

(2009) 11 DEL CK 0057
In the Delhi High Court
Case No : LPA No. 499 of 2001

D.D.A.	Vs	APPELLANT
Meenakshi Choudharie		RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0057

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sangita Chandra, for the Appellant; Sumeet Sharma, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned Counsel for the parties state that the appeal may be disposed of after hearing them today itself.

2. DDA is aggrieved by the order dated 29.05.2001 allowing WP(C) No. 4197/2000 filed by the respondents.

3. The reason given by the learned Single Judge in allowing the writ petition is as under:

When the matter taken up by this Court on 19.9.2000, the court directed that subject to the petitioner depositing the amount of penalty according to the norms of the DDA within two week from the date of the order, the DDA would not re-enter the possession of the premises. This order was challenged by the petitioner by view of a letters patent appeal. The LPA was disposed of by the Division Bench by order dated 19.03.2001. It was held by the Division Bench that it appeared to them that since the requisite infrastructure was not available on the site the petitioner could not be expected to raise the construction. According to the Division Bench for raising construction, electricity was one of the requirements: the other requirement was of a sewer pipeline. The Counsel for the MCD had informed the Division Bench that till the date of passing of the order, there was no proper light in the area. The Division Bench was, therefore,

of the view that when the authorities themselves had failed to provide the requisite infrastructure, they could not ask the petitioner to pay penalty for not raising the construction. The Court, therefore, held that the petitioner could not be asked to pay the penalty imposed by the DDA for non construction of the allotted plot. This order passed by the Division Bench has not been challenged by the petitioner. A Division Bench of this Court having already held that the petitioner could not be directed to pay the penalty imposed by the DDA for non-construction of the allotted site and the delay in not constructing the plot was entirely on account of the authorities having failed to provide requisite infrastructure, in my opinion, nothing further survives in this petition except to issue a direction to the DDA to issue no objection certificate to the petitioner without insisting upon the payment of the penalty for construction of building on the site in accordance with the plan approved by the MCD.

4. It may be noted that the learned Single Judge has allowed the writ petition with reference to an order dated 19.03.2001 passed by a Division Bench of this Court disposing of LPA No. 541/2000.

5. Let us note the relevant facts in brief.

6. DDA had raised a demand on 13.12.1999 charging belated construction charges inasmuch as DDA alleged that since the writ petitioner had not completed the construction of an industrial building on the plot given to the petitioner under a perpetual lease, DDA was entitled to charge composition fee. The writ petitioner challenged the levy of composition fee alleging that basic amenities were not made available, in that; there was no sewer line, no water line and no electricity in the area. It was alleged that in the absence of the said 3 facilities the writ petitioner was obstructed in raising the construction.

7. On 29.05.2001, the learned Single Judge passed an interim order directing that upon the writ petitioner depositing the composition fee as demanded by the DDA, requisite no objection certificate would be issued by DDA so that the writ petitioner could obtain sanction from the Municipal Corporation of Delhi to erect an industrial building on the plot in question.

8. The writ petitioner challenged the said interim order dated 19.09.2000 by filing an appeal which was registered LPA No. 541/2000.

9. The appeal was allowed vide order dated 19.03.2001. It was directed as under:

We have heard learned Counsel for the parties on the aforesaid issue. It appears to us that since the requisite infrastructure was not available on the site the appellant could not be expected to raise the construction. For raising the construction, electricity is one of the requirements. The other requirement is of water. The third requirement is of a sewer pipe line. We are also told by the learned Counsel for the MCD that even till date there are no proper roads in the area. When the authorities themselves had failed to provide the requisite infrastructure they cannot ask the applicant to pay penalty for not raising the

construction. In the interest of justice, the appellant cannot be asked to pay the penalty imposed by the DDA for non-construction of the allotted plot. Accordingly, the appeal is allowed and the order of the learned Single Judge is set aside.

10. It is thus apparent that the learned Single Judge has allowed the writ petition on merits with reference to an order passed by the Division Bench, which was passed at an interim stage of the matter. Needless to state, LPA No. 541/2000 was directed against an interim order dated 19.09.2000. Thus, the life and span of the order dated 19.03.2001 disposing of LPA No. 541/2000 was obviously limited to an interim arrangement between the parties till the writ petition was heard.

11. It is settled law that observations, findings or directions given by a Court at an interim stage are never treated as a final expression on merits with reference to the subject matter of the view.

12. Thus, learned Single Judge could not have allowed the writ petition treating the order dated 19.03.2001 disposing of LPA No. 541/2000 as conclusive of the controversy between the parties.

13. The observations of the Division Bench were limited to prima facie findings for the purposes of grant of an interim order.

14. We note that the DDA has challenged the order dated 19.03.2001 and the SLP is still pending before the Supreme Court.

15. Conscious of the fact that proceedings relating to interim orders are still pending, noting that in the interregnum the learned Single Judge has disposed of the writ petition on merits; findings being as afore-noted, we allow the appeal and set aside the impugned order dated 29.05.2001 allowing the writ petition.

16. Since the writ petition has been allowed treating the order dated 19.03.2001 in LPA No. 541/2000 as conclusively determining the questions raised and required to be adjudicated on the pleadings of the parties, we observe that nothing said in the order dated 19.03.2001 shall be read as conclusively opining on the issue raised in the writ petition. Likewise, nothing said by us in the present order would be treated as an expression on the merits of the controversy. The learned Single Judge would proceed to re-decide WP(C) No. 4197/2000 on merits.

17. The appeal stands disposed of setting aside the order dated 29.05.2001.

18. WP(C) No. 4197/2000 is restored to its original position for fresh adjudication on merits.

19. Learned Single Judge would take note of the observations in the present order while re-deciding the matter.

20. The writ petition would be listed for directions before the learned Single

Judge on 11.01.2010.

21. Learned Counsel for the parties shall be deemed to have served with a notice of the date fixed before the learned Single Judge and for the date fixed i.e. 11.01.2010 no notice need be issued to the parties.

22. No costs.