

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

**SUBJECT : WINDING UP**

Writ Petition (Civil) No.16830/2006

Date of decision: October 24 , 2008

DR. VIJAY KUMAR GUPTA ... Petitioner  
through: Mr. Sanjay Sharawat, Advocate  
with Mr. Sunil Verma, Advocate  
and Petitioner in person.

VERSUS

DELHI DEVELOPMENT AUTHORITY  
and ANOTHER ...Respondents  
through: Mr. Yeeshu Jain, Advocate for  
the Respondent No.1.  
Mr. O.P. Arya, Advocate with  
Mr. Y. Sharma, Advocate for  
the Respondent No.2.

GITA MITTAL, J

1. By this judgment, I propose to decide this writ petition filed by the petitioner wherein the following relief has been sought:- “(a) Pass an appropriate writ, order or direction in the nature of Mandamus directing the Respondent no.1 to allot an alternative plot to the petitioner in lieu of the plot bearing No.36, Pocket “ 2, Block “ B, Sector “ 16, Rohini, Delhi admeasuring 60 Sq. mtrs. as per the terms and conditions of the original allotment and in the same sector or in any other similarly developed sector and location; and (b) Pass an appropriate writ, order or direction in the nature of Mandamus directing the respondent no.1 to pay to the petitioner a compensatory damages quantified as Rs.20,00,000/- (Rupees twenty lakhs only) for violation of the fundamental right by non delivery of the plot in

question till date despite allotment being made in 1985 and possession delivered in 1988.”

2. There is no material dispute by the respondents to the facts placed by the petitioner before this court. It is an admitted position that the Delhi Development Authority, respondent no.1 herein, announced a scheme for allotment of plots in 1981 in new project which was named as “Rohini Residential Scheme” in the North-West part of Delhi.

3. The petitioner applied for allotment of a plot of 60 sq. meters size on 25th March, 1981 and also deposited Rs.5,000/- as earnest money as required by receipt no.02683 of this date with the respondent no.1. In a computerised draw of lots held on 25th March, 1985 by the DDA, the petitioner was successful in drawing a plot bearing no.36, Pocket II, Block B, Sector 16, Rohini admeasuring 60 sq. meters (hereinafter referred to as the `plot'). The demand-cum- allotment letter issued by the respondent no.1 to the petitioner required him to make payment of the balance amount of Rs.5,702/- as per schedule by the 31st May, 1985 while the total cost of the plot was fixed at Rs.12,011/-. The petitioner remitted the requisite amount of Rs.5,702/- vide a demand draft admittedly received by the DDA on 3rd August, 1985.

4. The petitioner made applications dated 14th October, 1987 and 15th October, 1987 to the DDA to hand over the possession of the plot along with the requisite documents. By a communication of 31st October, 1988, the DDA informed the petitioner of its intention of handing over possession of the plot and he was required to appear for this purpose at the site office. The petitioner reached the site office of the respondent no.1 on 8th December, 1988 as required where physical possession of the plot was handed over to him. The DDA also issued the possession letter along with the lay out plan of the plot to the petitioner.

5. On the 2nd of July, 1996, the respondent no1 required the petitioner to furnish additional documents including the ration card, photographs etc. for preparation of a lease deed. These documents were furnished by the petitioner to the DDA on the 12th May, 1997.

6. The petitioner has claimed that he submitted all the required documents to the DDA on 12th May, 1997 and thereafter kept awaiting receipt of the lease deed papers and information with regard to the time and date for execution of the lease deed at Mandsaur, M.P. where he was permanently residing.

Despite passage of about one and a half years, no information was received by the petitioner from the DDA. The petitioner states that he came to Delhi on 11th February, 1999 to meet his relatives and on 15th February, 1999 went to see his plot. To his shock, a double storey building had been raised on the plot and the name plate of Mr. S.N. Swami, respondent no.2 herein, was affixed on the entrance gate. The respondent no.2 did not give any satisfactory responses to the petitioner and only informed him that he had bought the plot from its owners.

