

(2006) 04 DEL CK 0086
In the Delhi High Court
Case No : WP (C) No. 3896 of 2003

Birla Centre for Medical Research and Another	APPELLANT
Vs	
Lt. Governor and Others	RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 137, 145, 226
Environment (Protection) Act, 1986 — Section 3(2), 3(3), 5
Supreme Court Rules, 1966 — Order 40 Rule 1

Citation : (2006) 04 DEL CK 0086

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ravinder Sethi and Sumit Bansal, for the Appellant; J.M. Sabharwal and Anil Sapra, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Quashing of letter No. F.11(40)81/IL/2699 dated 14.8.2002 addressed by Deputy Director (IL), DDA to the petitioner has been prayed for. By and under the said letter, petitioner has been informed that its request for allotment of land has been rejected by the competent authority and it has been decided to refund the payment made by the petitioner. Consequential prayer directing DDA to execute perpetual lease deed in favor of the petitioner has also been made.

2. Alternative prayer is that if lease deed cannot be executed for the allotted land, DDA be directed to allot another site to the petitioner.

3. Briefly stated, relevant facts necessary for the present decision are that the petitioner which is a society registered under the Societies Registration Act applied to DDA for allotment of land in an institutional area for setting up a hospital.

4. After processing the application and finding that it was eligible for allotment of land for setting up of a hospital, vide letter dated 1.12.1983, DDA allotted 3.5 acres land to the petitioner at Vasant Vihar. Petitioner was intimated that it would have to pay land cost for 2.975 acres at a provisional rate of Rs. 10,000/- per acre and for 0.525 acres it would have to pay at a provisional rate of Rs. 6,00,000/- per acre. It was indicated that a perpetual lease would be executed and annual ground rent @ 2.5% of the premium would be charged. Petitioner was directed to pay the provisional premium in the sum of Rs. 3,44,750/- within 60 days of issuance of the letter dated 1.12.1983.

5. Requisite sum was deposited by the petitioner on 3.1.1984. Possession of the site was handed over to the petitioner on 8.1.1985.

6. After taking possession, on 14.5.1985, petitioner wrote a letter to DDA informing that inspection of the site by its Architect revealed that the site was totally undeveloped. Site had deep undulations averaging from 5 to 10 meters. There was no approach road nor was there evidence of any external services. Request was made that some other alternative site be allotted. Taking cognizance of the letter dated 14.5.1985 written by the petitioner, on 21.10.1985, Director (City Planning) DDA wrote a letter to the petitioner informing that the matter regarding change of location was under consideration. Matter remained pending on the aforesaid request of the petitioner. DDA received representations from residents of a Group Housing Complex nearby requiring an extension of the road. DDA started considering the feasibility of extension of road between the SFS Pockets and the site allotted to the petitioner. Things went into a slumber as parties interacted only in the year 1992 thereafter.

7. As per the petitioner, on 7.5.1992, DDA issued a show cause notice to the petitioner alleging that as per terms of the allotment, building had to be constructed within two years from the date of possession. None was constructed. Petitioner was called upon to show cause as to why allotment be not canceled and possession resumed.

8. Vide letter dated 21.5.1992, petitioner submitted its response to the show cause notice. It pointed out that the site was totally undeveloped. No external services existed. There was no approach road. Site had deep pits. That all this was intimated to DDA in the month of May, 1985 with a request to change the site. DDA assured the petitioner that it was looking into the matter. Accordingly, petitioner requested that the show cause notice be dropped.

9. No order was passed by DDA pursuant to the show cause notice. Matter remained as it was. The year 2000 came.

10. On 4.10.2000, petitioner requested that perpetual lease be executed. After exchange of correspondence, on 18.4.2001, DDA forwarded the perpetual lease requiring the petitioner to pay the requisite stamp duty and obtain endorsement from the Collector of Stamps on the perpetual lease deed.

11. On 31.7.2001, petitioner requested DDA to construct the approach road and provide external services so that it could take up the construction of a hospital at the site. In the meanwhile, petitioner deposited the ground rent up to the period 2001.

