

PETITIONER:

M/S. SHORI LAL & SONS & ANT.

Vs.

RESPONDENT:

DELHI DEVELOPMENT AUTHORITY & ANT.

DATE OF JUDGMENT 01/12/1994

BENCH:

VENKATACHALA N. (J)

BENCH:

VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1995 AIR 1084

1995 SCC (3) 320

JT 1995 (1) 92

1994 SCALE (5) 88

ACT:

HEADNOTE:

JUDGMENT:

VENKATACHALA, J.:

1. This appeal by special 'leave is directed against the Order dated 1.2.1985 by which Writ Petition, C.W.P. No. 1264 of 1984 of the appellants was dismissed by the Delhi High Court.

2. Briefly stated, the facts are :-

Shori Lal and his minor sons were among those who migrated from Pakistan to India after its partition in 1947. In the year 1949 Shori Lal occupied 177 square yards of Government land out of Plot No. 10242, Motia Khan, Paharganj, Delhi for setting up a business in iron and steel under the name of his proprietary concern M/s. Shori Lal & Sons. In the year 1956, Shori Lal's proprietary concern M/s. Shori Lal & Sons became partnership firm since Shori Lal's first son, Krishan Kumar (Appellant-2), who on attaining the age of majority, was admitted as its partner. Shori Lal's second son, Manmohan Lal was also admitted as the partner of M/s. Shori Lal & Sons in the year 1962 when he attained the age of majority. In the meantime 322 square yards of land out of Plot No. 10242, Motia Khan, lying on the rear side of the land of 177 square yards of land, where M/s. Shori Lal & Sons carried on its iron & steel business came to be occupied by it in the name of its partner Krishan Kumar for its godown. However, M/s. Shori Lal & Sons carried on its iron & steel business in the said two places under a single Sales Tax number and by paying damages for occupation of both the lands in its name. Delhi Development Authority

94

(DDA) for purposes of assessing damages recoverable for 322 square yards of land in Plot No. 10242, Motia Khan, treated that land as Premises No. 117 and opened a file therefor as No.D/JH/KM-117. Further DDA for purposes of assessing damages recoverable for 177 square yards of land in Plot No. 10242, Motia Khan, treated that land as Premises No. 115 and opened a file therefor as No. D/JH/KM-115.

3. However, in the year 1975, DDA in its endeavour to clear up government land at Motia Khan, Delhi where iron & steel businesses were carried on by various persons and firms occupying it unauthorisedly, sought to allot to such persons and firms alternate plots for their businesses in the area covered by Naraina Warehousing Scheme. Sizes of alternate plots which were to be allotted to persons and firms, ready to shift from their plots in government land at Motia Khan, by vacating them, had to be done according to the following criteria:

Existing area under occupation Area to be allotted

Below 50 sq. yds.	91.86 sq. yds.
51 to 100 sq. yds.	125 sq. yds.
101 to 150 sq. yds.	172.22 sq. yds.
151 to 200 sq. yds.	200 sq. yds.
201 to 250 sq. yds.	250 sq. yds.
251 to 300 sq. yds.	300 sq. yds.
301 to 400 sq. yds.	400 sq. yds.
401 sq. yds.	450 sq. yds.

and above

4. On applications made to DDA for obtaining such allotment, Plot No. X-70 of 200 sq. yds. in Naraina Warehousing Scheme was allotted on 21.7.1975 in lieu of Premises No. 115 measuring 177 sq. yds. in Motia Khan and Plot No. Y-5 of 450 sq. yds. in Naraina Warehousing Scheme was allotted on 25.7.1975 in lieu of both Premises' No. 117 measuring 322 sq. yds. of land in Motia Khan and Premises No. 115 measuring 177 sq. yds. of land in Motia Khan.

