PETITIONER:
DELHI DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
DELHI CLOTH MILLS LTD. AND ORS.

DATE OF JUDGMENT01/05/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MISRA, RANGNATH (CJ)
AGRAWAL, S.C. (J)

CITATION:
1991 SCR (2) 590 1991 SCC (3) 277
JT 1991 (2) 374 1991 SCALE (1)839

ACT:
Delhi Cloth Mills-Scheme for redevelopment of the mills area-Supreme Court's direction to the Delhi Development Authority to grant conditional approval to the scheme subject to removal of objections raised by the Municipal Corporation of Delhi and the Delhi Development Authority-Objections by DDA-Validity of-Directions given by Supreme Court.

HEADNOTE:
By an order dated 13.3.1990 the Supreme Court directed the Delhi Development Authority (D.D.A.) to grant conditional approval to the respondent-Company's (D.C.M.) scheme pertaining to the development of mills land measuring 63 acres for construction of flatted factories and residential complex subject to removal of objections raised by Municipal Corporation of Delhi and Delhi Development Authority. The matter could not be finalised by the parties since the DDA took certain objections to the scheme:(a) that the Delhi Cloth Mills should file a modified plan so as to conform to the Master Plan of the year 2001; (b) the legal proceedings before the High Court and the Supreme Court proceeded on the wrong assumption that the entire 63 acres of land was owned by the Delhi Cloth Mills whereas the DCM owns only 52 acres of land while the balance 11 acres was owned by the DDA which is partly on lease and partly in trespass with the Delhi Cloth Mills; and (c) the grant of permission by the DDA vide its resolution No. 26 dated 1.2.83 does not ipso facto mean that it had given up its rights or title to the lease hold lands or that it had regularised the possession of the trespassed upon land with the Delhi Cloth Mills. The respondent-Company filed applications for direction in this Court.

Disposing the applications, this Court,

HELD: 1. The D.D.A. stands directed by this Court to grant to the D.C.M. approval, even though conditional, and the D.C.M. stands impliedly directed and is duty bound to remove the objections raised by the D.D.A. This Court had endorsed by means of this directive the already known views of the Delhi High Court towards restoring resolu-

tion of the D.D.A. dated February 1, 1983, whereby the scheme as given by the Delhi Cloth Mills was approved in terms thereof. The approval came from the D.D.A. at a time when the Master Plan of the year 1962 was operative and the one of the year 2001 was not existent, and if at all existent in an embryonic stage. The law governing the subject and the rules and regulations then in vogue and applicable were deemingly kept in view and applied by the D.D.A. in the approval of the scheme. To whittle down the effect of that resolution on the emergence of the new Master Plan of the year 2001, made applicable after the orders of this Court would, at the present stage, if insisted upon be spelled out as a step to undermine the orders of this Court. Such an objection by the D.D.A. when raised before March 13, 1990, the day when the Supreme Court passed its judgment, was untenable in law and the D.D.A. should have known it before putting such on objection to use. Therefore, the first objection of the D.D.A. is repelled and it is directed to stick to the position as per Master Plan as existing on February 1. 1983. [594 D-G]

2. The objection of the D.D.A. with regard to the wrong impression of the ownership of the land is valid substantially. It is the admitted case of the parties that the scheme pertains to 63 acres of land which the Delhi Cloth Mills while applying for sanction claimed to own and one of the considerations in passing the resolution dated February 1,1983 ex facie was the D.D.A. being impressed by a private entrepreneur coming forward with a scheme with such a large chunk of land. The D.D.A. when engaged in examining and sanctioning the proposal was justified on proceeding on the supposition of facts given by the Delhi Cloth Mills as true, and in processing the same cannot be said to have surrendered its ownership rights qua land measuring 11 acres. It cannot be assumed that by upholding the resolution dated February 1, 1983, the Delhi High Court, or Supreme Court, had acknowledged Delhi Cloth Mills as the owner of 63 acress of land involved in the scheme or that the right of ownership of the D.D.A. over about 11 acres of land stood extinguished by such exercise. Therefore, the said resolution cannot trample the rights of D.D.A. as owner over 11 acres of land when the respective leases reserve to the D.D.A. the right of resumption, and in lease expiring by efflux of time the option not to renew. The scheme approved must thus of necessity be denoted to that effect as the objection of the D.D.A. in that regard and to that extent is valid and tenable. But the Delhi Cloth Mills can still steer through its project in its owned 52 acres, even though in a truncated form and submit an amended plan. The scheme in the modified form would have to be brought in, not a new but as a substitute for the original scheme and that scheme would register its birth, legitimacy and binding force as of the original

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scheme.[594H, 595 A-D, E-F, 597 F, 598 D]