12. Having paid the stamp duty and having obtained endorsement from the Collector of Stamps, on 16.11.2001, petitioner submitted the conveyance deed in the office of the Assistant Director (I) DDA with a request that conveyance deed be executed at the earliest. On 28.1.2002, DDA intimated to the petitioner that the perpetual lease would be executed in the office of the Sub- Registrar on 28.1.2002, Petitioner was directed to furnish the specimen signatures of the person who would act on behalf of the petitioner.

13. As per the petitioner, date for execution of the perpetual lease was postponed to 31.1.2002. This date was also canceled. No further date was intimated. On 7.2.2002, petitioner sent a query to the Assistant Director (I) DDA as to what date was fixed by him for executing the perpetual lease.

14. Without hearing anything further, impugned order dated 14.8.2002 was received by the petitioner. It protested vide the letter dated 26.8.2002. Petitioner highlighted the reason why site could not be utilized. Petitioner pointed out that show cause notice issued in 1992 was replied to. No order was passed, meaning thereby, proceedings were dropped. Entire ground rent was paid. Perpetual lease had to be executed. DDA had to intimate the date when representative of the petitioner had to appear before the Sub-Registrar. There was no reason to cancel the allotment.

15. Various letters were addressed by the petitioner to the Lt. Governor and to the office of the Chairman, DDA. Since, no response came from DDA, present writ petition was filed.

16. Stand adopted by DDA is that after allotting the land on 1.12.1983, physical possession was handed over on 8.1.1985. If petitioner had a problem with the site, petitioner ought not to have taken over possession. Having taken over possession, petitioner started raising non-issues. As per Clause 4 of the letter of allotment dated 1.12.1983, petitioner was obliged to complete construction of a building on the plot within two years from the date possession was taken over. Request for alternative site being allotted was rejected. Justifying decision to cancel the allotment and refund the premium received, DDA pleaded that the site allotted to the petitioner was a part of International Hotel Complex in Vasant Vihar project. As per directions issued by the Hon''ble Supreme Court, it had to be maintained as a green area. According to DDA, issue of alternative allotment was considered but was rejected at the highest level i.e. at the level of Lt. Governor for the reason, it was noted that when site was allotted to the petitioner it was free from the rigors of the orders passed by the Hon''ble Supreme Court. Since 1985 petitioner did not construct any building on the site. Petitioner was responsible for the delay. Since Supreme Court order put an

embargo on construction, allotment had to be canceled and petitioner was not entitled as a matter of right to an alternative site.

17. Further pleadings came on record for the reason, DDA made a passing reference to some orders passed by the Supreme Court as per which the site had to be maintained as a green area. Further pleadings highlighted that a letter written by the well known writer and social activist, Shri Kuldip Nayar, to the Supreme Court was treated as a public interest litigation. In the said letter, Shri Kuldip Nayar pointed out to the Supreme Court that approximately 50 hectares of land in Vasant Kunj area was intended to be developed by DDA as an International Hotel Complex. The site of International Hotel Complex, if utilized for construction, would adversely affect the biodiversity of the city of Delhi. He pointed out that the land was a part of the South and South- Central ridge.

18. Taking cognizance of the aforementioned letter, Supreme Court initiated proceedings on 30.8.1996.

19. Responding to the notice issued by the Hon''ble Supreme Court, DDA informed that International Hotel Complex was conceived of on 315 hectares of land which was not comprised in the South or South Central Ridge. DDA informed that as per Master Plan for Delhi, 315 hectares of land was indicated for various urban uses. DDA informed that 100 acres was intended to be used for residential purpose, 8 hectares for commercial purpose, 41.5 hectares for public and semi-public buildings, 18.5 hectares for transportation and 147 hectares for recreational purposes. DDA stated that for an aesthetic development, competitive bids were invited from architects to design the layout. DDA informed that layout for the entire 315 hectares of land would form the basis of future development.

20. On 13.9.1996 after hearing the parties, Hon''ble Supreme Court passed the following order :

The proposal of Delhi Development Authority (DDA) called - International Hotels Complex on 315 hectares of prime land situated in South Delhi is before us for consideration. In the affidavit filed by Mr. Arun Mhaisalkar, Commissioner (Planning), (DDA), the details of the development in respect of the said 315 hectares has been given. It is not disputed that the Master Plan of Delhi 2001 was amended on June 17, 1995 where-under out of the total area of the complex the area assigned for residential purposes was reduced from 100 hectares to 49 hectares and for commercial purposes increased from 8 hectares to 65 hectares. Apart from that 39 hectares have been earmarked for public and semi public; 15 hectares for transportation and remaining 147 hectares for recreational purpose.

