In my opinion, in addition to the aforesaid substantial questions of law in exercise of my powers under the proviso of sub-Section 5 of Section 100 CPC the following substantial questions of law also arise for being determined:-

- (i) Whether the courts below have arrived at a completely perverse and illegal finding of allotment of two plots by relying upon the Office Noting/Order dated 24.12.1976, Ex.PW1/5, inasmuch as, this noting/order has never been communicated, to the respondent/plaintiff, and even if communicated this noting/order is not an actual allotment of two specific plots to the respondent/plaintiff as the noting only talks of ‘reserving’ of two plots for the respondent/plaintiff for allotment?
- (ii) Whether the courts below have again committed a clear cut gross illegality and perversity in holding that the Letter dated 19.6.1978, Ex.PW1/7, as an allotment of the second plot no. 1 of 75 sq. yards to the respondent/plaintiff although this letter even by a cursory reading does not show any such allotment?

(iii) Whether the judgments of the courts below suffer from complete illegality and perversity, inasmuch as, it was not open to the respondent/plaintiff who acted upon the Allotment Letter dated 6.7.1977, Ex.PW1/6 to question the license fee fixed, with respect to allotment of plot no. 2 and which Letter dated 6.7.1977 provided that rent was provisionally determined at Rs.354.20/- per month and to which thereafter there was never any change to the stated figure of rent/license fee either at the instance of the appellant/defendant or by the respondent/plaintiff and there was thus finality of the rent/license fee on account of the charges fixed by the Letter dated 6.7.1977 Ex.PW1/6?

8. The first two substantial questions of law framed are not pressed on behalf of the appellant/defendant and therefore not required to be decided. The three substantial questions of law framed today are answered in favour of the appellant/defendant and against the respondent/plaintiff whereby the impugned judgments of the courts below are set aside and the suit of the respondent/plaintiff will stand dismissed. The reasons are given hereinafter.

9. The first issue is that whether the respondent/plaintiff was ever allotted the second plot of 75 sq. yards, bearing plot no. 1 at Khichripur or any other plot of 75 sq. yards. The relevant documents in this regard to determine whether there was at all allotment of two plots of 75 sq. yards in favour of the respondent/plaintiff or there was allotment of only one plot in favour of the respondent/plaintiff of 75 sq. yards, reference will be required to be made to the

Allotment Order dated 6.7.1977/Ex.PW1/6, Office Noting/Order of the appellant/defendant dated 24.12.1976/Ex.PW1/5 and the Letter of the appellant/defendant dated 19.6.1987/Ex.PW1/7, and which orders and letter read as under:-

“Order dated 6.7.1977, Ex.PW 1/6

DELHI DEVELOPMENT AUTHORITY
JJ CUM Re Settlement SCHEME

50/SO/JJ/East 77/1222

Dt. 6.7.77

ORDER

Smt. Darshan Rani W/o Sh. Sat Prakash Batra holder of Coal dealer license No. 21 in the name of M/s. Batra Coal Depot is allotted coal depot Plot No. 2 Local Shopping Centre Khichri Pur, near Block 3, measuring 75 sq. mts (5N X 15N) under the order of D.C. (S) dated 4.7.77, for running Coal depot at resettlement colony Khichripuri. The possession of the plot may be handed over subject to payment of provisional market rent with the Rent Controller Khichripuri. She has produced an affidavit that she is ready to pay the provisional market rent. The provisional market rent has been fixed @ Rs.354.20 per month. The contraction of Building on the plot shall be done by the allottee as per provisions of DDA plan approved by ATP II. The difference between market rent and provisional market rent shall be adjusted. In case the higher rent is finally fixed, the allottee shall pay the same along with the arrears.