7. The petitioner immediately submitted a complaint to the Deputy Commissioner of Police of the Crime Branch, ITO, Delhi on 16th February, 1999. The petitioner also approached the DDA by complaints made on 15th March, 1999 and 29th April, 1999 requesting the DDA for removal of the unauthorised construction carried out on the plot in question. It was requested that a criminal case be got registered against the culprits who had forged and manipulated the allotment of the plot in favour of the respondent no.2. The petitioner was so asserting title to plot as he was the allottee of the plot and had paid the entire amount towards the cost thereof and possession had been handed over to him, while only the lease deed remained to be executed. As no action was taken by the DDA, the petitioner approach the Lt. Governor, Delhi with a complaint on 15th June, 1999. It was only thereafter that a criminal case was registered bearing FIR No.205/1999 dated 15th June, 1999 under Sections 420, 448, 468, 471 and 120-B of the Indian Penal Code at the Police Station Prashant Vihar, Delhi.

8. The petitioner has stated that the DDA informed him on 1st July, 1999 that further action in the matter would be taken on receipt of a report from the Delhi Police and he was required to await the outcome of the investigation. It was the investigation by the police which revealed to the petitioner that by fraud, forgery and impersonation, a registered lease deed of the plot had been executed on 28th November, 1996 and registered on 2nd December, 1996.

9. On investigation by the police, one of the persons investigated, Shri Brij Kishore, had stated that the file of the plot no.36, Pocket II, Block B, Sector 16, Rohini was obtained from the dealing clerk Shri L.K. Jha because the real owner of the said plot had never visited the DDA office. It was in evidence that Shri L.K. Jha, a UDC with the DDA had planned the sale of this plot. This Shri L.K. Jha, was arrested by the police on 21st July, 1999. Apart from the UDC of the DDA, its superintendent Shri Prem Lal and the

lease officer Shri Indira Singh (LAO) were also investigated with regard to the execution of the lease deed.

10. In the charge-sheet filed by it, the police has noted that according to these officers, the concerned file of the plot in question was missing. For this reason, no action could be taken against these officers due to lack of complete evidence. In this background, the police filed a charge-sheet dated 11th October, 1999 against seven persons which includes Shri Lalit Kumar Jha, an employee of the DDA. The petitioner has contended that the illegal acts were conducted with the complicity and active involvement of the officials of the DDA which is manifested from these facts.

11. In the counter affidavit which has been filed by the DDA before this court, the DDA has admitted that when it came to know about the execution of the lease deed of the plot in reference under forged signatures in the name of the respondent no.2, it required the Crime Branch of the Delhi Police to investigate the same. It has also been further submitted that the DDA also initiated a departmental inquiry against the dealing clerk/assistant in whose possession the file of the plot in reference was entrusted and also placed the seven other persons under suspension and initiated inquiry against them for their suspected role in the incidents.

12. Interestingly, despite the passage of almost a decade, the departmental inquiry has not been concluded and the DDA is unable to inform the court about its fate.

13. Be that as it may, so far as the execution of the lease deed is concerned, in the counter affidavit it is admitted that on “2nd November, 1996, the lease deed with regard to the plot of land was got executed by somebody impersonating as the petitioner and his wife in the name of the respondent no.2”. It is thus admitted that the lease deed was executed under forged signatures.

14. It is noteworthy that the DDA has also stated that vide a letter dated 2nd July, 1996, four sets of lease deed papers were issued in the names of the petitioner and his wife with the request to get it stamped from the office of the Collector of Stamps which the petitioner deposited on 12th May, 1997. The DDA has not placed anything on record to show that these papers were actually dispatched to or received by the petitioner. The petitioner has disputed receipt of any such documents from the DDA. The petitioner has

also submitted that he has not paid the stamp duty nor deposited these documents with the DDA. Record from the dispatch section could have been produced by the respondent if it existed. This is not done.

15. So far as the respondent no.2 Shri S.N. Swami is concerned, he has contended that “the petitioner and his wife are strangers to him as they are not the persons in whose favour the DDA executed the lease deed in respect of the plot in question on 28th November, 1996 and got it registered on 2nd December, 1996”. He has further contended that he was a bona fide purchaser for good consideration and has acted in good faith after purchasing the plot from the ostensible owners, duly identified by the real owner, that is the DDA, who had admittedly created/transferred the ownership in favour of the transferees. This respondent has also submitted that as per the plan submitted by the transferees and approved by the Delhi Development Authority, he had constructed a two and a half storeyed residential house spending an amount of Rs.8,00,000/- and that since 10th July, 1997 he is residing therein.

