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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 02.3.2017

Judgment delivered on : 09.3.2017

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W.P.(C) 6336/2010 & C.M. No.12590/2010

TIKKA BRIJENDER SINGH BEDI

..... Petitioner

Through Mr.A.S.Chandhiok, Sr. Adv. with
Mr.Preet Pal Singh, Mr.Dipender
Chauhan and Mr.Priyam and
Ms.Sukhneet Dhir, Advocates.

versus

UNION OF INDIA

..... Respondent

Through Mr.Sanjeev Narula, CGSC.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Petitioner is the recorded owner of property bearing No.132, Golf Links, New Delhi. The first owner of this property was Prem Kumari. The father of the petitioner had purchased this property from Prem Kumari on 02.8.1956. This sale deed recorded the area of the land as 335 sq. yards or “thereabouts”. Contention of the petitioner being that the factum of mentioning “thereabouts” clearly indicates that the authorities were themselves not certain about the exact area of

the plot at the site. In the proposed lay out plan the size of the plot was 390 sq. yards. The entire Golf Links area is divided into crescents. There are two types of crescents; one in which the facility centres and parks are provided and the other comprises of four smaller crescents. The house of the petitioner (No.132) falls in one of the smaller four crescents. The lanes are small and measure between 17 feet to 17.6 feet. A copy of the plan has been placed on record which has been highlighted to substantiate this submission. Another submission being that owner of plot no.142 had been allotted an additional strip of land measuring 25 sq. yards which had reduced the road to 16 feet 3 inches.

2 The father of the petitioner had submitted a plan for construction to the NDMC but that plan was not approved. On inspection it was found that whereas in the layout plan the size of the plot was 390 sq. yards but in the lease deed it was noted as 335 sq. yards. On 13.3.1958 the father of the petitioner requested the respondent to allot this piece of additional land (55 sq. yards) which was already under the user of the petitioner. Vide communication dated 11.4.1958 and 12.4.1958 the father of the petitioner informed

the Ministry of Rehabilitation that since the area at site was more; accordingly a demarcation be carried out. On 03.7.1958 the CPWD demarcated the plot and submitted its demarcation report to the Settlement Commissioner. As per this report the area of the plot (No.132) was 390 sq. yards. The building was constructed upon this plot in the year 1958-59 by the father of the petitioner. On 12.02.1961 a letter was received from the Settlement Commissioner by the father of the petitioner to deposit a sum of Rs.4941.75 per sq. yard towards the cost of this extra 55 sq. yards contained in the plot which was under the use and occupation of the petitioner. This demand was reiterated on 19.8.1961. On 12.02.1963 the respondent informed the petitioner that in case this amount is not paid up the same would be recovered from the father of the petitioner as arrears of land revenue.

3 The office notings dated 27.7.1964, 20.10.1964 have been highlighted. Attention has been drawn to the said documents. Submission is that this additional 55 sq. yards of land already being in the use and occupation of the petitioner upon which construction had been raised by the father of the petitioner (335 +55= 390 sq. yards) as it was always considered to be an integral part of the plot of the

petitioner. This plot of land measuring 390 sq. yards has remained in peaceful and undisturbed possession of the petitioner even after the death of his father; it continues to remain in his peaceful possession. After the death of the father of the petitioner on 03.10.1992 the property devolved upon the petitioner; it was mutated in his name on 27.5.1993.

4 On 12.01.1996 after the death of his father the petitioner realized that the supplementary lease deed for this additional strip of land had not been executed by the respondent. Several efforts and representations were made to the Department but there was no positive response from the Department. On 11.8.1995 the regularization of the plot of the petitioner with this additional piece of land (55 sq. yards) was approved. On 08.10.1996 petitioner deposited the amount (Rs.4941.75) which had been demanded from his father. The conversion application of the status of the property of the petitioner from leasehold to freehold which had been filed by the petitioner in the year 1996 however remained pending.

5 The office noting dated 23.8.1999 has also been highlighted. Submission being that the Department was actively considering the

case of the petitioner for regularization; however in spite of several letters his case remained unanswered. The petitioner met the Deputy L.& D.O. on 07.4.2005. He was informed that the earlier offer of 1961 which had been made to his father had been addressed at A-316, Defence Colony. The father of the petitioner was a resident of A-416 and it was for this reason that this letter was not received by him; this payment thus could not be made as the letter was never received by his father.

