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

Date of pronouncement: 13th December, 2018

+ W.P.(C) 7600/2016

SHRI LAKSHMI MAHA VIDYALYA Petitioner
Through: Mr. Sumit Bansal, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Arun Birbal, Advocate

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T (O R A L)**
13.12.2018

1. The petitioner had been running a school in the name and style of Shri Lakshmi Mahavidyalaya at Ashok Nagar, Faiz Road, Karol Bagh, which was demolished on 4th June, 2002, consequent to the land, on which the School was located, being acquired by the respondents for the purposes of the Faiz Road Development Scheme.

2. Pursuant to a representation made by the petitioner in that regard, the Hon'ble Lt. Governor, *vide* order dated 17th July, 2002, directed that an alternate land be allotted to the petitioner at a concessional rate for setting up of the School building. The said decision was further approved by the Vice Chairman of the DDA and a site was carved out for the purposes of allotment to the petitioner

admeasuring 900 square meters at Faiz Road, Karol Bagh, New Delhi.

3. As the handing over of the said plot to the petitioner was getting delayed, the petitioner moved this Court by way of W.P.(C) 7145/2005 praying for issuance of a writ of mandamus, directing the respondent to issue the demand letter and hand over physical possession of the plot to the petitioner. *Vide* order dated 14th December, 2005, the said writ petition was disposed of by this Court, recording the undertaking of the respondent, that, if the petitioner complied with the directions contained in the letter addressed by the respondent to it, the plot of 900 sq. meters would be handed over to the petitioner, subject to a demand being raised in that regard. The writ petition avers that the said demand letter was issued by the respondent only in 2015.

4. *Vide* letter dated 3rd March, 2015, the respondent informed the petitioner that the Hon'ble Lt. Governor had been pleased to approve the allotment of the aforementioned plot as an alternate allotment. This was followed by another communication dated 16th April, 2015, wherein the respondent intimated that it would charge Zonal Variant Rates i.e. the rates applicable on the date of approval of the allotment by the Hon'ble Lt. Governor on 16th August, 2002 along with 18% per annum penal interest. It was also stated that the appropriate demand letter would be issued after receipt of intimation of the correctness of the said amount from the Finance Department of the respondent.

5. *Vide* demand letter dated 22nd June, 2015, the respondent informed the petitioner that the aforementioned plot, admeasuring 900 square meters, was being allotted to the petitioner on perpetual lease basis for construction of a nursery school. The petitioner was directed to pay cost of the land @ ₹ 1.21 Crores per acre along with 2.5% ground rent. The petitioner was required to deposit ₹ 87,32,258/- as per the said letter.

6. These amounts were paid by the petitioner *vide* challan dated 19th October, 2005, and despite the said payment being made, the possession of the alternative plot was not handed over to the petitioner, by the respondent. On 4th January, 2016, the respondent issued yet another communication to the petitioner, requiring the petitioner to depute a representative to contact the AD (Survey) IL in the office of the respondent, so that a date could be fixed for handing over and taking over of the physical possession of the aforementioned plot. The writ petition states that, despite several visits of the petitioner to the said officer, the plot was not handed over to the petitioner.

7. Alleging, therefore, that despite the aforementioned alternative plot of 900 sq. meters having been allowed in the petitioner's favour by the Hon'ble Lt. Governor, and the said allotment having been approved by the Vice Chairman of the respondent, possession of the plot was not being handed over to the petitioner, the petitioner moved this Court by means of the present writ petition, praying for issuance

of an appropriate writ of mandamus, directing it to hand over, forthwith, physical possession of the aforementioned alternative plot admeasuring 900 sq. meters located at Faiz Road, Karol Bagh to the petitioner.

8. In these proceedings, a statement was made by Mr. Arun Birbal, learned counsel for the respondent, before this Court on 19th September, 2016, to the effect that, after amending of the layout plan of the area, the possession of the aforementioned plot would be handed over to the petitioner, so that the nursery school could be constructed thereon. This Court, therefore, granted three months' time to the respondent to do so, directing that, in default of handing over of possession of the plot to the petitioner on or before 19th December, 2016, the Director (Institution Land) of the DDA would be personally present in Court.

9. On the next date of hearing, i.e. 12th January, 2017, learned counsel for the petitioner reported that 845 sq. meters of the plot had been handed over to his client, and the DDA submitted that the balance 55 sq. meters would be handed over, after removal of the encroachment present thereon, within a period of two weeks. This Court recorded the said statement of the DDA and specifically directed that the DDA was held bound by the same.