5. But, on complaints received at a latter stage when it was discovered by DDA that Plots Nos. X-70 and Y-5 in the Naraina Warehousing Scheme allotted in lieu of extents of lands in Premises Nos. 117 and 115 in Motia Khan, had an extent of land far in excess of the extent of the land to the allotment of which appellants were entitled under the settled criteria and such allotment of excessive land had been obtained by Appellant-2 by practicing fraud on it, the DDA sought to withdraw the allotment of Plot No. X-70 of 200 sq. yds. in the Naraina Warehousing Scheme made in favour of the appellants and retake possession of the same from the appellants. When the DDA sent the communication dated 5.5.1984 to the appellants about the withdrawal of such allotment and the retaking of possession of Plot No. X-70, the appellants challenged the validity of that communication, by filing writ petition, C.W.P. No. 1264 of 1984 in Delhi High Court. But the High Court dismissed that Writ Petition by its order

95
dated 1.2.1985. It is the question of sustainability of that order of the High Court which arises for consideration in the present appeal by special leave filed by the appellants adverted to at the outset.

6. Since the arguments advanced before us in the present appeal were rounded on certain orders made by this Court earlier, reference to them has become necessary. First order made by this Court on 17.9.1985 relates to issue of Notice on S.L.P. confining it for consideration of the question of cancellation of allotment of Plot No. X-70. Another order made by this Court on the S.L.P. on 18.12.1985 reads:

"The matter is adjourned for one month to enable Delhi Development Authority to take appropriate action on a uniform basis against all the persons mentioned in paragraph 24 of

the Special Leave Petition and the additional affidavit dated 6.9.85. The Delhi Development Authority cannot discriminate between persons belonging to the same class and equally situated. The report shall be submitted by DDA within a month in this respect. The matter shall be listed on 27th January, 1986."

7. By subsequent order dated 17.2.1986 made by this Court on the S.L.P., Special Leave is granted and a direction is given thus:

"We direct the Delhi Development Authority to constitute a Committee of Inquiry to look into the several allegations made by the petitioners as regards the irregularities committed in the matter of allotment of plots in the Naraina Warehousing Scheme, Phase 1."

8. The argument advanced on behalf of the appellants by their learned Senior Counsel, Shri Soli Sorabjee was that this appeal of the appellants was required to be allowed, the order of the High Court under appeal set aside and the order of the DDA cancelling the allotment of Plot No. X-70 made in favour of appellant-1 quashed since the DDA had failed to carry out the directions of this Court contained in the Order dated 18.12.1985 and the Order dated 12.7.1986 as regards constitution of Enquiry Committee to look into irregularities in allotment of plots and submit a report to this Court in the matter even if it had a justifiable ground to cancel the order of allotment of Plot No. X-70 made by it in favour of appellant-1.

9. From the order made by this Court on 18.12.1985 at the SLP stage, which we have excerpted already, DDA was directed specifically to examine the cases of double allotments of plots mentioned in Paragraph 24 of the Special Leave Petition, and submit a report thereon to this Court. But, as seen from the original files of the DDA, a Committee has been, no doubt constituted by it to examine the cases of double allotment of plots mentioned in Paragraph 24 of the Special Leave Petition requiring it to make a report in the matter for placing the same before this Court. Then, when another order dated 17.2.1986 of this Court, already adverted to by us, has come to be passed granting Special Leave in the SLP and directing the DDA to constitute 'an Enquiry Committee to look into the serious irregularities alleged to have been committed in the matter of allotment of plots by the DDA in Naraina Warehousing Scheme, Phase-1, matter of enquiry does not appear to have been pursued by the DDA. As seen from the files of the DDA the Enquiry Committee said to have

96
been constituted to look into the irregularities committed in the matter of allotment of plots in Naraina Warehousing Scheme, does not appear to have even met after 23.1.1990. The question is, whether this inaction of the DDA should become the ground for us to uphold the allotment of plots of land made in favour of the appellants, even though the second allotment of plot had been obtained by appellant-2 far in excess of the area to which the appellants were entitled and the cancellation of allotment of Plot No. X-70 made in favour of appellant-1, was rightly not interfered with by the High Court? We do not think that the facts of the present case warrant upholding both the allotments of plots made in favour of the appellants by the DDA and interfering with the cancellation by the DDA of allotment of Plot No. X-70 made in favour of appellant-1 by it for the reasons which we shall, presently set out.

