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

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LPA 890/2015

Date of decision: 13th July, 2016

RAJINDER MOHAN MALHOTRA Appellant
Through Ms. Kamlesh Mahajan and Mr.
Prince Kumar, Advocate.

versus

VICE CHAIRMAN DELHI DEVELOPMENT AUTHORITY...Respondent
Through Mr. S.K. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

C.M.No.30228/2015

This application seeks condonation of five days' delay in filing this intra court appeal. There is no objection to the said application.

Application for condonation of delay is allowed for the reasons stated therein.

LPA 890/2015

The appellant, Rajinder Mohan Malhotra, in this intra court appeal impugnes order dated 3rd September, 2015, whereby his W.P.(C) No. 1911/2014 has been dismissed. The appellant contends that the learned single Judge has failed to notice non-compliance of the directions in the order dated 20th April, 2010 in W.P.(C) No.2601/2010 titled *Rajinder Mohan Malhotra Vs. Union of India & Anr* as

computation of damages was never furnished. Thus, the appellant has been erroneously saddled with a penalty of Rs 28,26,671/- as a pre-condition for conversion of the leasehold rights into freehold, though the appellant had only put barbed wire to fence and protect the Delhi Development Authority's land and was not using or in unauthorised occupation of the land.

2. In 1984, Industrial plot bearing No.E-18, in the layout plan of Rewari Line Industrial Area, Phase-II, Mayapuri, New Delhi (Naraina Village Revenue Estate) measuring 115 square meters, was put to auction by the Delhi Development Authority, and was purchased by one Laxman Dass Madan. Thereafter, in 1986, formal lease deed was executed by the Delhi Development Authority in favour of Laxman Dass Madan. The appellant claims having acquired rights and interest in the built-up plot from Laxman Dass Madan, who had executed a General Power of Attorney and Agreement To Sell dated 18th March, 2005. Thereupon, the appellant had setup an industrial unit for manufacture of hand pumps and spare parts on the said plot.

3. The appellant, by application dated 2nd March, 2006, had sought regularisation of purchase and conversion of the leasehold rights in the plot to freehold. On 5th May, 2006, the officers of the Delhi Development Authority had physically inspected the location. The inspection team had noticed encroachment on the four feet wide lane at the rear portion of the plot. The appellant was directed to remove the encroachment. By letter dated 2nd September, 2009, demand of Rs. 28, 26,671/- was raised by the Delhi

Development Authority, on account of the encroachment.

4. The appellant challenged the said demand in W.P. (C) No.2601/2010, inter alia, pleading that the encroachment noticed was done by the owners of plot bearing Nos.E-15 to E-19. Further, the penalty imposed vide letter dated 2nd September, 2009, was without an opportunity of hearing. This writ petition was disposed of by order dated 20th April, 2010 directing as under:-

“6. I have heard counsel for the parties and perused the relevant record filed along with the petition. A bare reading of the demand dated 2.9.2009 shows that while raising the demand DDA has failed to consider the reply of the petitioner dated 4.4.2009. The demand letter also does not disclose the period for which the demand has been raised, besides the formula by which such an amount has been demanded. Accordingly, the demand letter dated 2.9.2009 raising a demand of Rs.28,26,671/- is quashed with a direction to the DDA to grant one personal hearing to the petitioner and thereafter a speaking order shall be passed. It will be open to the DDA to raise the demand in case the DDA is not satisfied with the explanation rendered by the petitioner. The demand shall be raised clearly giving the method of calculation and the period for which it has been raised.”

5. By court order dated 9th September, 2013 passed on an application, respondent- Delhi Development Authority was directed to implement the order within a period of eight weeks and the appellant was directed to appear before the Director (Commercial Lands), DDA on 19th September, 2013 at 3.30 p.m. for a personal hearing.

6. Thereafter, the Director (Commercial Lands) passed the detailed order dated 15th October, 2013. The order refers to the unauthorized encroachment on

land which was noticed and recorded in the Field Inspection Report dated 24th April, 2007. Demand of damages for unauthorized occupation in an area of 91.10 square meters for the period between 14th September, 1994 to 24th April, 2007 was worked out and computed as per the calculation sheet enclosed. The damage charges were calculated on the basis of the commercial rate and as per the prevalent policy. The appellant was accordingly required to deposit the damage charges within 15 days.

7. Aggrieved, the appellant filed W.P.(C) No.1911/2014, in which the impugned order has been passed. The writ petition had come up for hearing before the learned single Judge on 28th March, 2014, on which date, the following order was passed:-

“At the outset, counsel for the petitioner states that he has raised a limited challenge only with regard to the jurisdiction and powers of the Director (CL), Delhi Development Authority, who has issued the impugned order 15.10.2013; he, however, raises no challenge on the merits of the calculations that have been carried out in this regard, and it is for that reason he has not considered it necessary even to annex the calculation sheet, which was enclosed with the order of the Director (CL). He further submits that he is fully aware of the principle of res judicata and constructive res judicata, which would necessarily be attracted in this matter, thereby closing out any challenge on merits to the calculations even in future. Issue notice to the respondent to show cause as to why Rule nisi be not issued.”

A reading of the said order would indicate that the appellant had raised a limited challenge. The appellant had challenged the jurisdiction and authority of

the Director (Commercial Lands), DDA, who had passed the order dated 15th October, 2013. This being the accepted position, we fail to understand how the appellant can now go behind the order dated 28th March, 2014 and raise contentions contrary to the solemn statement recorded at the Bar. The appellant cannot be permitted to oscillate and negate the first statement. Principle of estoppel would apply. The appellant therefore, cannot claim that the calculations made were not in accordance with the order dated 20th April, 2010. The appellant never filed the calculation sheet computing the damages, at any time in the proceedings in W.P. (C) No. 1911/2014. Computation of damages, cannot be challenged in this appeal.

8. The appellant had earlier professed that rag pickers (kabariwalas) or neighbours had encroached the public land. Subsequently, on being confronted, the appellant had accepted that he had put up the barbed wire fencing. The plea changed and so did the defence. The appellant professed that he had fenced the land to protect public property. This belated admission was made after the appellant had realised that he would not be able to substantiate his claim that the encroached land was not in his possession. The total area of the plot in question was admeasuring 157.5 square meters. However, what was sold to Laxman Das Madan was 115 square meters, for the remaining area at the back side of the plot was then encroached by third parties. The excess area found in unauthorised occupation of the appellant as per the Field Inspection Report and as per the calculations made as noticed in the order dated 15th October, 2013 was 91.10

square meters, which was more than the original area of the plot.

9. On the question whether the Director (Commercial Lands) was the competent authority authorised to pass the order dated 15th October, 2013, we would only refer to the order dated 9th September, 2013 passed by a single Judge on the application filed by the appellant in W.P. (C) 5650/2013. With the consent of the learned counsel for the parties, specific direction was given that the petitioner i.e. the present appellant would appear before the Director (Commercial Lands), DDA on 19th September, 2013 at 3.30 p.m. for personal hearing. It is obvious that the said authority was supposed to pass the order. In these circumstances, challenge to the authority of the Director (Commercial Lands) is misconceived and futile. This is not a case where a statutory authority was required to pass an order under an Act/enactment. Violation of a statutory provision is not asserted and argued.

10. There is no merit in the present Letters Patent Appeal and the same is dismissed. No costs.

SANJIV KHANNA, J.

JULY 13, 2016
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SUNITA GUPTA, J.