3. Respondent-Company's relationship with the D.D.A. is that of a lessee and lessor. Out of 10 leases one is perpetual in nature and the remaining leases are short durated. Under the terms of the perpetual lease unless the D.D.A. grants approval to the change of user as asked and reconstruction, the Delhi Cloth Mills has no such deemed right or privilege ignoring the covenants and the terms of the lease. Therefore, it cannot be said that the resolution has the automatic effect of the D.D.A. having granted change of user, consciously or impliedly, or vesting any right in that regard to the Delhi Cloth Mills. [597 D-F,

596 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: I.A. Nos. 4,5,6 and 7 in Civil Appeal Nos. 1401 & 1402 of 1990.

From the Judgment and Order dated 22.5.1987 of the Delhi High Court in C.W.P No. 2687 of 1986.

Kapil Sibal, V.B. Saharya and R.K. Khanna for the Appellant.

Rajiv Sawhney, Sanjay Anand, Deepak Kumar Thakur, Mrs. Ameeta Rathore, Kapil Chandra for J.B. Dadachanji & Co. and R.K. Maheshwari for the Respondents.

The following Order of the Court was delivered:

PUNCHHI, J. These are applications for directions in Civil Appeal Nos. 1401 and 1402 of 1990 decided by us on March 13, 1990.

For facility of fact situation resort be had to our judgment dated March 13, 1990. Direction given by to the D.D.A was meaningful and clear that it shall grant to the Delhi Cloth Mills conditional approval subject to the removal of the objections enumerated and extracted in the judgment, as raised, or such of them as were valid and tenable in law, after the Delhi Cloth Mills is heard by the Municipal Corporation of Delhi, the author of the objections, and which the D.D.A. had adopted, and the matter to be formalised forthwith by the D.D.A. and the authorities connected therewith within a time frame. This has reportedly met with hurdles necessitating these applications. The objections may broadly be divided in three parts:

(i) objections which are within the exclusive domain of the Municipal Corporation of Delhi

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(ii) objections which are exclusively within the domain of the D.D.A.; and

(iii) objections which are lendingly common to both, the D.D.A. and the Municipal Corporation of Delhi overseeing and safeguarding the interests of each other.

And these objections can also be divided as surmountable and insurmountable.

The objections, to begin with, as raised by the Municipal Corporation of Delhi and later adopted by the D.D.A., presently requiring smoothening before us relate to those which are within the exclusive domain of the D.D.A. for it is asserted by the applicant Delhi Cloth Mills that the objections relating to the Municipal Corporation of Delhi are not insurmountable and those can for the present, be left alone to be tackled by the applicant without the intervention of the Court. For this reason neither any direction is asked at this stage nor is one necessary to the Municipal Corporation of Delhi.

The D.D.A. has broadly three objections:

(i) To further the resolution of the D.D.A., dated February 1, 1983, the Delhi Cloth Mills should file an amended or modified plan so as to conform to the Master Plan of the year 2001;

(ii) Since the matter before the Delhi High Court, as also in this Court, had proceeded on the assumption that the entire 63 acres of land involved in the re-development for flatted factories and residential complex was owned by the Delhi Cloth Mills, which assumption was wrong, the Delhi Cloth Mills should confine its plan to about

52 acres of land as owned by it as the balance about 11 acres of land is owned by the D.D.A. which is either on varied termed leases or in trespass with the Delhi Cloth Mills. The plan would require rectification accordingly; and

(iii) The fact of grant of permission vide resolution of 1-2-1983 did not ipso facto mean that the D.D.A. had given up its rights on lease hold lands in accordance with the terms thereof or the tittle to it or to regularize possession of the trespassed upon land with the Delhi Cloth Mills.

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On that basis it is required of the Delhi Cloth Mills to confine its plans within those 52 acres as owned by it and by a process of reasoning it is hinted that after providing for recreational and other necessary facilities, as required by law, there hardly would remain any land to further the project.

It has been maintained on behalf of the Delhi Cloth Mills that the posture of the D.D.A. is obstructive in nature and a step to flout or undermine the orders of this Court. It has on the other hand been maintained on behalf of the retrenched workers that since the settlement arrived at by them with the Delhi Cloth Mills was beneficial to them in nature, as a price for closure of the Mill, the posture of the D.D.A. was indirectly against their interests. They have prayed for suitable directions so that the benefits accruing to them by lapse of time may not go dry.