10. Appellant-1 is a partnership firm with partners, the 2nd appellant - Krishan Kumar, his brother - Manmohan Lal and his father - Shori Lal, is an admitted fact. While the business of iron and steel was carried on by that firm in Premises No. 115, Premises No. 117 in the name of its partner, Krishan Kumar appears to have been used as its godown. If there were to be more premises than one occupied by a partnership firm and its partners to carry on iron and steel business in Motia Khan area, such persons were entitled to obtain alternate plot/plots limited to the area specified in the aforementioned criteria, the same being the policy of the DDA to provide alternative plots for the persons who had to vacate the plots in Motia Khan area and get plots in the area covered by the Naraina Warehousing Scheme or other schemes. But, what has been done by Krishan Kumar, as disclosed from the original DDA records, in getting allotments of Plot No. X-70 measuring 200 sq. yds. and Plot No. Y-5 measuring 450 sq. yds. in Naraina Warehousing Scheme is nothing short of fraud played by him on the DDA, even though connivance of officers of DDA in the matter cannot be ruled out. The contents of application for allotment made by Shori Lal, his statement relating to Premises No. 115, Motia Khan and the contents of allotment order allotting Plot No. X-70 in lieu of Premises No.115, Motia Khan, as disclosed from the excerpt of the original application for allotment are these:

"I Shori Lal son of Shri Ram Singh for and on behalf of M/s. Shod Lal & Sons have today 21st July, 1975 voluntarily handed over peaceful possession of Premises No. D/TH/KM/115, Motia Khan, to DDA and shifted to Naraina Warehousing Scheme. I have not been allotted any plot by the DDA.

Area = 117 sq. yds.

Pre-1960

Sd/- in Urdu

Signature of the Applicant

He may be allotted Plot No. X-70

Measuring 200 square yards

Countersigned

Sd/

(Executive Officer)"

11. Then, when it comes to Krishan Kumar's original application for allotment, his statement relating to surrender of possession of Premises No. 117 and Premises No. 115, Motia Khan, and the allotment order made on the basis of such statement allotting Plot No. Y-5 in lieu of Premises 97

No. 117 and Premises No. 115, Motia Khan. reads thus:

"I. Krishan Kumar s/o Shri Shori Lal. Krishan Kumar and Manmohan Lal for and on behalf of M/s. Shori Lal have today 27th July, 1975 voluntarily handed over peaceful possession of Premises No. D/TH/KM/117 & 115 Motia Khan to the Delhi Development Authority and shifted to Naraina Warehousing Scheme. I have not been allotted any plot by the DDA.

Area = 499

Pre - 1960

K.K.Moga

Sd/-

Signature of the Applicant

Sd/-

Krishan Kumar

He may be allotted Plot No. Y-5

Measuring 450 sq. yards.
Countersigned
Sd/
(Executive Officer)"

12. As becomes clear from the contents of the above application and the above allotment order. an application is made by Krishan Kumar to get allotment of a plot of land for M/s. Shori Lal, Krishan Kumar and Manmohan Lal. the partners of M/s. Shori Lal & Sons in lieu of both Premises No. 117 and also Premises No. 115 in Motia Khan because of handing over possession of them to the DDA. The statement made therein in the handwriting of Krishan Kumar himself that "I have not been allotted any plot by DDA" in unequivocal language indicates that he had not been allotted any plot in lieu of both Premises No. 117 and Premises No. 115. Motia Khan. is a falsehood. in that, for Premises No. 115. handed over by Shori Lal he had already obtained 200 sq. yds. of Plot No. X-70 of Naraina Warehousing Scheme.