6 On 28.3.2006 the petitioner received a letter from the Department informing him that his case for regularization could not be considered. Thereafter several representations were made to the Department but to no avail. Contention of the petitioner all along has been that the plot which was in occupation of the petitioner (and on inspection was found to measure 390 sq. yards); although the lease deed had been executed for 335 sq. yards yet this additional 55 sq. yards continued to be in occupation of the petitioner. The premium of the same was also paid by the petitioner on 08.10.1996 in terms of the demand made by the Department vide its letter dated 12.2.1961. It is pointed out that an additional area of 25 sq. yards of land (in addition

to the 55 sq. yards) adjacent to this plot has also always been in the occupation of the father of the petitioner; it was also a part of the construction which had been raised by his father on this plot. This structure had been constructed in the year 1959-60; load bearing walls and drainage pipes are also constructed upon it.

7 It is further averred that in an identical case a 2.5 feet strip of land (25 sq. yards) had been taken out of the road and allotted to the owner of Plot No.142, Golf Links (opposite crescent). Submission is that the case of the petitioner is not different from the case of the owner of House No.142; since the benefit of this additional 25 sq. yards had been given to the owner of Plot No.142, the case of the petitioner should also be considered sympathetically. He cannot be discriminated. This additional piece of 25 sq. also be allotted to the petitioner.

8 This petition is premised on these submissions.

9 In the course of these proceedings on 11.7.2014 this Court had noted that the respondent-Department was considering the application of the petitioner for regularization. The matter remained pending before the Department. Vide letter dated 06.8.2014 addressed by the

respondent to the counsel for the petitioner the regularization application of the petitioner was rejected. This was during the pendency of this petition.

10 The stand of the respondent is evident from their counter affidavit. Submission is that pursuant to inspection reports dated 06.12.1989, 07.7.1993, 19.5.2005 it was revealed that the area encroached upon by the petitioner was 80 sq. yards. Admittedly, on 13.3.1961 a communication had been addressed to the father of the petitioner asking him to pay the premium amount @ 39.95 per sq. yard but he not having paid this demanded amount and this amount admittedly having been paid by the petitioner only on 08.10.1996 the original offer stood cancelled. It is pointed out that on an earlier inspection report dated 07.02.1973 the encroached area was found to be 55 sq. yards; thereafter the subsequent inspection reports have shown that the area encroached upon by the petitioner is more i.e. 80 sq. yards. It is pointed out that the petitioner has not only encroached upon this 80 sq. yards of land but he is playing a fraud upon a the Government. Government land belongs to the Government and it cannot be utilized in the manner in which the petitioner is pleading his

case. It is pointed out that the property bearing no.132, Golf Links was originally purchased by Prem Kumari in an open auction held on 09.01.1955. The lease deed clearly states that the area measured 335 sq. yards; this property was later on purchased by J.S.Bedi (father of the petitioner). After the death of the father of the petitioner, the name of the petitioner was substituted. The title of the petitioner cannot be better than that of his processor-in-interest; his predecessor-in-interest purchased this property measuring 335 sq. yards alone. It is pointed out that when the lessee had taken up his case before the Superintendent Engineer, CPWD, the size of the plot was taken as 390 sq. yards; this measurement was arrived at by taking the road width as 20 feet whereas the road width was 25 feet; it was thus informed that the land comes to 390 sq. yards. The petitioner's father was given an offer letter dated 13.3.1961 by the Ministry of Rehabilitation and he was required to pay Rs.4941.75 which was the cost of extra land @ Rs.39.95. He was required to deposit this amount but he failed to do so in spite of reminders issued on 19.8.1961 and 12.02.1963. Action under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 had not been initiated against the petitioner as the area

encroached upon being under the control of the Government and this area not being covered by the lease deed no action was required to be taken. Copies of the letter dated 11.6.1963 and the reminder letter dated 04.10.1963 have been placed on record to show that in spite of repeated reminders the father of the petitioner did not pay the demanded amount; since the petitioner had not acceded to the payment demand in terms of the communication dated 13.3.1961 his case stood closed on 20.11.1964. It is pointed out that on inspection of the property in 1975 it was reported that the actual area in occupation is 415 sq. yards i.e. an excess area of 80 sq. yards. It is denied that the area/size of the plot had not been mentioned specifically in the lease deed; it specified that the area of the plot is 335 sq. yards only. It is pointed out that after more than three decades in the year 1996 i.e. on 08.10.1996 the petitioner on his own deposited a payment of Rs.4942/- which has no binding effect on the Department. The case of the petitioner has been examined and the same has been turned down. Para 4.8 has been relied upon to point out that there is no discrimination qua the petitioner and the owner of property bearing no.142, Golfs Links. The case of 142, Golf Links is not similar to the

case of the petitioner. The case of the petitioner (132, Golf Links) shows that the encroachment is much larger i.e. about 80 sq. yards; in the case of 142, Golf Links, the area finally regularized in favour of that party was 25 sq. yards. It is pointed out that all roads in the crescent of Golfs Links are not comparable to each other. The petitioner cannot claim more land than what has been auctioned and sold to him in terms of the sale deed.