16. The respondent no.2 has also filed a civil suit bearing Suit No.329/1999 against the DDA, Shri Vijay Kumar Gupta, the present petitioner and his wife Smt. Maya Gupta as defendants, seeking permanent injunction. It would be useful to examine the contentions of the respondent no.2 in the plaint so far as execution of the document is concerned in paras 1 to 4 and 9 of the plaint and the stand of the DDA in its written statement:- Plaint filed by the respondent no.2 Written statement of the DDA “1. That the plaintiff purchased plot no.36 admeasuring 60 sq. situated in block B, Pocket 2, Sector 16 in Rohini Residential Scheme of the DDA against proper consideration from two persons pretending to be defendants nos.2 and 3 through a property dealer, namely Shri Subhash Swami in Dec., 1996. 2. That the perpetual lease deed in respect of the aforesaid plot was duly executed in favour of the same persons, pretending to be defendants Nos.2 and 3 by defendant no.1 on 28.11.1996 and was got registered with their photographs before the Sub Registrar VI, New Delhi in the presence of the witnesses on 2.12.1996. That the contents of para No.1 of the plaint as stated by the plaintiff are not correct as such not admitted. The defendant nos.2 and 3 have never transferred their rights regarding the said plot to any body and also not received any consideration in any manner. 2. That the contents of para no.2 of the plaint as stated by the plaintiff are not correct as such not admitted. The said plot was allotted in the name of defendant no.2 by the Delhi Development Authority and possession of the said plot was also

handed over to the defendant no.2. Then after the defendant No.2 has completed the entire required formalities according to the satisfaction of the DDA authorities for getting execution of the lease deed but the DDA authorities have not executed any lease deed in favour of defendant no.2 and afterwards it revealed that the plaintiff in collusion with certain other persons and also certain staff members of DDA got executed and registered the alleged forged leased deed by affixing photographs of certain other persons. 3. That the two persons in whose favour the lease deed was registered, executed agreement to sell and other various documents of sale/transfer on the same day, i.e. On 02.12.1996. The documents executed include General Power of Attorney, Special Power of Attorney and Will which were also registered with their photographs by the said Sub-Registrar. True copies of the perpetual lease deed, GPA, SPA, Will, Agreement to Sell and other documents are filed. 3. That the contents of the para no.3 of the plaint as stated by the plaintiff are entirely wrong and incorrect as such not admitted. The defendant nos.2 and 3 have never executed Agreement to sell, General Power of Attorney, Special Power of Attorney and Will as alleged by the plaintiff in para no.3 of the plaint were got executed by the plaintiff in a planned way by entering into criminal conspiracy in collusion with certain offenders with intent to grab the plot as detailed at the end of the plaint. 4. That physical possession of the above stated residential plot along with its all original documents including the letter of allotment and letter of possession was handed over to the plaintiff by the above said two persons pretending to be defendant nos. 2 and 3 through the said property dealer after receipt of consideration on the same day i.e. 02.12.1996. As it was settled between the parties the above said two persons and the property dealer also got issued letter for extension of time for completion of construction, Form 4. That the contents of para no.4 of the plaint as stated by the plaintiff are absolutely incorrect and false as such not admitted. The alleged defendants nos.2 and 3 have never received any amount from any one regarding the plot in dispute as such no question arises to execute any document as alleged by the plaintiff. The defendant No.2 has never issued any letter for extension of time for completion of construction. Actually the defendant no.2 was waiting for the execution of the lease deed. This is all a foul play of the plaintiff. The plaintiff himself is the sole master B, D and E and the sanctioned plan in respect of plot no. 36 from defendant no. 1 and handed over to the plaintiff after receipt of the remaining consideration after two weeks. mind to chalk out this plan and got prepared certain documents with intent to grab the said plot illegally. The plaintiff is in the legal profession and very well acquainted with the pros and cons. 9. That the

plaintiff is a bona fide purchaser and is admittedly in peaceful possession of plot no. 36 having certainly a better title on the strength of the documents including the perpetual lease deed duly executed by the competent officer of DDA and duly registered by the Sub Registrar and the registered GPA, SPA and Will in favour of the plaintiff.” 9. That the contents of para no.9 of the plaint as stated by the plaintiff are also not correct and as such denied. The plaintiff is not a bona fide purchaser. The plaintiff is the main accused for the scam and has prepared all the forged documents regarding the plot in dispute. The said plaintiff is in the illegal occupation of the plot and as such liable to be evicted.

