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

Date of Decision: 05.12.2017

+ **LPA 519/2017**

JASPAL KAUR (SINCE DECEASED)

THR HER LRS

..... Appellant

Through: Ms. Amrit Kaur Oberoi, Adv.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Puja Kalra, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.(ORAL)

CM No. 27440/2017(for substitution of LR's)

1. This is an application for substitution of legal representatives of Appellant No.3 on record.
2. For the reasons stated in the application, the application is allowed. The legal representatives of Appellant No.3 are brought on record.
3. Amended memo of parties is taken on record.
4. The application stands disposed of.

LPA 519/2017 & CM No. 27437/2017(stay)

1. The Appellants impugn the judgment dated 20.02.2017, whereby the petition of Smt. Jaspal Kaur, the predecessor of the Appellants, seeking a direction to the respondent-MCD to allot a plot of 440 Sq. mtrs. in Sanjay Gandhi Transport Nagar, New Delhi and to hand over the possession of the same in terms of the judgment dated 23.10.2002 in the earlier petition of Smt. Jaspal Kaur, the predecessor of the Appellants (W.P.(C) No. 2328/1989) [*Smt. Jaspal Kaur and the Appellants hereinafter shall be referred to as the Appellants*], has been dismissed.

2. One Shri Hardev Singh was running a transport business from premises bearing No. 5008, Rui Mandi, Sadar Bazar, Delhi under the name and style of Madhya Pradesh Transport Services as a sole proprietor. Another partnership firm under the name and style of New Delhi Madhya Pradesh Road Lines was also alleged to be doing business from the same premises, in which Sardar Hardev Singh was one of the partners.

3. In the year 1976, respondent-MCD planned to develop a Transport Nagar, which was subsequently named as Sanjay Gandhi Transport Nagar and invited applications from eligible persons. Sardar Hardev Singh applied for allotment of two plots, one as a sole proprietor of Madhya Pradesh Transport Services and another as a partnership of New Delhi Madhya Pradesh Road Lines and made payments to the tune

of Rs. 1,18,800/-. On death of Sardar Hardev Singh on 06.05.1986, his wife Smt. Jaspal Kaur continued the transport business.

4. On 20.12.1988 Smt. Jaspal Kaur received a demand from the respondent-MCD for a sum of Rs. 4,42,200/- as the balance payment for allotment of a plot. Being aggrieved by the demand, the above referred writ petition i.e. W.P.(C) 2328/1989 was filed seeking quashing of the excessive demand on the ground that the rate demanded was substantially higher; direction for allotment of the plot @ Rs. 425 per sq. mtrs was sought.

5. It may be noticed that several other persons had also filed petitions, alleging failure of the respondent to hand over possession to them, seeking direction to the respondent to allot plots. All those writ petitions were clubbed together. The petition filed by the Appellants, was also taken up along with said petitions and disposed of by a common judgment dated 23.10.2002, wherein a direction was issued to the respondent to hand over the possession of the plots allotted to the petitioners therein who had made the full payment of Rs. 425/- per sq. mtrs. plus Rs. 55/- per sq. mtr. and those who had only paid Rs. 425/- per sq. mtr., on payment of balance of Rs. 75/- per sq. mtrs. within a period of 8 (eight) weeks. It was directed that in case the full payment of Rs. 425/- per sq. mtrs. had not been made by any petitioner, it would be open to the respondent to charge the new determined rate of Rs. 4500/- per sq. mtrs. The judgment also noticed, the claim of the respondent for escalation of the amount demanded by DDA; it was directed that in case

the same was recoverable from the allottees of the plots, the same would have to be spread out evenly among all the allottees.

6. Pursuant to the said judgment, a draw of lot was held on 03.07.2007 and a plot measuring 440 sq. mtrs. being plot no. 6 in Block/Pocket – ‘AG’ was stated to have been earmarked for the Appellants. Despite the same being earmarked for the Appellants, the allotment of the said plot was not made because of which the Appellants filed the present writ petition.

7. The respondent in the counter affidavit contended that both the applications filed by Sardar Hardev Singh, were clubbed together and considered as one application. As against the two applications, allotment was made of plot No. AG-48, which was handed over to Sh. Mohinder Singh, the other partner of New Delhi Madhya Pradesh Road Lines. It is contended that on handing over the plots both the applications were treated as disposed of. In the year 1987, however, fresh resolutions were passed wherein it was decided that applicants with plots of over 500 per sq. mtrs. were entitled to additional plots of applicable size. However, for the next additional plot, commercial prize i.e. (three times of the reserved price) was applicable and for remaining additional plots market price i.e. (five times of the reserved price) was applicable.

