

\$~13

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

+ **CS(OS) 318/2005**

VASANT SURGICO & MEDICAL CENTRE

..... Plaintiff

Through: Mr. Ravinder Sethi, Senior Advocate
with Mr. Rajiv Kumar Ghawana,
Advocate, Mr. Puneet Sharma,
Advocate.

versus

DDA & ORS

..... Defendants

Through: Ms. Shobhana Takiar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

%

19.02.2018

1. In this suit for declaration and injunction filed by the plaintiff

Vasant Surgico & Medical Centre against the Delhi Development Authority

(DDA) the following reliefs were claimed:-

“(a) pass a decree for declaration in favour of the plaintiff and against the defendants, inter-alia, declaring that the letter bearing ref. No.F.10(2)/76/Inpl/C-L/390 dated 8th February, 2000, is illegal, void ab-initio and of no effect and consequence.

(b) a decree for permanent injunction restraining the defendants, their employees, representatives etc. from taking possession, or any other such action against the plaintiff in pursuance to the letter dated 8th February, 2000, or notice dated 9th May, 2000;

(c) award cost in favour of the plaintiff; and

(d) any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants."

2. Admittedly the disputes between the parties at the stage when the suit was filed pertained with respect to claim of the defendant that plaintiff had violated the terms of the lease deed and hence the lease deed was liable to be cancelled. Accordingly defendant had issued its letter dated 8.2.2000 which was impugned in the present suit.

3. There is no dispute between the parties that subsequent events have taken place and which events are the events recorded in the order passed by a learned Single Judge of this Court in ***Delhi Development Authority Vs. Vasant Surgico Medical Centre 228 (2016) DLT 297***. The relevant paras of this order dated 25.2.2016 in CRP No.43/2014 reported as 228 (2016) DLT 297 read as under:-

"2. Record shows that the present suit is a suit for declaration, permanent injunction which has been filed by the plaintiff namely M/s Vasant Surgico Medical Centre Pvt. Ltd. and Ors. against the DDA. Prayer was that a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining them from dispossessing the plaintiff from the suit property and a decree of declaration was also sought declaring the lease deed 15.01.1986 to be ultra vires and the same be treated as cancelled. The Trial Court had decreed the suit. Before the Appellate Court parties were negotiating. This is clear from the order dated 17.10.2008 passed by

ARC in RCA No.19/2007. Extract of the order is reproduced herein as under:

“Matter has been fixed for conciliation. The officers of the appellant and the Director for the respondent company are present in the Court. They have made their respective statements. In view of the judgment of Delhi High Court in the case of *DDA vs. Aditya Kumar Jajodia*, 2005 IV (Delhi) 329 and *J.K. Bhartiya & Ors. vs. UOI & Anr.*, 2006 I AD (Delhi) 408 the respondent has agreed to pay the Ground Rent, Restoration Charges, Conversion Charges (without interest) in terms of the abovesaid rulings and Circular dated 23.6.1995 to which the appellant has no objection. The officer of the appellant and the Director of the respondent company are present in the Court and they agreed that after making adjustments of the amount already deposited by the respondent only a sum of Rs.23,91,238/- which is inclusive of the interest @ 10% per annum from the date of application is required to be paid which the respondent is agreed to pay on or before 31.10.2008. I am satisfied by the statements of the parties and counsels by which they are bound.

In terms of the aforesaid the impugned judgment of the learned trial Court dated 26.4.2007 holding clause (aa) of lease deed to be null and void is hereby set aside. Appeal stands disposed off. Trial Court record be sent back along with copy of this order. Parties to bear their own costs. Appeal file be consigned to record room.”

Statement of Jaswant Singh, Senior Account Officer, DDA, Vikas Sadan was recorded on the same date; which reads hereinafter as under:

“Statement of Sh. Jaswant Singh, Senior Accounts Officer, DDA, Vikas Sadan, I.N.A., New Delhi.

On S.A.

I am the Sr. Account Officer of DDA duly competent to

make a statement on their behalf. The respondent (Plaintiff) is required to make a payment of Rs.23,91,238/- as Restoration charges, ground rent and conversion charges which has been worked out as under.