It is stated in the affidavit that there is an acute shortage of tourist accommodation in Delhi and as such it is necessary to provide sites for 4/5 Star Hotels, Institutions, Hospital, Shopping Mall etc. It is about 23 km away from Southern and South Central Ridge.

We have heard Mr. V.B. Saharya, learned Counsel for DDA and also Mr. P.C. Jain,

Consultant, Planner, DDA. We have heard Mr. Mehta, Dr. Rajiv Dhawan and others, learned Counsel assisting us in this matter.

Mr. Sunder Subramanian, Member of Citizens for the South Western Lake Wilderness and Others and of PILSARC, has filed an affidavit pursuant to this Court's order dated September 4, 1996. It is stated in the affidavit that the area is topographically a part of the South Ridge which is to South Delhi what the Central Ridge is to Central Delhi. It is further stated in the affidavit that the area is lake studded covering for 1000 acre. The affidavit indicates that the area was kept green under the 1962 Master Plan. In the Draft Zonal Plan of 1993 (ZDP Zone 121993-Z-P/F/93-52) of the DDA 2001 Master Plan. It is further stated that this area is the natural extension of Sanjay Van and notified reserve forest and a part of Ridge. Along with the affidavit, various photographs have been attached to depict the ecology of the area.

This court in Vellore Citizens Welfare Forum Vs. Union of India and others, has observed that the development and environment protection must go together. There should be balance between development and environment protection. It is, Therefore, necessary that before the proposed complex of the DDA is brought into execution, it should have environment clearance from the authorities concerned. The whole of the area has to be surveyed from the point of view of environment protection. In other words, the environment impact assessment of the area has to be done by the experts. We are of the view that the authority contemplated by Section 3(3) of the Environment (Protection) Act, 1986 (the Act) can be the only appropriate Authority to look into the environment protection side of the present project or any other project which the DDA or any other authority may initiate in future. Needless to say that the city of Delhi is already highly congested and has been rated by the World Health Organization as the 4th most polluted city so far as the air pollution is concerned. It is, Therefore, necessary that the development in the city should have environmental clearance.

We, Therefore, direct that the Central Government to constitute an Authority u/s 3(3) of the Act and confer on the said Authority all the powers necessary to deal with the environmental protection issues arising out of the project in hand or any other project which may in future come under its consideration. The authority shall be headed by a retired Judge of a High Court and it may have other Members - preferably experts in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said Authority the powers to issue directions u/s 5 of the Act and for taking measures with respect to the matters referred to in clauses (i), (iii), (iv), (v), (vi), (viii), (ix) and (xii) of Sub-section (2) of Section 3 of the Act. The Central Government shall constitute the Authority before October 10, 1996. This Authority shall have the jurisdiction over the National Capital Region as defined under the National Capital Region Planning Act, 1985.

Needless to say that the authority so constituted shall keep in view the

precautionary principle and other principles laid down by this Court in Vellors Citizens Welfare Forum's case (supra). The authority shall lay down its own procedure.

We further direct that till the time the complex is cleared by the Authority so constituted by the Central Government, there shall be no construction and no development of any kind in the area by the DDA or by any other authority. The DDA can, however, clean the area and plant trees if they so wish.

The proceedings initiated on Kuldeep Nayar's letter are disposed of.

21. DDA realized that the stand taken by it as reflected in its affidavit filed before the Supreme Court had projected a wrong picture before the Court. DDA realized that 92 hectares of land had already been developed and institutional and commercial plots carved out and allotted under perpetual lease to third parties. DDA realized that this 92 hectares of land was otherwise not to be developed as per plans to be prepared by the architects to be shortlisted. This 92 hectares of land was indicated in 315 hectares of land for the purpose of the architects to keep in view the sanctioned development of this 92 hectares of land and integrate the same with the remaining land so that aesthetics could be maintained.