Sd/-
(C.P. Pandey)
Executive Officer (JJ-I)

Copy to:-

1. Smt. Darshan Rani W/o Sh. Sat Prakash Batra
2. Camp. Commandant Khichripuri to handover the possession of plot on production of rent receipt of Coal Depot plot no. 2, Local Shopping Centre, near Block 3, Khichripuri.
3. Rent Collector Trilokpuri to recover rent @ Rs.354.20 per month till the market rent is finally fixed.
4. Accounts officer J.J.
5. Head Clerk G.A. J.J. for information

Sd/-
(C.P. Pandey)
Executive Officer (JJ-I)

Letter dated 24.12.1976, Ex.PW1/5

DELHI DEVELOPMENT AUTHORITY
PLANNING CELL (SLUM & JJ)

No. AP/1244/276

Dated: 24.12.1976

M/s. Batra Coal Depot was allotted a 200 sq. yards plot at Seelampur for coal depot. This plot was taken over by E.O. Sh. K.K. Nayar and he had asked for an alternative site at Khichripur. The site for Batra Coal Depot was earmarked in the shopping centre in Kichripur, where 2 plots of 75 sq. yds. were earmarked for this purpose, out of 4 coal depot sites. These 2 plots has earmarked at site may be reserved for Batra Coal Depot, as an alternative allotment for which necessary orders may be issued by the E.O. (East).

(R.D. Gohar)
Jr. Town Planner
24.12.76

Copy to:-

1. Ex. Engineer Div. No. IV
2. Mr. Ramesh, A.E. Div. No. IV
3. Sh. Pande, E.O. (East) (J.J)

Sd/-
(R.D. Gohar)
Jr. Town Planner
24.12.76

Letter dated 19.6.1978, Ex.PW1/7

MUNICIPAL CORPORATION OF DELHI
J.J.R. SCHEME,
CYCLE Market, Jhandewalan,
New Delhi.

No. F0(60) EO/JJ/East/77/1087

Dt. 19.6.78

From :

R.K. Varchnaya
Executive Officer (J.J. East)

To

The Executive Engineer (JJ) II,
Cycle Market, Jhandewalan,
New Delhi

Sir,

Reference is invited to this office letter of even No. dated 28.2.78 wherein you were requested to demarcate Coal Depot No.1 & 2 in Khichari pur Resettlement colony and hand over the same to M/s Anand Ram and Sons and M/s Batra Coal Depot respectively, being the allottees. It is regrettable to say that nothing has been heard in the matter from you so far with the result that the excess area of land is being utilized by them.

You are, therefore, again requested to please look into the matter personally and get the needful done at an early date under intimation to the under signed.

Yours faithfully,

Sd/-

(R.K. Varchnaya)

Executive Officer (East)

Copy to:

1. M/s Anant Ram & Sons
2. M/s Batra Coal Depot.”

10. A reading of the Order dated 6.7.1977 Ex.PW1/6, and which is the only allotment letter with respect to the allotment of a plot to the respondent/plaintiff at Khichripur, shows that allotment is only of one plot bearing no. 2 of 75 sq. yards. Clearly, therefore, this letter is not an allotment letter of two plots of 75 sq. yards each and hence this Letter dated 6.7.1977 cannot help the respondent/plaintiff for proving that two plots were allotted.

(i) So far as Order/Noting dated 24.12.1976 Ex.PW1/5 is concerned, it is once again clear that assuming that this order/noting was communicated to the respondent/plaintiff, this order/noting is not an allotment of a specific plot no. 1 to the respondent/plaintiff, or allotment of two plots of 75 sq. yards each to the respondent/plaintiff, because, this letter only talks of two plots being

‘earmarked and reserved’ for the respondent/plaintiff as an alternative allotment i.e for which orders would have to be subsequently issued. Once a plot is only to be reserved for allotment and allotment orders have to be issued, then, it cannot be argued by the respondent/plaintiff that this Order/Noting dated 24.12.1975 Ex.PW1/5 is an allotment.