11 In the course of the arguments, learned counsel for respondent has drawn attention of this Court to a judgment pronounced by a Bench of this Court in WP(C) 3225/2006 titled N.K.Varma Vs. Union of India . This case related to the extra unauthorized use and occupation of 25 sq. yards abutting property bearing No.142, Golf Links. The Single Judge of this Court had dismissed the contention of the petitioner (owner of 142, Golf Links) that he was entitled to this extra piece of 25 sq. yards. The Court was of the view that the petitioner had failed to establish any right in his favour to get a supplementely lease executed in respect of 25 sq. yards of land. Qua the claim of mis-user charges since disputed questions of fact were

involved, the writ court did not think it appropriate to adjudicate upon that.

12 This matter was taken upon in appeal before the LPA Court (LPA No.124/2012 decided on 11.7.2012). A settlement was arrived at pursuant to the report of the Mediator (appointed under the orders of the Court); the compromise was to the effect that the excess 25 sq. yards land occupied by the owner of 142, Golf Links would stand regularized on the party making a payment in the sum mentioned therein. Learned senior counsel for the petitioner has vehemently relies upon this part of the order. His submission is that the case of the petitioner is not different from the owner of 142, Golf Links. His case should also be considered on parity. On this count learned counsel for the respondent submits that efforts for mediation had been made in this case also (pursuant to the orders of this Court) but these attempts did not fructify. A letter of rejection was accordingly sent to the counsel for petitioner on 06.8.2014. Submission being that the judgment passed by the Single Judge in N.K.Varma (supra) had laid down the law correctly; Government land could not have been allotted at its own whims and fancies. Even presuming that a wrong decision

had been arrived at by the Department the petitioner cannot claim party on an illegality perpetrated by the Department. Additional submission being that the internal notings relied upon by the petitioner are of no help to the petitioner as they have no binding effect. Reliance has been placed upon JT 2011 (3) SC 110 Union of India Vs. Vartak Labour Union. Submission being that internal departmental notings do not have any sanction of law; they do not create any enforceable right.

13 In rejoinder, learned senior counsel for petitioner submits that that after the promulgation of the “Right to Information Act, 2005” notings made in departmental files do have a legal sanctity and a binding effect. They reflect the thought process of the Department. The policy of the Government dated 28.01.1980 dealing with “Disposal of Strips of land” issued by the Ministry of Supply and Rehabilitation (Annexure 32- page 45 of the paper book) has been highlighted. It is pointed out that strips of land not exceeding 125 sq. yards could be the subject matter of disposal; it was however necessary to ensure that these strips of land are not required by the Government in public interest; moreover these strips of land could not

be used independently. Learned counsel for the petitioner points out that the strips of land which is the subject matter of the present petition (55 sq. yards + 25 sq. yards = 80 sq. yards) have been correctly reflected in the lay out plan which shows the plot size as 415 sq. yards. The actual occupation of the land at site is 415 sq. yards. It is reiterated that the offer letter of the Department in the year 1961 offering to sell to the father of the petitioner 55 sq. yards of land on the payment of premium amount had been accepted by the petitioner and he had paid this amount in October 1996; it could not be paid earlier as this communication had never been received by his father as he was not a resident of A-316, Defence Colony but being a resident of A-416, Defence Colony this communication having been addressed at A-316, Defence Colony, was never received by his father. The case of the owner of property bearing no. 142, Golf Links is on the same footing. The petitioner is entitled to parity on all counts.

14 Arguments have been heard. Record has been perused.

15 The predecessor-in-interest of the petitioner (Prem Kumari) had originally purchased this piece of land (132, Golf Links) vide lease deed dated 16.7.1956. This plot of land was subsequently purchased

by the father of the petitioner vide sale deed dated 02.8.1956. A perusal of the lease deed shows what had been sold and purchased by the predecessor-in-interest of the petitioner was 335 sq. yards or “thereabouts” of land. The word “thereabouts” does not enlarge the scope of the measurement of the land from 335 to an unlimited figure as is the contention of the petitioner. It reflects that what has been purchased was 335 sq. yards of land. The word “thereabouts” highlighted by the learned counsel for petitioner does not come to his aid. Record further shows that it is an admitted fact that a letter dated 13.03.1961 had been sent by the Settlement Officer to the father of the petitioner. He was directed to deposit a sum of Rs.4941.75/- towards the cost of extra 55 sq. yards of land which was allegedly being used by him; this premium amount was required to be paid but was not paid. Reminder letters were sent to the petitioner’s father on 19.8.1961 and 12.02.1963. The amount was still not paid. The case of the petitioner stood closed on 20.11.1964. It is also an admitted position that on 08.10.1996 the petitioner deposited the amount demanded by the letter dated 12.2.1961 i.e. Rs.4942/- towards the cost of 55 sq. yards of land (@ 39.95/-er per sq. yards); this was a

