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

Date of decision : 08.03.2018

+ LPA 164/2014

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Ms.Shobhana Takiar, Adv.

versus

VIJAYA C GURSAHANEY Respondent
Through: Mr.Kirti Uppal, Sr.Adv. with
Mr.K.R.Chawla, Mr.Abhimanyu
Redhu and Mr.Aditya Awasthi,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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1. The Delhi Development Authority (DDA) appeals the decision of learned Single Judge who had quashed its demand of composition fee amounting to ₹42,83,618/- made through its circular dated 08.10.2010.

2. The facts are that the plot in question (D-3, Community Centre, Naraina, New Delhi) was purchased by one Ramdhan Bhandoola (hereinafter referred to as "the original owner") in an auction by DDA on 25.05.1969. A perpetual lease deed was executed between the President of India and Ramdhan

Bhandoola on 17.02.1972. The original owner died without any construction on the plot. The respondent (hereinafter referred to as “the owner”), applied for Letters of Administration which was granted by the District Judge on 07.05.1980. She subsequently applied to the DDA for substitution of her name as the owner. DDA issued show cause notice for non-construction of the plot within a specified time when the owner sought mutation of the property in her name. This led DDA to demand 50% unearned increase towards what it termed as unauthorized transfer (i.e. through testamentary devolution). The demand was challenged by respondent in W.P.(C) 3696/1992. The Division Bench of this court quashed the demand as not legal vide its judgment dated 10.05.1994. The DDA then appealed to the Supreme Court by Special Leave which was allowed on 26.08.2003 and it directed the owner/respondent to pay the 50% unearned increase, as demanded by appellant. The respondent/owner deposited the amount on 22.10.2003. The respondent/owner had requested for extension of the time granted by the lease deed for construction upon the plot and waiver of composition fee, which was rejected by the DDA and it further demanded ₹ 42,83,618/-.

3. The respondent/owner has approached this Court complaining that the calculation of composition fee in the circumstances of the case was improper. The DDA countered the claim and stated that its extant policies do not permit the

competent authorities to condone the delay and that condonation was permissible only in certain contingencies. To do so, the DDA relied upon the composition policy, especially Clause 1.4.

4. By the impugned judgment, the learned Single Judge was of the opinion that having regard to the overall circumstances, the DDA was not constrained by its policy and that the demand made was arbitrary and unreasonable.

5. The Single Judge's reasoning, is as follows:-

“11. I am fortified in coming to the aforesaid conclusion from sub-clause (iv) of Clause 1.4, which provides for exemption in the case of “death of the allottee and subsequent delays in mutation.....” There is nothing in the said sub-clause to show that the application of the said sub-clause is restricted to delays in mutation of the plot to the legal heirs of the original allottee and not to the transferees of a plot. Delays in mutation would in my view be equally applicable to legal heirs of the original allottee and those who have stepped into the shoes of the allottee as a result of transfer, sale etc. To hold otherwise would be inequitable and unfair for it would mean that while the period of litigation between the legal heirs of the original allottees is to be excluded for the purpose of calculation of composition fee, the transferees of the original allottee are to be kept deprived of such benefit and must bear the brunt of the delay in mutation, even if it is for no fault of theirs.

12. Yet another aspect of the matter is that in the instant case, it cannot be said that the litigation

between the Petitioner and the DDA was a frivolous one. A Division Bench of this Court held in favour of the Petitioner, rejecting the DDA's claim for unearned income of ₹6,57,020/- and imposing costs upon the DDA. On appeal, the Supreme Court though held in favour of the DDA, yet, the Petitioner was required to deposit only a sum of ₹3,73,745/- instead of the sum of ₹6,51,020/- which was the initial demand of the DDA for unearned increase.

13. In view of the aforesaid, the demand raised by the DDA for the amount of ₹42,83,618/- on account of composition fee is quashed and the DDA is directed to re-calculate the composition fee for the period after the mutation of the plot in favour of the Petitioner and to issue a fresh demand thereafter. The re-calculation shall be done by the DDA and the fresh demand letter issued to the Petitioner within a period of eight weeks from today.”

6. It is urged by the learned counsel on behalf of DDA that the prevailing policies of the DDA at the relevant time did not permit latitude and that its appeal before the Supreme Court had succeeded in 2003. Consequently, the period during the pendency of the proceedings i.e. 1992 to 2003 was correctly included for the purpose of calculation of the composition rates to calculate composition fee. On the other hand, learned counsel for the respondent/owner urged that the reasoning of the Single Judge cannot be faulted and that the parties were involved in a bonafide dispute. Eventually, of course, it was decided in favour of the appellant/DDA, but the fact remains that during the

interregnum, the respondent/owner could not reasonably be expected to deposit any money, under these circumstances.

7. This Court has considered the material on record including the proceedings and pleadings in the writ petition. What is evident is that the respondent/owner's claim to be the heir of the original owner, was accepted by the Division Bench in the first instance. Of course, that determination was upset by the Supreme Court in its judgment. But what has to be understood here is that the respondent in these uncertain circumstances, could not be expected to pay upfront any amount – much less the composition fee nor could the DDA legitimately say that had she paid the composition fee, she would have been permitted to construct upon the plot. Given these facts, the reasoning and the conclusions of the learned Single Judge cannot be faulted.

8. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 8, 2018

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