22. Before DDA could seek any clarification direction, Unison Hotel Ltd., to whom a hotel site had been allotted by DDA on part of 92 hectares of land which was approved for development as per the layout plan already sanctioned by DDA, moved the Supreme Court. In the said proceedings, DDA filed an affidavit under the signatures of Shri Vijay Risbud, Commissioner (Planning). In the said affidavit, inter alia, DDA stated as under :

That the project of International Hotel Complex - Vasant Vihar evolved by Delhi Development Authority raised some apprehensions in the mind of certain citizens and Shri Kuldeep Nayar, wrote a letter to Supreme Court of India against the proposal and development in this area. The subject matter of the letter petition filed by Shri Kuldeep Nayar before the Hon'ble Supreme Court was the environment issues. It is submitted that as per Delhi Development Authority's understanding the issues raised by Shri Kuldeep Nayar did not apply to the existing on going projects in this area. These on going projects were planned, developed and partly disposed off, were included in the competition dossier with a view to harmonize and integrate with the proposed complex. Therefore, for this reason Delhi Development Authority did not mention these projects in the affidavit of the Commissioner (Planning) filed before the Supreme Court of India.

However, it is pertinent to mention to the fact that in that area there already existed plots which had already been sold way back in 1992-93 and which were included only for the purpose of integration in the proposed complex and marked as constraint area. It is clarified that out of 315 ha project area, about 92 ha is already planned and allotted by Delhi Development Authority and treated as Constraint Area for the competition. This 92 ha of Constraint Area is meant for :

a) Residential : The Kusumpur and Hill View Apartment (15.00 ha) Kusumpur and two pockets of SFS housing of Hill View Apartments are already habitated.

b) Commercial : Shopping Mall and Hotel Site (25.00 ha).

The design of shopping mall is approved by Delhi Urban Arts Commission and the development works are in progress at site. One Five Star Hotel site was auctioned on 01.03.1993 for Rs. 32.25 crores to M/s Unison Hotels Ltd. and the building plans were sanctioned on 23.02.1996 and thereafter construction activity was started by the Hotelier.

c) Public and Semi Public Facilities : Area already allotted and recommended for allotment (24.00 ha)

In the 24 ha area institutional plots are already allotted to School of Planning and Architecture, New Delhi etc. and in some cases recommended for allotment.

d) Recreational : Provision has been kept for green buffer spaces within the Constraint Area. These are located along 30 mt. Wide road. Nelson Mandela Road and South Western Boundary of the project area (23.00 ha).

In the recreational area one site each of sewage pumping station (SPS) and electric sub station (ESS) are proposed. The SPS construction was going on as per the affidavit filed by the Delhi Development Authority in the Supreme Court of India for connecting the peripheral sewerage line of Vasant Kunj area to Ghatoni Sewerage Pumping Station. The ESS site earth filling and laying of cables was also in progress. These works relate to the provision of utilities in the area.

e) Transportation : 30 mt. wide road already constructed (5.00 ha)

In the Constraint Area of 92 ha for access of plots of various uses 30 mt. wide road has already been constructed.

In view of above, the proposed hotels complex is actually in an area covering 223 ha of land and 92 ha of Constraint Area is to be integrated in the overall planning and design for 315 ha area for which National Urban Planning and Design Competition was launched.

The Constraint Area of 92 ha was included in the project of 315 ha with a view to integrate with overall planning of the project of 315 ha area without changing the use and the location of Constraint Area (92 ha) which was already planned, developed and partly disposed off.

23. On 19.9.1997, Hon"ble Supreme Court clarified upon its order dated 13.9.1996. Following order was passed:- "Having heard learned Counsel for the parties and the learned Additional Solicitor General we are satisfied that this Court's order dated 13.9.1996 on I.A. No. 18 in WP(C) No. 4677/85 is in effect to govern the constructions made under the proposal of the Delhi Development Authority (DDA) called the "The International Hotels Complex" in South Delhi