unilateral payment made by the petitioner to the Department. It was not that any fresh demand was made upon the petitioner to pay this amount. This amount paid on 08.10.1996 thus did not create any vested right in favour of the petitioner for this extra 55 sq. yards of land.

16 The Policy of the Government dated 28.01.1980 has been mentioned for the first time in the rejoinder. It did not find mention earlier in the first petition or even in the amended writ petition filed in the year 2012. This was a policy of the Government of India, Ministry of Supply and Rehabilitation (Department of Rehabilitation) dealing with “Disposal of Strips of Land” in rehabilitation colonies in Delhi. This policy permitted strips of land not exceeding 125 sq. yards and not forming part of larger areas of adjoining plots to be disposed of under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It applied to those pieces of land which could not be used independently; these strips of land could be disposed of if not required by the Government for public interest. The relevant extract of this Policy reads herein as under:

“To

*The Deputy Chief Settlement Commissioner (G)
Settlement Wing
Department of Rehabilitation,
New Delhi*

*Subject: Disposal of strips of land in the Rehabilitation Colonies in
Delhi*

Sir,

In supersession of this Departments' letter of even number, dated the 13th July, 1978, on the above subject, I am directed to say that it has been decided that henceforth the terms and conditions governing the disposal of additional strips of land in the rehabilitation colonies in Delhi/New Delhi, which are to be retained by this Department while transferring the unutilised lands within the urban/urbanisable limits in the various Rehabilitation colonies in Delhi/New Delhi to the Delhi Development Authority, would be as under;

- (i) Strips of land shall be defined as self-contained pieces of land not exceeding 125 sq. yards. And not forming part of larger areas of adjoining plots that have been disposed of under the Displaced Persons (Compensation & Rehabilitation) Act, 1954.*
- (ii) These strips will mean strictly those pieces of land which cannot be used independently.*
- (iii) It is to be ensured first that these strips of land are not required by the Government in public interest.*

- (iv) *For the strips of land lying vacant, the price to be charged would be 50% over and above the current Schedule of Rates prescribed by the Ministry of Works & Housing to be increased by 10% for every year subsequent to the year to which the Works & Housing Schedule of Rates pertains.*
- (v) *In cases where the strips of land are found to be under unauthorized occupation of prospective buyers and the occupation is unobjectionable price to be charges of the land would be 25% over and above the price mentioned at (iv)above.*
- (vi) *Leases in respect of these strips of land would be issued in appendix XI and the ground rent would be payable at the rate of Re1/- per 100 sq. yds. Per annum.*
- (vii) *Payment shall be made/accepted within six weeks of the issue of the offer.*
- (viii) *All these cases will be decided by the Deputy Chief Settlement Commissioner (G).*

2 *Before offers are issued, the land use of each strip is to be checked with reference to the approved Master Plan and the prospective transferee will be required to file an affidavit landholding will not exceed the prescribed urban ceiling in Delhi.*

3 *The terms and conditions contained herein are final and no correspondence/objections etc. shall be entertained. Officers/Agreement to Sell made by the Deputy Chief Settlement Commissioner(G) shall clearly state this position. If the offer is not*

accepted or lapses, the concerned strip shall forthwith be handed over to the DDA.

4 This sanction issues with the concurrence of the Finance Branch vide their U.O.No.110/Fin./80 dt.17-1.80

5 The receipt of this letter may please be acknowledged.”

Yours faithfully

(N.M.Wadhwani)

Under Secretary to the Govt. of India”