17. It is, therefore, apparent that the respondent no.2 herein has claimed and drawn his rights including possession based on the registered lease deed executed by the DDA in favour of the impostors who have further transacted and transferred the property in question in favour of the respondent no.2. In para 7 of the written statement of the DDA in Suit No.329/1999, it has been categorically admitted the involvement of some of its officials in executing the lease deed and passing of the building plan on the forged signatures and fake photographs. Therefore, It is an admitted position that the DDA, though empowered to take action in respect of the illegalities brought to its notice, has not taken any action at all despite the prohibitions even in the lease deed of further transacting and transferring the property. It is also noteworthy that in the light of the facts placed on record by the respondent no.2, the DDA was also a party to the sanctioning of the building plans in favour of the impersonators and that its officers have connived in the illegal acts done in respect of and on the plot including the handing over of its possession to the respondent no.2 and raising of construction thereon to the prejudice of the petitioner.

18. In the instant case, I am informed that even file of cases is missing from the office of the DDA.

19. A vehement plea has been raised by Mr.Yeeshu Jain, learned counsel representing the DDA before this court that the petitioner had filed a prior civil suit bearing Suit No.329/1999 and for this reason, cannot maintain the present writ petition. It is necessary to notice the prayers made by the petitioner in suit which was filed by him. In the suit filed on 22nd November, 1999, the petitioner had sought the following prayers:- “(a) That decree for mandatory injunction be passed in favour of the plaintiffs and against the defendants to the effect that the defendants be directed by the

Hon'ble Court to demolish the entire construction over the plot in dispute and after removal of the alleged construction, the vacant physical possession over the plot as detailed at the end of the plaint be restored to the plaintiffs in accordance with law within a specified period fixed by the Hon'ble Court and in case of default the demolition of the entire construction and thereafter its removal vacant physical possession be accordingly restored to the plaintiffs through the agency of the Hon'ble Court at the cost of defendants. (b) That decree for declaration be passed in favour of the plaintiffs and against the defendants to the effect that the lease deed executed on 28.11.1996 and also got registered on 2.12.1996 as Document Registration No.8717 Book No.1 Volume No.215 Page No.82 to 87 at the office of Sub-registrar VI Delhi by fraud and impersonation and using forged signatures and fake photographs of the plaintiffs be declared null and void or cancelled and there after due information in this regard be also sent accordingly to the concerned Sub- Registrar office for the purpose to make entries in the concerning records. (c) That decree for declaration be passed in favour of the plaintiffs and against the defendants to the effect that the alleged Special Power of Attorney dated 2.12.1996, General Power of Attorney dated 2.12.1996 purported to be executed by the name of Sh. Vijay Kumar Gupta and Deed of Will dated 1.12.1996 purported to be executed by the name of Smt. Maya Gupta, Receipt of Consideration, Agreement to Appoint Arbitrator, Construction Agreement, Indemnity Bond, Affidavit, Form B, D and E alongwith sanctioned plan and all other documents alleged or claimed by the defendant no.3 got to be executed or prepared regarding the said plot in dispute as detailed at the end of the plaint be declared null and void or cancelled. (d) That decree for mandatory injunction be passed in favour of the plaintiffs against the defendants to the effect that the defendant no.2 be directed by the Hon'ble Court to execute perpetual lease deed regarding the plot as detailed at the end of the plaint in favour of the plaintiffs in accordance with law within a specified time as fixed by the Hon'ble Court. (e) That decree for damages be passed in favour of the plaintiffs and against the defendants to pay Rupees 3000=00 (Three Thousands) per month as pendente lite and future damages for the illegal and unauthorized use and occupation from the date of the suit till the date of restoration of possession by the plaintiffs over the plot in dispute. The court fee in this regard shall be paid at the time of execution. (f) That cost of the suit may be awarded to the plaintiffs.”