8. After verification of the occupied area of 687.8 per sq. mtrs., the case of the Appellants was considered for one more plot and accordingly a demand notice was sent to the Appellants to deposit the requisite

amount for allotment of such second plot. It is contended that since Sardar Hardev Singh failed to deposit additional amount demanded within 180 days, the allotment stood automatically cancelled. It was contended that the applicable size for additional size of plot of 187.8 per sq. mtrs. (687.8 sq. mtrs. – 500 sq. mtrs.) is plot of 110 per sq. mtrs. and the rate applicable was Rs. 1250/- per sq. mtrs.

9. As noticed above, the Appellants filed the Writ Petition (W.P.(C) 2328/1989), which petition was taken up along with the batch of other petitions with regard to the failure of the respondent to hand over possession of plots to the petitioners therein. W.P. (C) 2328/1989 was disposed of by a common order along with said batch of other Petitions by judgment dated 23.10.2002.

10. Consequent to the said judgment, as noticed above, in the draw of lots, the name of the Appellants was included and Appellants were allocated plot No. AG-6, measuring 440 per sq. mtrs. The respondent however contends that as the additional area above 500 per sq. mtrs. was only 187.8 per sq. mtrs., the Appellants were entitled to a plot of size 110 per sq. mtrs. only and the inclusion of the name of the Appellants in the draw of lots was because of an error and omission to notice the fact that it was a case of the second allotment, over and above, the initial allotment of 500 per sq. mtrs. Further it is contended that the Appellants cannot be offered the said allotment at the then applicable rate.

11. Learned Single Judge by the impugned order has noticed that the demand raised by the respondent in the letter dated 28.12.1988 was in conformity with the resolution and was binding upon the Appellants and the Appellants had to pay the amount of Rs. 4,42,200/- in case they wanted the said second plot. After perusal of the record of W.P. (C) 2328/1989, the learned Single Judge held that the judgment dated 23.10.2002 in the batch of petitions was on a distinct matrix. It was noticed that in the earlier writ petition, the Appellants had made an application seeking a direction for handing over possession of the plot on payment of the demanded amount, however, the same could not be considered in the absence of respondent's counsel not having requisite instructions with regard to the same.

12. Learned Single Judge, after noticing the averments of the earlier petition filed by the Appellants, has held that the Appellants cannot avail of the judgment passed on 23.10.2002 in the earlier petition. Learned Single Judge was of the view that it was due to an error/mistake that the earlier petition came to be tagged along with other bunch of writ petitions, when the issue in the petition filed by the Appellants and other batch of petitions was distinct and separate.

13. The Petition has been dismissed on the premise that the earlier writ petition of the Appellants was wrongly tagged alongwith the other batch of petitions due to an error/mistake and a mistake of such a nature could not work to the advantage of the Appellants, who in the view of the court were trying to build up a confusion and were not coming clear.

It was also noticed that, in the earlier petition, the Appellants had made an application seeking a direction to make payment of the demanded amount of Rs. 4,42,200/- for the allotment of the second plot. It was observed that this fact was concealed. Learned Judge has dismissed the petition on the ground of concealment and as the Appellants have not paid the demanded amount within the stipulated period. Learned Single Judge was of the view that there was concealment and misrepresentation on the part of the Appellants and accordingly found the Appellants not entitled to any relief.

14. We are unable to agree with the view taken by the learned Single Judge, firstly in holding that mistake of such nature cannot work to the advantage of the Appellants on the ground that a party cannot be put to the disadvantage on account of the mistake of the Court. The earlier writ petition of the Appellants was taken up and disposed of, by a common judgment. If the case of the Appellants was not connected with the other bunch of petition, it was equally the responsibility of the respondent-Corporation to point out to the Court that the petition of the Appellants had been incorrectly taken up along with the said batch of petitions. Not only did the respondent-MCD fail to point out the said mistake to the Court, it even included the name of the Appellants in the draw of lots, which was subsequently held in the year 2007 and a plot of 440 per sq. mtrs. Was allocated to the Appellants. The legal maxim – *Actus Curiae Neminem Gravabit* (i.e. An act of Court shall prejudice no man) squarely applies to the facts of the present case. Though the Appellants

cannot take advantage of an error of the Court, equally the Appellants cannot be put to disadvantage on account of an alleged error of the Court.