(ii) Also, this Order/Noting dated 24.12.1976 Ex.PW1/5 cannot be relied upon as an allotment order of the second plot of 75 sq. yards, much less of plot no. 1, inasmuch as, this order/noting is only an initial office order/noting of the appellant/defendant which was never communicated or informed to the respondent/plaintiff. This is seen from the office noting/order itself and which shows that the same is an initial noting/order and marked only internally to the officers of the appellant/defendant. It is settled law in view of the judgment of the Supreme Court in the case of ***Sethi Auto Service Station and Anr. Vs. Delhi Development Authority and Ors. (2009) 1 SCC 180*** that an office noting/order cannot create vested rights unless the same is communicated to a person. The relevant paragraphs of the judgment of the Supreme Court in the case of ***Sethi Auto Service Station (supra)*** are paragraphs 13 to 17 and the same read as under:-

“13. In ***Bachhittar Singh v. The State of Punjab*** AIR 1963 SC 395, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to the Article 166 (1) of the Constitution, the

Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

14. To the like effect are the observations of this Court in ***Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr.***[2003] 3 SCR 409, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.

15. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of the DDA fructified into an order conferring legal right upon the appellants. We may note that during the course of hearing of the writ petitions, the learned Single Judge had summoned the original records wherein the representations of the appellants were dealt with. On a perusal thereof, the learned Judge observed that the proposal for resitement was apparently approved up to the level of the Commissioner and the matter was placed before the Technical Committee, which approved it on 28th November, 2002. Thereafter, the DDA took further steps on the basis of field inspection to earmark the two sites; the entire matter was placed before the Screening Committee and the Screening Committee in its decision some time in 2003 noted that the matter had to be placed for disposal in accordance with the policy. Some time in July, 2004 after the conclusion of certain inquiries into the complaints regarding re-sitement, the issue of relocation was again taken up and a detailed note was made on 12th August, 2004, recounting the steps taken including the discussion of the Screening Committee in its meeting on 21st November, 2003. It is pointed out that the note records that the proposals for re-sitement were not finally approved.

The learned Judge has also observed that the note dated 21st November, 2003 along with the inspection report and the proposal for resitement was put up before the Commissioner (LB) who, on 9th September, 2004 recorded the following comments:

However, the basic fact to be noted is that these petrol pumps were allotted on the land of Airport Authority of India and there is no responsibility on the part of the DDA to bear any cost or to carry out resitement for such sites given by any other land owning agency and which are being effected by a project which is being done by a third agency vis National Highway Authority of India with which DDA has no links. This was discussed with VC and PC last week in the context of certain other resitement proposal pending for different areas in Dwarka and it was agreed that the onus of such petrol pump sites on DDA land, does not lie upon DDA particularly in a situation when DDA now has a policy for auction of petrol pump sites. It was, therefore, decided that irrespective of the impact of the proposed Express Way on these petrol pump sites, there is no reason for DDA to take the responsibility of resitement of these petrol pump sites and the oil companies concerned may either participate in the auction process or obtain private plots for the purpose of carrying out their business.

16. Finally, the Vice Chairman concurred with the view of the Commissioner; proposals for re-sitement were rejected and consequently decision was taken to put the two plots, on which the appellants had staked their claims for auction.

17. From the afore-extracted notings of the Commissioner and the order of the Vice Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice Chairman, the final decision making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of State Level Co-ordinator (oil industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision making process, in our view, are of no consequence and shall not bind the DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference."

(underlining added)

11. It is therefore held that the Office Order/Noting dated 24.12.1976 Ex.PW1/5 has most illegally and perversely been held by the courts below as an allotment of second plot of 75 sq. yards to the respondent/plaintiff.