(i) Restoration charges : Rs.1,31,103.00

(ii) Ground Rent w.e.f. 21.6.1977 to 14.12.2008 after adjustment of Rs.1,51,300/- and interest of Rs.38,156/- (subject to verification) comes to Rs.1,20,150/- and interest up to 14.1.2009 comes to Rs.3,79,294/-.

(iii) Conversion Charges applicable on the date of application i.e. February 2004 comes to Rs.23,95,490.00 after deducting amount of Rs.11,98,419/-. A sum of Rs.11,97,071/- is payable by the respondent.

(iv) Interest @10% as per the direction of the Hon'ble Court for the period February 2004 when the application was made till 31.10.2008 comes to Rs.5,63,620/-.

(v) The total figure is Rs.23,91,238/-."

3. The sum of Rs.23,91,238/- calculated by the DDA was accordingly paid by the plaintiff to the DDA. The Department was, however, not happy with the order. They preferred to file a review petition. This review petition was filed on 28.10.2009. This was accompanied by an application seeking condonation of delay. Contention in this review petition was that the earlier order dated 17.10.2008 is liable to be reviewed for the reason that the official who had made this statement on behalf of the Department was not authorized to do so. The Review Court had noted that it was not the case of the petitioner that any action had been taken against the concerned official who as per them had made this unauthorized statement on behalf of the Department. The delay of one year in filing the review petition was unexplained. This was not answered in terms of the averments made in the application. The application seeking condonation of delay was accordingly dismissed on

27.4.2010.

7. This petition is hopelessly barred by time. Even on merits this Court is of the view that once a consent order had been passed on 17.10.2008 and the statement of the officer of the DDA had been recorded and the order sheet also noted the presence of the Director of the Department (on that date); the Department having calculated a sum of Rs.23,91,238/- which amount as per them was payable by the nonapplicant to the Department and the appeal also stood disposed of on that day; review petition against that order was rightly dismissed. Not only was there an inordinate delay in filing the review petition, even otherwise the Review Court had correctly noted that it was not that any action has been taken against the so-called erring official who had made this statement without any authority. In these circumstances, it could not be said that any ground for review was made out.

8. Even before this Court (at the cost of repetition) not only is there an abnormal delay in preferring this petition (1049 days) even otherwise it was a consent order interse the parties. DDA has agreed to receive a sum of Rs. Rs.23,91,238/-; it does not now lie in their mouth to assail this order. Relevant would it be to state that a prima finding to the same effect has also been recorded by the coordinate Bench of this Court vide its order dated 19.8.2013 which had penned down and noted that the Department was not entitled to charge unearned increase on account of the change in the share holding of the company. On this count the Department had sought time to take instructions but none were forthcoming. Today arguments have been addressed on merits.

In this background, this Court is of the view that the matter has come to a close. It cannot be agitated and re-agitated again and again. This petition is without any merit. It is dismissed.”

4. This order dated 25.2.2016 passed in CRP No.43/2014 was admittedly challenged by the defendant herein in the Supreme Court by

filing the SLP but this SLP(C) No.23113/2016 was dismissed by the order dated 5.1.2017.

5. The sequitur of the aforesaid discussion is that cause of action in the present suit as pleaded does not survive and would stand superseded in terms of the agreement entered into between the parties in the suit which was subject matter of challenge before a Single Judge of this Court in CRP No.43/2014 decided on 25.2.2016. The final order in the suit which was subject matter of appeal in CRP no.43/2014 would operate as res judicata between the parties and would supersede the cause of action in the present suit.

6. Accordingly, since no cause of action survives for which this suit was filed inasmuch as that cause of action stands superseded in terms of the order passed in the suit which was subject matter of challenge in CRP No.43/2014, accordingly this suit is disposed of with liberty to the parties to enforce their rights in terms of the final order which was subject matter of the suit and which achieved finality on dismissal of SLP(C) No.23113/2016 on 5.1.2017.

7. It is noted that since the pecuniary jurisdiction of the present suit would no longer be there with this High Court, hence for the purpose of

passing the aforesaid order, and in order not to prolong the litigation, this Court has exercised its power under Section 24 CPC read with Article 227 of the Constitution of India.

8. Suit is accordingly disposed of, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 19, 2018

Ne