At the outset, we put it beyond any doubt and re-affirm that the D.D.A. stands directed by this Court to grant to the D.C.M. approval, even though conditional, and the D.C.M. stands impliedly directed and is duty bound to remove the objections as were valid and tenable in law as raised by the D.D.A. within its domain. Having gone thus far there is no retreat of it contemplated. It is further to be understood that this Court had endorsed by means of this directive the already known views of the Delhi High Court towards restoring resolution of the D.D.A. dated February 1, 1983, whereby the scheme as given by the Delhi Cloth Mills was approved in terms thereof. And obviously the approval came from the D.D.A. at a time when the Master Plan of the year 1962 was operative and the one of the year 2001 was not existant, and if at all existant in an embryonic stage. The law governing the object and the rules and regulations then in vogue and applicable were deemingly kept in view and applied by the D.D.A. in the approval of the scheme. To whittle down the effect of that resolution on the emergence of the new Master Plan of the year 2001, made applicable after the orders of this Court would, at the present stage, if insisted upon be spelled out as a step to undermine the orders of this Court. Such an objection by the D.D.A. when raised before March 13, 1990, the day when we passed judgment, was untenable in law and the D.D.A. should have known it before putting such an objection to use. For this reason, we repel the first objection of the D.D.A. and require of it to stick to the position as per Master Plan as existing on February 1, 1983. This objection is thus surmounted.

The second objection of the D.D.A. with regard to the wrong

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impression of the ownership of the land appears to us to be valid substantially. It is the admitted case of the parties that the scheme pertains to 63 acres of land which the Delhi Cloth Mills while applying for sanction claimed to own and

one of the considerations in passing the resolution dated February 1, 1983 ex facie was the D.D.A. being impressed by a private entrepreneur coming forward with a scheme with such a large chunk of land. It is significant that nowhere at that stage, even remotely, or at any stage during the litigation before the Delhi High Court or this Court, was the Delhi Cloth Mill's claim of owning 63 acres of land been given a serious thought or refuted or put to proof or testing. One way of looking at it now can be that the Delhi Cloth Mills misled the D.D.A. in that regard and had the D.D.A. known that the Delhi Cloth Mills owned only about 52 acres of land the D.D.A. might have resolved differently. The other view as suggested by the Delhi Cloth Mills is that the D.D.A. of its own should have counter checked the extent of the ownership of the land of the Delhi Cloth Mills at the time of granting sanction. Learned counsel on both sides have dwelt upon this matter a great deal. We cannot assume that by upholding resolution dated February 1,1983, the Delhi High Court, or for that matter this Court, had made or acknowledged Delhi Cloth Mills as the owner of 63 acres of land involved in the scheme or that the right of ownership of the D.D.A. over about 11 acres of land stood extinguished by such exercise. The D.D.A. when engaged in examining and sanctioning the proposal was justified on proceedings on the supposition of facts given by the Delhi Cloth Mills as true, and in processing the same cannot be said to have surrendered its ownership rights qua land measuring 11 acres. Thus we are clear in arriving at the view that the said resolution cannot trample the right of D.D.A. as owner over about 11 acres of land when the respective leases reserve to the D.D.A. the right of resumption, and in leases expiring by efflux of time the option not to renew. The scheme approved must thus of necessity be dented to that effect as the objection of the D.D.A. in that regard and to that extent is valid and tenable.

Reservation in that regard appears also to have been made by the Delhi High Court in its judgment in C.W.P. No. 1281 of 1985 decided on July 22,1988. While dealing with possibility of a law and order problem, the court relied on the Delhi Cloth Mill's management's affidavit towards granting statutory compensation to the workers as well as its undertaking to pay, in some event, additional compensation. The Delhi Cloth Mills had in the affidavit stated that the additional compensation shall be payable on expiry of two years from the date the Delhi Cloth Mills is allowed by all the concerned authorities

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including the D.D.A. and Municipal Corporation of Delhi to redevelop its entire 63 acres of land at Bara Hindu Rao and Krishan Ganj, in accordance with the user stipulated therefore under the Master Plan for Delhi dated September 1962. The High Court in judging the stand taken by the delhi Cloth Mills made the following significant observations:

> "No assurance is extended by any competent authority to the workmen that the authorities shall not enforce the Master Plan or shall not insist for due compliance of the provisions of the Act and the regulations in the matter of the Mill. It is also doubtful if any one could opt out of the statutory provisions."

These observations make it clear that the D.D.A. cannot be said to have abandoned its right either as a statutory body or that of the lessor of land on leases held by the Delhi Cloth Mills by mere passing of the resolution afore-

mentioned, or correspondingly to have given any right to the workers.