20. In the written statement filed by the DDA on 4th October, 2001, the DDA had stated that the defendant no.3-Shri S.N. Swami (respondent no.2

herein) had raised illegal and unauthorised construction over the plot in question. It was also admitted in the written statement that the lease deed was executed with the help of forged signatures and fake photographs through the impersonation of Shri Vijay Kumar Gupta and Smt. Maya Gupta on 12th May, 1997. The respondent no.1-DDA in its written statement contended that:- “(a) the suit of the petitioner (plaintiffs) is not maintainable and that there is no cause of action to file the present suit; (b) the plot in question was allotted to the petitioner through computerized draw of lots and after issuance of possession letter and after handing over possession of the plot to the petitioner the lease deed papers were issued in the joint names of the petitioner and that thereafter the same were executed and registered by forged signatures and fake photographs and by impersonation as the petitioner; (c) DDA cannot take any action till the outcome of the criminal case as well as the outcome of the case filed by the respondent no.2.”

21. In the writ petition which has been filed by the petitioner, it has been explained that despite the passage of several years since 1999 and the admitted fraud so far as the rights of the petitioner is concerned, the DDA has not moved an inch. No action has been taken against its officials or the persons responsible for the fraud. In this background, the petitioner was left with no option but to file the present writ petition seeking allotment of an alternative plot in lieu of original plot in question and compensatory damages. There is no dispute that in the suit, the petitioner had claimed entitlement over the plot which was originally allotted to him but was fraudulently conveyed by DDA in favour of the impostor, who had occupied the same and transacted in respect thereof in favour of the present respondent no.2. All this was effected without following the prescribed procedure of informing the allottee in writing against recorded delivery of the allottee being required to complete the formalities for registration of the conveyance deed. No steps for verifying the identity of the allottee were taken. Despite these admitted facts, the DDA has taken no action at all against the impersonators for the admitted violations. The DDA has admittedly taken no action even in respect of the missing records. The same clearly point towards those who were involved in the transaction, execution of the document handing over possession to impostors, sanction of building plans, permitting construction thereon and occupation.

22. The respondent no.2 has at the same time, set up an independent claim placing reliance on the collusive acts of the officials of the DDA. In this

manner, the petitioner has been deprived of immovable property for no faults of his.

23. So far as the prayers of the petitioner for directions for allotment of an alternative plot and compensation are concerned, the DDA has opposed the same on the specious plea that investigation is still pending with the Crime Branch of the Delhi Police and that the report was yet to come. The submission is that in the absence of the report of such investigation, it would be difficult to ascertain as to who is the real culprit and without ascertaining the same, it would be unjust to pass orders or directions for an alternative plot or compensation in favour of the petitioner.

24. It is really unfortunate that such a stand is being taken despite the admitted position that the lease deed in respect of the plot has been executed by DDA in favour of impostors by fraud, forgery and impersonation. The DDA has nowhere contended that the lease deed has been executed in favour of the petitioner or attributed any complicity to him. On the other hand, it has been categorically stated that the lease deed bears forged signatures. It is also noteworthy that in the letter dated 31st October, 1988, the DDA had required the petitioner to submit a letter of undertaking to execute the lease deed when called upon to do so. The petitioner never received any intimation to execution of the lease deed.

25. It is trite that right, title and interest in immovable property can pass only by a registered document. It is an admitted position by the DDA that in the instant case, it has irrevocably passed right, title and interest in the subject land in favour of the impostors who have forged and fabricated signatures even though the allotment of the plot was made rightfully in favour of the petitioner.

26. My attention has been drawn to the brochure which was issued by the DDA in respect of the allotment of the plots in Rohini in the scheme of 1981. The same included terms and conditions for sale by the DDA on behalf of the President of India of lease hold rights in the residential plots under the Rohini scheme. The petitioner has placed reliance on the "lease conditions" stipulated in Clause 8 wherein inter alia it is provided thus:- "8. Lease Conditions xxx xxx xxx (iv) The lessee will not be entitled to transfer the plot before or after the erection of the building without the prior permission of the Lessor. Such permission will not be given for a period of ten years from the commencement of the lease unless in the opinion of the

Lessor, exceptional circumstances exist for the grant of such permission. However, a mortgage of the plot for the bone fide purpose of financing the construction may be allowed by the Lt. Governor, Delhi, if the mortgagee is the Government or an Insurance Co. or a Bank or Financial Institution or such other institution or such other institution approved by the Lt. Governor for this purpose. In the case of transfer, 50% of the unearned increase in the value (i.e. the value) of the plot at the time of transfer shall be paid to the Lessor. xxx xxx xxx (vii) If the lease of the plot is obtained by any misrepresentation, mis-statement or fraud or if there is any breach of the conditions of the lease, the lease will be determined and the possession of the plot and the building thereon will be taken over by the Lessor on the lessee will not be entitled to any compensation.”