and mention of the area of 315 hectares to that Complex is inadvertent since the DDA's proposal itself excluded the constraint area described at page 33 of the paper book (page 13 of the booklet) which is a total of 92 hectares including the shopping mall and hotel site of 25 hectares within which is located the site of the petitioner's proposed hotel under construction in an area of 4 hectares. In other words, the proposal of the DDA called "The International Hotels Complex" in South Delhi is to be understood as that for the area of $315 - 92 = 223$ hectares as shown in the DDA's proposal itself. This clarification of this Court's order dated 13.9.1996 has become necessary on account of the fact that the concerned authorities are construing the order dated 13.9.1996 to operate also in respect of the aforesaid constraint area of 92 hectares in addition to some other areas which are even outside the area of 315 hectares. However, it is made clear that the petitioner and all others similarly situate outside the 223 hectares of the areas of the proposal of the DDA are required to abide by all the conditions of clearance from the environmental authorities including taking the measures necessary for checking pollution and all other requirements of law.

In view of the manner in which this Court's aforesaid order dated 13.9.1996 is to be construed, the orders of the Authority of 31st January, 1997 and 7th March, 1997 do not survive

24. Therefore, position which emerges qua 315 hectares of land in Vasant Vihar area is that treating entire 315 hectares of land as requiring environmental protection, vide order dated 13.9.1996, Hon'ble Supreme Court directed an authority to be constituted u/s 3(3) of the Environment (Protection) Act, 1986 with power to deal with environment related issues and till the entire complex i.e. 315 hectares of land was cleared by the authority so constituted, no construction or development could be carried out by DDA on 315 hectares of land. But, when in the proceedings initiated by Unison Hotel Ltd., DDA's response came on the record in the shape of an affidavit filed by Shri Vijay Risbud, Commissioner (Planning), Supreme Court modified its order dated 13.9.1996 by and under order dated 19.8.1997. Hon'ble Supreme Court excluded 92 hectares of land from the purview of its order dated 13.9.1996. Meaning thereby, that construction on this 92 hectares of land could proceed ahead as per development plans finalized by DDA. Needless to state, picture projected before the Supreme Court was that plots carved out on this 92 hectares of land were already allotted to third parties and premium was received.

25. Unfortunately, site in question was not included in the 92 hectares of land which was stated before the Supreme Court as part of approved layout plan and plots carved out thereon and allotted to third parties.

26. Why this happened has not been projected in the pleadings of the parties, but since record was summoned and with the assistance of counsel for the parties was gone through, position which emerged was that DDA approved layout of 92 hectares in Vasant Vihar area and as per plan, showed the roads, plots, shopping complex, hotel, School of Planning and Architecture, electricity sub-

station and other utilities which had to come up. In 1983, when DDA allotted the site in question to the petitioner, it located the site opposite Hill View Apartments, Block-A, but unfortunately, did not carry out consequential amendments in the approved layout plan. Had 3.5 acres site been shown in the layout plan after amendment, while projecting the picture before the Supreme Court in relation to the approved layout and allotted plots, plot of the petitioner would have been shown as developed i.e. constraint area would have been more than 92 hectares, and fate of the land would have been the same as was the fate of the plots carved out for the purpose of constructing buildings on 92 hectares land. Since this factual position was not projected before the Supreme Court, site of the petitioner fell within the rigours of the order dated 13.9.1996 passed by the Hon''ble Supreme Court.

27. Learned counsel for DDA, Shri Jagmohan Sabharwal, Senior Advocate contended that the impugned letter of cancellation was a result of the site being covered by the order dated 13.9.1996 passed by the Hon''ble Supreme Court and, Therefore, DDA could do nothing in the matter. However, learned Senior Advocate very fairly conceded that if afore-noted faux pas had not occurred, site of the petitioner would have been at par with the plots carved out on 92 hectares land in respect whereof clarification / modification direction was issued by the Hon''ble Supreme Court in terms of order dated 19.8.1997.

