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

Pronounced on: 30.01.2009

+ W.P. (C) 1497/2000

INDIAN INSITITUTE OF ARCHITECT Petitioner
Through: Mr. K.R. Chawla with
Ms. Monika Singhal, Advocates.

versus

UOI Respondent
Through: Ms. Monica Garg, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

% Issue Rule. Ms. Monica Garg, Advocate on behalf of respondent waives notice of Rule. With consent of counsel, the matter was heard finally.

2. The petitioner claims the Writ for quashing of an order issued by the Land & Development Office (L&DO) whereby the allotment of its plot No.4, Lodi Road Industrial Area (hereafter called the 'plot') cancelled.

3. The facts necessary to decide this case are that the petitioner is a Society of Architects. It had applied for allotment of a plot; on 22.3.1979,

L&DO allotted the plot, which measures 1051.33 Square Yards on perpetual lease hold basis. An agreement was executed in this regard on that day. Clause-II of the lease deed stated that within 24 calendar months from the date of handing over of the possession, the lessee was to, at its own expenses construct a building, upon the plot. The petitioner adverts to a further demand for additional payment of consideration by the L&DO on 12.6.79 and its expressed inability to do so, (in its letter) accepted by the L&DO on 30.11.1979. It is alleged that the possession of the plot was handed over on 19.12.1979. Soon thereafter the plot was sought to be re-developed in view of a proposed road widening. It is contended that this process involved diminution of plot area by 29.6 Sq. Yards. Eventually the plot was handed back to the petitioner, sometime in 1987. It is claimed that in the meanwhile, the petitioner had applied for sanction to construct upon the plot. It is a matter of record that the petitioner sought for "No Objection Certificate" from the L&DO sometime in 1990. In the meanwhile, the plot apparently was encroached upon; the respondent had inspected the land and issued notice to the petitioner on 23.1.1987 alleging contravention of the lease deed.

4. The L&DO issued NOC to the petitioner on 26.11.1990; the latter applied to the local authority i.e. Municipal Corporation of Delhi (MCD) for sanction of its building plans. This was eventually granted on 28.2.92. Soon thereafter apparently in 1993, the alleged encroachers (who had occupied a

part of the plot) approached the Civil Court claiming injunction; an ex-parte stay was granted. The ex parte injunction was vacated on 25.4.1993 after which the plaintiff in that case approached this Court through a Civil Revision, which was dismissed on 26.4.94. It is contended that the said suit was dismissed in 1998.

5. The petitioner had on 12.12.1990 furnished an undertaking stating that it would pay such sums as were to be determined by the L&DO and get the encroachment cleared within six months. However, in view of the subsequent events whereby the suit was filed, the petitioner was unable to do so. In the circumstances, on 29.9.1999, the L&DO issued the impugned order demanding a sum of Rs.2,16,26,904/- on account of misuse of the land, non-construction and unauthorized occupation.

6. It is contended by the learned counsel that the impugned order should be set aside because the petitioner was a victim of circumstances beyond its control. He contends that initially construction could not be undertaken on account of re-development of the plot. That process was completed in 1987. By that time, a part of the plot had been encroached. The encroacher himself sought a restraint order against the petitioner, the lawful owner. The proceedings in that regard finally ended sometime in 1998. In the meanwhile, the petitioner sought for building sanction, which was granted on 28.2.1992 by the local authority. The petitioner also filed a Suit for possession impleading the said alleged encroachers being Suit No.1918/1999

on the file of this Court. The Suit was, however, transferred after the pecuniary limit of the jurisdiction of the Court was raised to Rs.20 lacs. The suit is pending and has not proceeded further.

7. The L&DO contends that the impugned order is justified in the circumstances of the case. Counsel points to the impugned order where differential rates are disclosed for the period 1986-1999. It is contended that the authorities were conscious of the fact that the plot was subject to development and, therefore, excluded the period of 8 years. It is further claimed that the petitioner has not explained why delay occurred in its approaching the Court for a decree of possession. These clearly point to its ineptitude and indifference regarding protection of the plot. It is further contended that the misuse and damage charges have further increased, for which the Petitioner is squarely responsible. Urging that the Court should not intervene, L&DO contends that the plot can be re-allotted to some other deserving organization.