We have been given the break up of those leases numbering 10. One of them pertains to 36425 sq. yards(about 7 acres) which is perpetual in nature and is not required to be renewed except that the rent is revisable after every 25 years. The remaining leases are in comparison short durated, some of which have expired and others are expiring in the year 2001. The unexpired period of leases is not long enough in the context of the project. besides there is an area which is said to be trespassed upon by the Delhi Cloth Mills. this area under durated leases and trespass totals about 4 acres. the Delhi Cloth Mills cannot be permitted to lay hands on this area as of right to further the scheme. there a common term in each respective lease reserving right to the lessor to determine the lease at any time if the land is required for public purpose in consideration of the land having been demised free of any premium. To involve this four acres of land in the scheme the D.C.M may have to work it out under a different shade and premise and not from this Court. The objection is thus insurmountable on this plain.

So far as the perpetual lease is concerned, its purpose covenants for residential, cultural and recreational purposes of staff and workers of the lessee and purposes ancillary thereto, in accordance with the rules and regulations in force in Delhi under the Municipality Act or any bye-laws framed by the lessor. It is further covenanted that for

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purposes of construction of building the approval of the lessor in writing is a pre-condition before the start of the construction, and further no alteration or addition in the building as approved by the lessor either externally or internally can be made without first obtaining the permission of the lessor in writing. Besides that if during the period of lease, it is certified by the Central Government that the premises are required for the purposes of the Central Government or any other public purpose, the lessor shall be entitled to take possession of the land together with all building structures etc. with certain consequences. It is thus plain and evident that even in the case of perpetual lease enormous residual control is left with the lessor who alone can accord permission to construct building for the specified purpose for residential, cultural and recreational purpose of the staff and workers of the Mill and purposes ancillary thereto, and on frustration of such purpose has the further right to treat the lease to have become void if the land is used for any purpose other than for which the lease was granted, not being the purpose subsequently approved by the lessor. Thus unless the D.D.A. grants approval to the change of user as asked and reconstruction, the Delhi Cloth Mills has no such deemed right or privilege ignoring the covenants and the terms of the lease. Thus it cannot be suggested that the resolution afore-mentioned has the automatic effect of the D.D.A. having granted change of user, consciously or impliedly, or vesting any right in that regard to the Delhi Cloth Mills. Here as well the D.C.M. would have to work out its plans with the D.D.A. under the terms of the lease without any further mandate from this Court in this regard. This objection also is insurmountable in the presence of the void clause.

Yet all is not lost for the Delhi Cloth Mills. It can still steer through its project in its owned 52 acres, even

though in a truncated from and submit an amended plan. On the other hand its relationship with the D.D.A. being that of a lessee and lessor permits a meaningful dialogue seeking extensions of lease periods, and change of permissive user in respect of 11 acres of land. It can make attractive suggestions to the D.D.A. for setting up cultural, educational, recreational and other facilities etc. at the expense of the Delhi Cloth Mills, if the project is to remain of the 63 acre size. It is the case of Delhi Cloth Mills that if it is allowed to involve the said 11 acres of land, the project would be better and it is prepared to pay any charges as are known to law to keep it as part of the project of the original size. Be that as it may we are no experts to opine whether a 52 acre project would be more viable or better or a 63 acre one. But since the project has in terms of our order dated March 13, 1990 to go on, the D.D.A.

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may if asked examine the suggestions. That is their field and not ours to decide.

Before concluding this Order, we cannot help remarking that both parties, i.e., the D.C.M. and the D.D.A. have to share mutually the blame for the present situation. The D.C.M. for its cavalier away in having asserted to own 63 acres of land and the D.D.A. in casually, without consulting its records, passing its Resolution No. 26 dated February 1, 1983 and communicating the same to the D.C.M. on 31-3-1983. Should the D.C.M. now confine its scheme and project to its owned 52 acres of land, abandoning any effort to have included the remaining D.D.A. owned 11 acres of land by negotiations, and the D.D.A. in not offering on its own, or otherwise, the said land to the D.C.M., the project as originally conceived would have to be spruced. It is evident from the proceedings of the Resolution that as per Master Plan, 23.14 acres have been earmarked for flatted factories and 43.39 acres as residential, though the sum total goes to more than 63 acres. Both these areas include areas set apart for facilities and amenities enumerated therein. The respective areas in that event would have to be reduced keeping in view the ground realities of ownership and the earmarking in the Master plan. Cuts inevitably may have to be employed in either area or both. Be that as it may, the scheme in the modified from would have to be brought in, not a new but as a substitute for the original scheme and that scheme would register its birth, legitimacy and binding force as of the original scheme. The mandate in this regard should be clearly understood by the parties concerned for they are under obligation to responsibly carry out the directions of this Court dated March 13, 1990, in all events, and share the burden of it, indeed as doing the blame.

With these observations, these applications are disposed of. No Costs.

T.N.A. Applications disposed of.

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