28. Shri Ravinder Sethi, Senior Counsel appearing for the petitioners urged that in view of law laid down by the Hon''ble Supreme Court in the decisions reported as AIR 1994 SC 1046, Maharashtra State Coop. Cotton Growers M.F. Ltd. v. M.S.C.C. Growers M.F.E.U. JT 1993 (5) SC 27 , Prakash Chandra Pathak Vs. State of Uttar Pradesh, , P.C. Pathak v. State of U.P. 1976 SC 1766 Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, Deb Narayan Shyam and Others Vs. State of West Bengal and Others, Deb Narayan Shyam and Ors. v. State of W.B., since order dated 13.9.1996 passed by Hon''ble Supreme Court was pursuant to wrong facts being projected and order dated 19.8.1997 passed by the Supreme Court while giving necessary clarifications once again proceeded on incomplete fact being projected before the Supreme Court, relief must be granted to the petitioner by this Court for the reason, impugned letter of cancellation was a result of the site being treated as falling in the 223 hectares of land falling outside the constraint area. Alternatively, counsel submitted that DDA should be directed to allot an alternative site to the petitioner. Counsel urged that since the petitioner has lost the site due to the default committed by DDA, petitioner must be recompensed with an alternative site.

29. To the alternative submission made by Shri Ravinder Sethi, learned Senior Counsel for the petitioner, Shri Jagmohan Sabharwal, learned Senior Counsel for DDA urged that the site was handed over to the petitioner in the year 1985. After taking possession, petitioner started raising non-issues. Had petitioner commenced and completed construction of the building, problem would not have

arisen. Counsel urged that as per latest policy of DDA, hospital sites are no longer being allotted at predetermined rates. These have to be auctioned. Petitioner is free to participate in an auction as and when DDA offers sites for hospital.

30. Having given a thoughtful consideration to the submissions made by the learned senior counsel for the parties and in view of the facts as noted above, question of alternative allotment would need to be decided if the site in question cannot be utilized by the petitioner. But can this Court issue directions which would amount to modifying the order dated 13.9.1996 and the order dated 19.8.1997 passed by the Supreme Court?

31. Relying upon certain passages from the decisions in para 28 above, it was sought to be urged that a decision founded on a wrong fact or a decision where a relevant fact was not brought to the notice of the court would not be a precedent and, Therefore, this Court would be justified in directing DDA to treat the petitioner's site as forming part of the constraint area and to be treated at par with sites in the constraint area i.e. within 92 hectares of land where development work and construction work was permitted by the Supreme Court as per its order dated 19.8.1997.

32. I may note here that the term "constraint area" used by DDA in its affidavit filed before the Supreme Court is probably a misnomer because of the fact that DDA was projecting that 92 hectares land was under developed as per approved layout plan and, Therefore, suffered from no constraint. It was the remaining 213 hectares of land which had a constraint, in that, had yet to be approved for development. I am so recording because during arguments repeated confusion was being caused as the word constraint normally connotes limitation, restriction or inhibition. As is to be noted from the facts noted above, the constraint was on 213 hectares of land and not on 92 hectares of land. Having said that, I return from where I made the limited afore-noted departure.

33. In the decision reported as AIR 1994 SC 1046, Maharashtra State Coop. Cotton Growers M.F. Ltd. v. M.S.C.C. Growers M.F.E.U., their Lordships of the Supreme Court did not follow an earlier decision relating to the same award for the reason their Lordships noted that the earlier decision was a result of a factual presumption not borne out by the facts. Decision reported as 1976 SC 1766 Regional Manager and Anr. v. P.K. Dubey, guides as to how ratio decidendi of a decision has to be understood and applied. Their Lordships held as under :

7. ...It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. 34. Decision reported as Prakash Chandra Pathak Vs. State of Uttar Pradesh, relates to applying decisions in penal offences with a caution in the following words:

It is enough to say that decisions even of the highest court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts. The general principles governing appreciation of circumstantial evidence are well established and beyond doubt or controversy. The more difficult question is one of applying those principles to the facts and circumstances of a particular case coming before the court. That question has to be determined by the court as and when it arises with reference to the particular case. It is no use, Therefore, appealing to precedents in such matters. No case on facts can be on all fours with those of another. Therefore, it will serve no useful purpose to decide this case with reference to the decisions of this Court in previous cases. We have to determine whether on the facts and circumstances disclosed in the evidence which has been accepted by the courts below, the crime charged against the appellant has been made out.