27. It is also necessary to notice the stipulations contained in Clause 10 of the terms and conditions under the heading “Execution of the lease deed” wherein it is stated thus:- “10. Execution of Lease Deed xxx xxx xxx (ii) The allottee will after receipt of lease deed papers from the DDA, be required to return the lease deed duly stamped from the Collector of Stamps within a period of six months failing which the penalty will be charged as decided by the Lessor and the allotment will be cancelled after one year. The allottee will be required to execute the lease deed on a date for which he will be informed in writing and penalty will be charged if he does not come for execution as decided by the lessor.”

28. The DDA, which has been statutorily constituted and mandated under the provisions of the Delhi Development Act, 1957, to act fairly and to ensure the protection of the property. The DDA is enjoined even under the terms and conditions of the conveyance deed to take action where the lease of the plot is obtained by any mis-representation, mis-statement or fraud. It is also bound to take action if there is any breach on the condition of the lease.

29. Mr. Jain, learned counsel for the DDA, has set up a plea that possession having been handed over to the petitioner, it was the petitioner's duty to protect the same. Such a plea has to be noticed only to be rejected. DDA admits the fact that it was aware of the identity of the petitioner yet the registered conveyance of this plot has been admittedly executed by it in favour of the impostor thereby conveying all rights, title and interest therein to them.

30. Further, the DDA has processed building plans thereon in favour of an impostor and permitted construction to be raised by their transferee, namely the respondent no.2. The petitioner who was admittedly a resident of Madhya Pradesh and was not in Delhi, brought it to the notice of the DDA at the earliest in 1999.

31. So far as the suit is concerned, on the 14th November, 2006 when writ petition came up for hearing, the petitioner had made a statement that the suit would be withdrawn so that there is no multiplicity of proceedings. The petitioner consequently filed an application dated 15th November, 2006 under Order 23 Rule 1 of the Code of Civil Procedure, praying for leave to withdraw the suit with liberty to file a fresh suit subject to decision of the writ petition. The suit was consequently permitted to be withdrawn by the learned trial Judge on 16th November, 2006 with liberty as prayed for. In this background, certainly, the filing of the suit would not prejudice the claim of the petitioner in the instant case.

32. In the above noticed facts, there is no dispute that the plot allotted to the petitioner has been transferred by the DDA in favour of an impostor. There is also no dispute that the petitioner had complied with the terms of his allotment. The allotment was effected in favour of the petitioner in the draw of lots held on 25th March, 1985. It is admitted by DDA that the petitioner has been deprived of this plot in connivance with the officers of the DDA and it has taken no action of any kind. No effective administrative or departmental action has been taken in respect of the fraud.

33. To say the least, DDA has not proceeded even for tracing out records or taking action for failure to maintain and protect its records. Therefore, irrespective and independent of the stand taken by the respondent no.2, the petitioner cannot be deprived of his admitted rights. Perhaps if the matter stopped at mere dispossession, there may have been some difficulty. In the instant case, DDA has executed and registered a conveyance in favour of an impostor and sanctioned building plans in their favour, permitted construction and occupancy.

34. Therefore, so far as the petitioner is concerned, he has been reduced by these acts of DDA to the same position as an applicant to whom no allotment has been made. That the petitioner's turn has matured is evidenced by the allotment letter dated 25th March, 1985 admittedly written to him. DDA's stand in the suit filed by the respondent no.2 is that this respondent is

a party to the fraud. Looked at from any angle, it is DDA's admitted position that the petitioner is an innocent victim of a fraud to which its officials are party. There can be no denial to the fact that the petitioner is entitled to right, title and interest in an unencumbered plot. The question is whether the petitioner can be relegated to the position of having to wait for his a plot till adjudication in the civil suit filed by the respondent no.2 and the criminal trial. Such a stand in a case as the present is most inequitable and unfair. To say the least, DDA has not even sought a counter claim, let alone file any litigation based on its plea of fraud and impersonation to begin legal steps towards recovery of land. Not even a bare notice under the lease terms noticed above has been issued.