10. This order, apparently, provoked the alleged encroacher of the aforementioned 55 sq. meters of the plot in question, Ms. Shakti Devi,

to move this Court by means of a slew of applications, being CM 22109/2018, 22100/2018 and 22101/2018 seeking to be impleaded in these proceedings and praying for modification of the order dated 12th January, 2017 (*supra*). These applications were disposed of by an order dated 30th May, 2018, which reads thus:

“CM APPL.Nos. 22099/2018 (modification), 22100/2018 (impleadment) and 22101/2018 (direction) in W.P.(C) 7600/2016

During the course of hearing, learned counsel for the applicant on instructions from the applicant Ms. Shakti Devi present in the Court submits that the applicant shall handover 55 sq. mtrs. Of the land/property in her occupation to DDA on the demarcation to that effect being made by the DDA within seven days from today to ensure the compliance of the order dated 21.09.2017, reserving her right for allotment of residential plot admeasuring 25 sq. yds. from within the remaining portion of the land/property in her occupation, within six weeks from today. It is directed accordingly.

It is made clear that the matter would not be adjourned further on the next date of hearing. that the instant proceedings shall have no bearing on any of the rights and contentions of the parties in relation to subject matter of WP(C) 1713/2017 *Ms. Shakti Devi vs. DDA* that was disposed off on 27.02.2017.

The applications stand disposed off accordingly.”

11. As possession of the 55 sq. meters of land in the occupation of Ms. Shakti Devi was still alluding the petitioner, apparently, owing to failure on the part of DDA to demarcate the land, I had passed the

following order on 19th November, 2018:

“The issue that survives is only regarding the allotment of 55 sq. mtrs. Of land which was in the possession of Ms. Shakti Devi. By the order dated 30th May, 2018, Ms. Shakti Devi had stated that she would hand over the said area in her occupation to DDA on demarcation to that effect made by the DDA within 7 days, so that compliance of the earlier order dated 25th September, 2017, is effected. Learned counsel appearing for DDA has absolutely no idea of whether demarcation has been done by it, as stated in the said order.

In case, demarcation has not been done, the DDA is directed to ensure the demarcation takes place prior to the next date of hearing failing which contempt action shall be initiated against the concerned officers in the DDA.

Renotify on 12th December, 2018.”

12. Today, Mr. Arun Birbal, learned counsel for the respondent submits that demarcation of the land has taken place but Ms. Shakti Devi is still not willing to release the possession of the 55 sq. meters held by her. In my view, this is a flagrant violation, on the part of Ms. Shakti Devi, of the undertaking given by her to this Court on 30th May, 2018 and may expose her to punitive action as well as contempt proceedings, inasmuch as Ms. Shakti Devi had clearly undertaken on 30th May, 2018 to hand over 55 sq. meters of land in her occupation to the petitioner, subject only to the condition that demarcation of the land would be done by the DDA. The right was reserved by Ms. Shakti Devi, in the said order, to allotment of 25 sq. meters from

within the *remaining portion of the land/property in her occupation*. The reservation of this right cannot permit Ms. Shakti Devi to continue in occupation of the 55 sq. meters of land, of which she had undertaken to hand over possession, even after demarcation of the land has been done by the respondent-DDA.

13. In the circumstances, this writ petition is disposed of with the following directions:

- (i) Ms. Shakti Devi is directed to hand over possession of the 55 sq. meters of the aforementioned plot located at Faiz Road, Karol Bagh, presently occupied by her, to the DDA within a period of two weeks from today.
- (ii) In case of any opposition by Ms. Shakti Devi to recover the possession of the said 55 sq. meters of land, which she has encroached, the DDA is directed to remove the encroachment in accordance with law and acquire possession of the said 55 sq. meters. Should it become necessary, the DDA may also elicit help from the concerned Police authorities for the said purpose.
- (iii) Consequent to acquiring possession of the said 55 sq. meters, the said area would be handed over to the petitioner, subject to the petitioner fulfilling the requisite formalities in that regard.

14. Mr. Bansal, learned counsel for the petitioner seeks a clarification that no penal consequences would visit his client for failure to raise construction on the aforementioned plot, as the entire plot has yet not been handed over to his client. It is clarified

accordingly.

15. The writ petition stands disposed of in the above terms.

C. HARI SHANKAR, J

DECEMBER 13, 2018/rd