15. Admittedly the plot size of the Appellants was more than 500 per sq. mtrs. and in terms of the policy of the respondent, the Appellants were entitled to an additional plot of an appropriate size. In the Counter Affidavit the Respondents have contended as under:

“5. That in the year 1987, two new resolutions no. 1137 dated 12.01.1987 and no. 705 dated 23.11.1987 were passed by the answering respondent. As per the said resolutions, applicants with plots of over 500 sq. mtrs. were entitled for additional plot of applicable size, however, for the next additional plot commercial price (three times the reserve price) was applicable and for the remaining additional plots market price (five times the reserve prices) was applicable.

True copy of resolutions no. 1137 dated 12.01.1987 and no. 705 dated 23.11.1987 are annexed herewith and marked ANNEXURE R-4(Colly)

6. That after verification of occupied area of 687.8 sq. mts. of plot bearing no. 5008 Rui Mandi, Sadar Bajar, Delhi, upon resurvey conducted by EE-Bridge, case of petitioner was considered for one more plot. Therefore a demand notice was sent to the petitioner to deposit the required amount for allotment of such second plot.

True copy of demand notice dated 28.12.1988 is annexed herewith and marked as ANNEXURE R-5 (colly).

7. That petitioner failed to deposit the required amount for allotment of such second plot.

8. That as per the resolution no. 14 of the Adhoc Committee dated 10.11.1987 and abovesaid demand letter dated notice dated 28.12.1988, in case of failure of allottees of second plot to pay the complete amount within 180 days of receipt of said demand letter, the allotment would stand cancelled. Resolution no. 14 of the Adhoc Committee dated 10.11.1987 already forms part of resolution no, 705.

9. That upon failure of Late Sh. Hardev Singh or petitioner or any other person claiming through them, to make the payment of complete amount within 180 days of receipt of demand notice, the allotment of second letter stood cancelled automatically.

10. That in the alternative it is submitted that the applicable size for additional size of 187.8 sq. mtrs. (687.8 sq. mtrs. – 500 sq. mtrs.) is 110 mtrs. plot @ Rs. 1250/- per sq. mtrs.....”

16. It may be noticed that as per the counter affidavit, the Appellants were found eligible for being allotted a plot 110 per sq. mtrs. @ Rs. 1250/- per sq. mtrs. which works out to Rs. 1,37,500/-, whereas the demand raised on the Appellants was Rs. 4,42,200/- which was challenged by the Appellants in the earlier petition. It cannot be held that the Appellants were wrong in approaching the Court impugning the said demand.

17. The Writ Petition of the Appellants was disposed of alongwith the other batch of petitions by judgment dated 23.10.2002 and a direction was issued to the respondent-MCD to allot the additional plot at the rate fixed therein. Thereafter the respondent-MCD even included the name of the Appellants in draw of lots in 2007 and earmarked a plot for the

Appellants. It is on failure of the respondent in allotting and handing over of the same, that the Appellants filed the present petition. In the present Writ Petition, the appellants have duly disclosed about the filing of the earlier petition. The Appellants have contended that they have already paid a sum of Rs. 1,18,000/- out of the demanded amount.

18. In view of the above, we are of the view that the Learned Single Judge has clearly erred in dismissing the petition.

19. Accordingly, in our view, the Appellants are entitled to an alternative plot of appropriate size, which as per the respondent is 110 sq. mtrs. The next question which arises is as to what rate should the Appellants be allotted the alternative plot. By judgment dated 23.10.2002, the Court had directed that for the petitioners therein who had not paid the said amount of Rs. 425/- plus Rs. 75/-, the new determined rate of Rs. 4500 per sq. mtrs. would be chargeable. It was further directed that the escalation amount demanded by DDA be spread out evenly among all the allottees. Accordingly, the Court is of the view that the rate to be charged from the Appellants should be Rs. 4500 per sq. mtr. plus escalation amount proportionately determined for the 110 sq. mtr. along with interest @ 12% from the said date till today.

20. Accordingly, the appeal is allowed. The impugned order is set aside. The respondents are accordingly directed to allot a plot of 110 sq. mtrs. to the Appellants @ of Rs. 4500 sq. mtrs. plus escalation amount (if any) along with interest @ 12% from 23.10.2002 till date. The

Appellants shall be given due credit for the amount of Rs. 1,18,000/- claimed to have been already deposited by them, with the same rate of interest the entire exercise of allotment and handing over of possession be completed by the respondent-MCD within a period of six weeks from today.

21. The interim order dated 02.08.2017 is vacated, subject to the respondent allotting the appropriate size of plot, according to the directions made in this order.

22. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

S. RAVINDRA BHAT, J

December 05, 2017
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