13. As has been pointed out by us earlier. there were two files, one relating to Premises No. 117 which was No.D/JH/KM/117 covering an area of 322 sq. yds. and another relating to Premises No. 115 was No.D/JH/KM/115 relating to 177 sq. yds. When the allotment of alternate plot was made in favour of M/s. Shori Lal. Krishan Kumar and Manmohan Lal. both the files being the areas of two premiseses are taken together as 322 sq. yds. + 177 sq. yds., their entitlement for allotment is considered to be 499 sq. yds. of one plot. But. under the criteria of allotment of alternate plots to which we have referred to. the area of such plot could not have exceeded 450 sq. yds. That is how for both the premiseses. i.e., Premises No. 117 and Premises No. 115. appellant-1 and its partners including appellant-2 are given Plot No. Y-5 of 450 sq. yds. in Naraina Warehousing Scheme. This also becomes clear from allotment letter issued to all the three partners by the DDA. If Krishan Kumar had not stated in his application that he was not given an alternate plot for both the premiseses. i.e., Premises No. 117 and Premises No. 115. Motia Khan. New Delhi. and if he had not stated that he had surrendered both of them. there would not have been any scope for the DDA to allot to him a huge Plot No. Y-5. measuring 450 sq. yds. which was the only full entitlement in lieu of two premises. It is these glaring facts which have led us to the conclusion that Krishan Kumar. appellant-2. has played fraud on the DDA in making a wilful misrepresentation about the handing over of possession of premiseses as also the non-obtaining of alternate plots in his application for

98
allotment. When such fraud is the cause for obtaining the allotment of Plot No. Y5 measuring 450 sq. yds. in Naraina Warehousing Scheme, there could be no justification for retention by the firm and its partners earlier allotment made of Plot No. X70 measuring 200 sq. yds., which would be beyond their entitlement. Since this Court, while issuing notice on S.L.P., has limited the consideration of this appeal to the question of cancellation of allotment of Plot No. X-70 in Naraina Warehousing Scheme, we find that the cancellation of that plot by the DDA was rightly upheld by the High Court by dismissing the Writ Petition of the appellants. That order of the High Court does not call for our interference.

14. The next question is, whether DDA, which has failed to carry out the specific orders of this Court in holding the enquiry in respect of double allotments and irregularities alleged to have been committed in making allotment of

alternate plots, and making a report thereon, should be proceeded against by taking contempt action against it. Public bodies like, DDA, which are trustees of public properties, and are to carry out public functions, in our view, cannot escape their accountability for their failure to carry out the orders of this Court made in public interest. The officers of the DDA, who are guilty of inaction, in our view, should be proceeded against in contempt action. Adoption of such course, in our view, is necessary for the reason that if the officers of the DDA or similar public bodies are directed by this Court to confer benefits on certain ineligible persons either because of such officers' inaction or because of conferment by such officers of similar benefits on others who were ineligible for them, the same could result not only in public loss but also in providing unwarranted protection to officers from their liability for punitive action on account of wrongs committed by them. However, in the facts of the present case, DDA and its concerned officers, we feel, should be given a further opportunity to carry out the orders of this Court in the matter of constituting an Enquiry Committee and enquiring into the irregularities or illegalities adverted to in the orders and making a report therefor, before making them liable for inaction, if any. We, therefore, propose to grant as a last chance to DDA and its concerned officers three months' time to comply with the orders of this Court made on 18.12.1985 and on 17.2.1986, and make a report of remedial action taken in the matter, before proceeding to take contempt action against them for non-compliance with the orders of this Court. The Registry of this Court shall put up this case for orders in the matter immediately on the expiry of three months from today.

15. Subject to the above directions given to DDA and the Registry of this Court, we dismiss this Civil Appeal, but without costs. C.M.P. No. 38020 of 1980 of petitioners therein for impleadment as supplemental respondents in this Civil Appeal is rejected as not surviving for consideration. However, a copy of this order be sent forthwith by the Registry of this Court to the Chairman, Delhi Development Authority, Vikas Bhawan, Indraprasta Estate, New Delhi, with a view to enable the D.D.A. to comply with the directions given . to it therein.