8. The factual discussion shows that the petitioner entered into a lease deed with the L&DO on 22.2.1979, in terms of which, it had to construct upon the plot within 24 months of handing over of the possession. There is no dispute about certain facts, which occurred till 1987 such as possession being handed over in December, 1979 and the plot being subject to re-development, which led to decrease in its size – the process being completed in 1987. At that point of time, the L&DO inspected site and discovered some

encroachment; the petitioner was put to notice and asked to take steps to have the encroachment removed and misuse rectified. The matter remained thus till 1990 when the petitioner sought for an NOC; the same too was granted on 26.11.1990. The petitioner's application for sanction of its plan was granted on 28.2.1992. In the meanwhile, the L&DO had granted extension to the petitioner; in respect of the condition to construct upon the plot, by its letter dated 7.2.1991. The material part of that letter reads as follows: -

“With reference to your letter dated 19.12.1990, I am to say that the extension of time for execution of the construction on the plot allotted to the Institution is allowed up to 30-6-1991. The terms and conditions as mentioned in this office letter No.LII-1(209)/86/502 dated 4-9-1990 and 26-11-1990 will be settled separately”.

9. The alleged encroacher filed a Suit in 1993 and secured an ex parte injunction. The injunction was later vacated in 1994; however, the Suit continued to be pending on the file of the Trial Court till it was dismissed in 1998. The respondents issued the impugned demand on 29.9.1999. The said demand is premised on misuse charges for the period 9.7.1986 to 30.9.1999. The L&DO has based its demand on 4 different block periods i.e. 7.9.1986 - 23.4.1990; 24.4.1990 - 9.2.1992; 10.2.92 - 7.12.1998 and 8.12.1998 - 28.1.1999. All these are based on misuse charges in respect of specific areas occupied by the encroachers described as tea stall and M/s Taj Nursery. The L&DO has also demanded damages towards unauthorized

construction and collective interest. After the orders of this Court, the L&DO issued further demand on 23.11.2004 for a total amount of Rs.5,37,34,627/-.

10. The above narration of facts discloses that the petitioner showed indifference towards the condition of the plot and did not secure it at least from 1987. The first time when it approached the authority for NOC was in 1990. The discussion would show that the petitioner was casual to its commitment and disinterested as did not care to take steps towards putting up any construction; it approached the authorities in 1990 when the NOC was granted. The sanction for construction was granted by the MCD on 28.2.1992. At that stage, the alleged encroachers approached the Court and obtained a stay. The petitioner could perhaps legitimately claim helplessness on that score. Yet it cannot completely disclaim any responsibility because it filed the Suit to seek eviction from the land and obtain possession in 1999. The alleged encroacher's suit was dismissed only in 1998. The petitioner suit is still pending and has not been decided by the Trial Court. According to counsel, the Trial Court has not taken further steps in view of the pendency of the present writ proceedings.

11. Having regard to the above facts, the picture which emerges is that although the petitioner showed indifference, it would be harsh to saddle it with liability for the entire period. No doubt, the L&DO noticed the encroachment in 1987, yet the petitioner took steps to have the NOC and sanction between 1990-92. In between the respondent also granted

extension of time, (of course subject to the condition of payment of charges). In these circumstances, the L&DO should not have sought damages for misuse and unauthorized construction from the petitioner for the entire period. Doing so would be unreasonable, because for some periods the matter was in fact beyond the petitioner's control. No doubt, the allotment made was for purpose of utilization of the plot; yet the period between 1992 and 1999 should not be included for the purpose of calculating misuse and damage charges.

12. In view of the above, at least in respect of two distinct periods i.e. 9.3.1990 to 28.2.1992 (till it obtained the sanction from the MCD), and thereafter as the petitioner was subject to an interim order, which prevented it from taking any steps towards recovery of possession and the clearance of the encroachment, the L&DO should not claim any damages and charges. In the circumstances, L&DO could not have claimed misuse and damage charges for the period 9.3.1990 till 1.1.1999.

13. Having regard to the above, the following directions are issued: -

(a) The petitioner's suit, which is now re-numbered as 348/2007 pending before the Additional District Judge, Tis Hazari titled as **Institute of Architects v. Shri Narender Singh & Ors.** shall be decided on its merits within six months from today.

(b) The impugned orders dated 29.1.1999 and 24.9.1999 are hereby quashed.

(c) The petitioner shall intimate the outcome of the Suit to the L&DO, which shall thereafter proceed to take an informed decision having regard to the pendency of the Suit and after considering the order sheet in the same, and subject to the above judgment.

The Writ Petition stands disposed of, in the above terms.

Order dasti.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 30, 2009
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