17 Learned senior counsel for the petitioner submits that it was pursuant to this policy that the internal notings relating to the case of the petitioner had been made in the departmental files. Attention has been drawn to the aforementioned notings. They appear at pages 75, 84, 90, 95, 98 and 105 of the paper book they; are dated 01.5.1995, 24.3.1999, 16.11.2004, 10.3.2006. The gist of these notes reflect that the additional 55 sq. yards of land under the use and occupation of the petitioner appear to be of no use to the Department; the Department had noted that this piece of land cannot be utilized or put to use for any purpose. The policy of the Department dated 28.01.1980 (supra) also forms a part of these notings. It had been relied upon. In the

noting dated 16.11.2004 it has been recorded that the land measuring 55 sq. yards may be allotted on land rates along with interest and the additional encroached area of 25 sq. yards may also allotted on the basis of the present land rates to the petitioner. Submission being that the petitioner was awaiting the response from the Department and its final decision on this count. On 23.8.1999 (Annexure P-20) a communication had been sent to the petitioner informing him that his case for conversion from lease hold to free hold was actively being considered and his case for regularization is under finalization. Annexure P-21 is a letter dated 28.3.2006 informing the petitioner that his case of regularization cannot be considered. It was in these circumstances the petitioner was constrained to file this petition. This submission has been made to advance the argument that the delay in coming to the court (in the year 2006) is explained for the aforementioned reasons.

18 Thus what is evidenced from the record is that on 13.03.1961 a communication had been sent to the father of the petitioner to deposit a sum of Rs.4941.75 towards this extra 55 sq. yards of land; this offer had not been accepted; no payment had been made on this count by

the father of the petitioner. The petitioner by way of his unilateral act made deposit at the aforementioned rate with the Department on 08.10.1996, admittedly, after a gap of more than 35 years i.e. three and half decades. At the cost of repetition, this being unilateral act in the absence of any offer made to the petitioner, it did not create any contract and could not vest any right in the petitioner. The earlier offer made to the father of the petitioner already stood closed on 20.11.1964. The policy of the Government (dated 28.01.1980) was never relied upon in the petition. Even otherwise being of the year 1980 it provided an offer period followed by an acceptance in a stipulated time slot failing which this policy would be inapplicable. In this case after 28.01.1980 there was no offer to the petitioner; the question of an acceptance would not arise. This policy is of no use to the petitioner.

19 This Court also notes that the interdepartmental notings relied upon by the petitioner are of no help for him. They may express the thought process of a relevant officer of the Department but not having culminated into any decision/resolution these notings did not create any right in favour of the petitioner.

20 In Vartak Labour Union (supra) the Apex Court had an occasion to consider such interdepartmental notings. The Apex Court noted with approval its earlier decisions of the earlier Benches of this Court. The relevant extract reads as under:

14. In *Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.* (2009)1 SCC 180, a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus:

“Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.”

15. Similar views are echoed in *Jasbir Singh Chhabra & Ors. Vs. State of Punjab & Ors.* (2010) 4 SCC 192. This Court has observed that:

“It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public

interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest.”

Thus these notings even if obtained under the RTI Act would not bind the respondent. They are of little use to the petitioner.

21 The case of 142, Golf Links was dismissed by the Single Judge [WP(C) 3225/2006)]. The plea for execution of a supplementary lease deed qua 25 sq. yards (occupied and in possession of that petitioner) had been rejected. In the LPA (LPA 124/2012) decided on 11.7.2012 the inter se settlement arrived at between the parties was noted. This settlement did not upset the judgment delivered by the Single Judge on 09.01.2012 which was on the merits of the case and based on legal parameters. Presuming that the decision of the Department to allot 25 sq. yards of land to the owner of 142, Golf Links was arrived at before the Mediator, it would not be binding upon the Department to again arrive at a similar settlement. This appears to be a palpably wrong decision as the Single Judge had correctly noted that this 25 sq. yards of land (abutting 142, Golf Links) was a government land to which the petitioner could lay no claim. This Court is not inclined to deal with the merits/demerits of the settlement which had been arrived at before

the Mediator. Presuming that a wrong decision has been made by the Department/Government (as is apparent) it would not become a precedent and definitely cannot be used as an equitable consideration by the petitioner in this case. This would be wholly unacceptable. The case of the petitioner is thus not on parity with the case of the owner of 142, Golf Links.

22 In the instant case the petitioner was well aware of the fact that what has been sold to his predecessor-in-interest (Prem Kumari) was 335 sq. yards of land. The rights of the father of the petitioner who had purchased this plot from Prem Kumari were no better than those of his predecessor-in-interest i.e. an entitlement of 335 sq. yards of land alone. On inspection of the site in the year 07.2.1973, the petitioner was found to be in possession of an excess portion of 55 sq. yards of land. Subsequent inspections made on 06.12.1989, 07.7.1993 and 19.5.2005 revealed that he had occupied an additional land of 25 sq. yards also; the cumulative encroachment on government land thus became 80 sq. yards.

23 This Court is of the view that the case of the petitioner is that of an encroacher; he is not entitled to any equitable relief.

24 This petition is without any merit. It is dismissed.

INDERMEET KAUR, J

MARCH 9, 2017/ndn