35. Decision reported as *Deb Narayan Shyam and Others Vs. State of West Bengal and Others*, deals with when a decision passes sub-silentio. Decision reported as *JT 1993 (5) SC 27, S. Nagraj and Ors. v. State of Karnataka and Anr.* deals with the power of the court to correct itself on Realizing that an earlier decision was based on a wrong fact or was the result of a relevant fact not being brought to the notice of the court. In para 18 and 19 of report, their Lordships observed as under:

18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction and but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative Law the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (R.M. Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the court correcting the mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favor of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In AIR 1941 1 (Federal Court) the court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The court approved the principle laid down by the Privy Council in *Rajinder Narain Race v. Bijai Govind Singh* 1 Moo PC 117 that an order made by the court was final and could not be altered.

Basis for exercise of the power was stated in the same decision as under :

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order been inadvertently made as if the party had been heard.

Rectification of the order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed and substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary to make such orders as may be necessary in the interest of justice or to prevent the abuse of the process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

36. It is trite that a mistake of fact can be rectified and should be rectified at the stage when the mistake is noticed. It is equally correct that a mistake does not bind a party. As observed in *Nagraj's case* (supra) justice is a virtue which

transcends all barriers and that the entire concept of writ jurisdiction exercised by higher court is founded on equity and fairness. Indeed, where court finds that an order was passed under a mistake, the court would take corrective action.

37. Decisions cited deal with how decisions of the court, in relation to the factual premise on which the decisions are rendered, should be treated when cited in subsequent proceedings or where between the same parties or similarly situated parties mistake surfaces. But the question with which I had concerned in the present proceedings is whether it would be appropriate for this Court to issue a mandamus which would interdict orders passed by the Hon'ble Supreme Court.

38. Exercising power under Article 226 of the Constitution of India, a High Court exercises writ jurisdiction over authorities and tribunals subordinate to the High Court. Under the constitutional scheme, power of this Court under Article 226 of the Constitution of India is a plenary power. A High Court may not be subordinate to the Supreme Court in the context of administrative supervision but in the hierarchy of judicial pyramid, a High Court would be bound by the decision of the Supreme Court and indeed, would be obliged to follow them. It would be impermissible for a High Court not to follow the decision of the Supreme Court on the ground that the decision is on a erroneous assumption of a fact or is the result of a relevant fact not being projected before the Supreme Court.

39. Orders passed by the Supreme Court are final and binding as far as this Court is concerned. I cannot, Therefore, issue a mandamus which comes into conflict with the mandamus issued by the Supreme Court.

40. Before bringing the curtain down, I may note one fact. During pendency of the writ petition, parties approached the Environment Pollution (Prevention and Control) Authority constituted pursuant to orders passed by the Supreme Court. Since the land in question fell within 213 hectares of land i.e. outside 92 hectares qua which Supreme Court passed the order on 19.8.1997, the Committee held that no construction was permissible. Impact on environment due to proposed construction was not decided.

41. Remedy of the petitioner, which I may note, I had suggested during arguments was to move a curative petition or an application before the Supreme Court in the proceedings which were taken up pursuant to the letter written by Shri Kuldeep Nayyar. Appropriate remedy for the petitioner would be to inform the Hon'ble Supreme Court, by way of a petition or an application that in the petition filed by Unison Hotel Ltd., affidavit filed by Shri Vijay Risbud, Commissioner (Planning) erroneously mentioned that only 92 hectares of land was within constraint area for which lay out plan had been sanctioned and plots sold to third parties. Petitioner ought to go before the Supreme Court and inform that site allotted to the petitioner was inadvertently not included as a part of the constraint area. Petitioner should project that the constraint area was where plots were allotted. That plot was allotted to the petitioner in the year 1983. Money was paid in 1984 and possession taken over in 1985. Petitioner ought to

go and inform the Supreme Court that it has to be treated at par with other allottees of plots in the constraint area. Petitioner ought to pray that the site be treated at par and as part of the constraint area.

42. Since I am leaving the issue to be raised by the petitioner before the Hon''ble Supreme Court and I do not know as to what would be the fate of said proceedings, if initiated by the petitioner, I need not deal with the alternative submissions made regarding entitlement to an alternative plot for the reason, if the petitioner were to succeed before the Hon''ble Supreme Court, the said issue would be a non-issue.

43. Advising the petitioner to move the Hon''ble Supreme Court for necessary clarifications, I discharge the rule without granting relief as prayed for.

44. Petition stands disposed of. There shall be no order as to costs.