12. That takes us to the Letter dated 19.6.1978 Ex.PW1/7, which has been reproduced above, and it is to be seen whether this letter amounts to an allotment of a second plot of 75 sq. yards in favour of the respondent/plaintiff. Even a cursory reading of this letter only shows that only one plot of 75 sq. yards has been allotted to the respondent/plaintiff/M/s Batra Coal Depot and the second plot of 75 sq. yards has been allotted to some other person/entity, namely, M/s Anant Ram and Sons and therefore, courts below have committed complete illegality and perversity in reading of this letter that this Letter dated 19.6.1978 Ex.PW1/7 as if it can be taken as an allotment of a second plot of 75 sq. yards to the respondent/plaintiff.

13. Merely because the respondent/plaintiff wrote various communications from 1978 onwards seeking allotment of second plot will not mean that there was in fact an allotment of a second plot. Also, even if, respondent/plaintiff was entitled to allotment of second plot, her claim for the second plot in my opinion would have commenced when instead of the original allotment of the plot of 200 sq. yards at Seelampur, one plot of 75 sq. yards was allotted to the respondent/plaintiff at Khichripur, Delhi vide Order dated 6.7.1977. On this date it was clear that instead of getting two plots of 75 sq. yards or getting one plot of 200 sq.yards (which was the position at Seelampur), the respondent/plaintiff was only getting one plot of 75 sq. yards. Limitation

period for getting allotment of a second plot therefore commenced from 1977 and legal proceedings therefore should have been filed within three years from 1977 for seeking allotment of the second plot of 75 sq. yards, whereas, the subject suit instead of being filed in the year 1980 in fact was only filed in the year 1988, i.e eight years after expiry of the limitation in the year 1980. This Court can *suo moto* take notice of limitation as per Section 3 of the Limitation Act, 1963 and consequently, in addition to the fact that there has never been an allotment of a second plot of 75 sq. yards to the respondent/plaintiff it is held that in fact the suit seeking the allotment of the second plot in the year 1988 is clearly barred by limitation.

14. I, therefore, hold that there has been never an entitlement of the respondent/plaintiff to the second plot of 75 sq. yards and even assuming there was so, a suit filed in the year 1988 is barred by limitation because cause of action for the purpose of limitation for allotment of second plot was three years from 6.7.1977.

15. Now, the next issue which arises for determination is whether the already allotted plot no. 2 of 75 sq. yards to the respondent/plaintiff has been rightly cancelled by the appellant/defendant vide its Letter dated 1.1.1988/Ex.PW1/16. In this regard the courts below have held that the

appellant/defendant being a government authority could not cancel the allotment/license without show cause notice and without following any rules.

16. At this stage, so that there are no observations by this Court on merits, it is agreed on behalf the appellant/defendant that whether or not there was valid cancellation of plot no.2, Khichripur in favor of the respondent/plaintiff be left open for being decided on the appellant/defendant following the principles of natural justice. It is also agreed that no aspect of merit as to whether there was a licensee fee/rent payable by the respondent/plaintiff or whether there is any default or whether the default could be cured or not cured and all other aspects are left open to be decided in the proceedings to be initiated by the appellant/defendant by following of principles of natural justice to decide whether or not allotment to the respondent/plaintiff under the Letter dated 6.7.1977 should or should not be or already stands or does not stand cancelled etc etc.

17. In view of the above, this Regular Second Appeal is disposed of by setting aside the judgments of the courts below decreeing the suit for allotment of second plot of 75 sq. yards, however, with respect to the issue of cancellation of already allotted plot of 75 sq. yards being plot no. 2, Khichripur, Delhi, etc etc the issue with respect to cancellation of allotment of this plot, whether already stands finalized or is legal or not or what are the consequences or what

is the legal position as to the entitlement of either of the parties with respect to this plot no. 2 admeasuring 75 sq. yards falling in Khichripur, Delhi will be decided by the appellant/defendant by following the principles of natural justice.

18. The Regular Second Appeal is accordingly allowed and partly disposed of by directing the following of principles of natural justice as stated above, leaving the parties to bear their own costs. Decree sheet be drawn up accordingly.

SEPTEMBER 09, 2016

AK

VALMIKI J. MEHTA, J