35. It is the petitioner's contention that he is presently aged about 68 years and is residing at the District Headquarters at Mandsaur (Madhya Pradesh) since birth. He was in the field of education for 38 years and in September, 2002 retired from Government service from the post of Principal of the Government PG College, Mandsaur (MP). Between the period 1998 to 2001, the petitioner was serving as a principal of the Government PG College, Neemuch (MP). His wife is stated to be a housewife presently aged 60 years. The petitioner has two daughters and a son while his daughters are married and residing in Delhi and Gurgaon. The petitioner has explained his desire of acquiring a property in Delhi. For the reason that his uncle, wife's sister, other relatives and his children are all residing in Delhi, the petitioner was of the intention of looking to settle in Delhi after his retirement.

36. The petitioner's claim in this writ petition rests on the stand taken by the DDA in Suit No.1045/1999 filed by him and the suit filed by the respondent no.2. He has sought a prayer in lieu of the prayer for the plot which stands conveyed to respondent no.2.

37. Almost eleven years have already passed since the 28th November, 1996 when the conveyance deed was fraudulently executed by DDA and 2nd December, 1996 when it was so registered. Even if the suit filed by the respondent no.2 was ultimately dismissed, and DDA were to then commence recovery proceedings, keeping in view the age factor, the possibility that the petitioner would be able to enjoy property to which he is is admittedly legally entitled, is difficult.

38. In this background, it has to be held that the petitioner is entitled to allotment of an alternative plot of the same size and in the same colony in

which he was allotted the plot on 28th March, 1985 on the same terms and conditions.

39. Matters do not rest here. It has been pointed out that the petitioner has been deprived of property to which he was legitimately entitled for over 18 years and has expended the time, money and energy on litigation apart from mental agony, pain and harassment on account of the uncertainty created by the afore-noticed acts. The petitioner has stated that his dreams of his living in his home nurtured from more than 35 years ago when he applied for a plot with DDA, were shattered and that he is living in rented accommodation at Mandsaur Madhya Pradesh.

40. Apart from the relief for grant of an alternative plot, the petitioner has prayed for a direction to the Delhi Development Authority to pay compensatory damages quantified at Rs.20,00,000/- for violation of the fundamental rights by non-delivery of the plot in question despite the allotment made in 1985.

41. This prayer is opposed by the respondent on the ground that the present proceedings would not be appropriate remedy for the same.

42. This very issue was raised before this court in WP(C) Nos.4328/2001 Ram Kishore Vs. MCD; WP(C) No.6360/2002 Mohd. Yasheen Vs. Lt. Governor and Ors.; and WP (C) Nos.7390-91/2005 Bhagwan and Anr. Vs. DDA decided by Muralidhar, J by a judgment dated 18.07.2007 laying down binding principles. Placing reliance on the pronouncement of the Apex Court in 1993 (2) SCC 746 Neelbati Behera Vs. State of Maharashtra at page 768, it was observed that the relief of monetary compensation, as exemplary damages in proceedings under Article 32 by the Apex Court or under Article 226 by the High Courts for established infringement of the indefeasible right carried under Article 21 of the Constitution is the remedy available in public law and is based on the strict liability for contravention of guaranteed basic and indefeasible rights of the citizens. The purpose of public law is not only to civilize public power but also to assure the citizens that they live in a legal system which aims to protect their interests and preserve their rights. The Apex Court held that when the court moulds the relief by guaranteed "compensation" in proceedings under Articles 32 or 226 of the Constitution, seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalties on wrong doers and fixing the liability for public wrong. The payment of compensation in such case is not to be

understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief, by an order of making a monetary amounts under the public law for the wrong done due to breach of public duty for not protecting the fundamental rights of the citizens. The compensation is in the nature of “exemplary damages” awarded against the wrong doers for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. The court also cautioned that the exercise of this remedy is to be tempered by judicial restraint to avoid circumvention by the private law remedy when appropriate.

43. These principles were further explained in (1997) 1 SCC 416 D.K. Basu Vs. Union of India wherein it was explained that a claim of a citizen for compensation of constitutional wrongs is based on the principles of strict liability to which the defence of sovereign immunity is not available and that the citizen must receive the amount of compensation from the state which would have the right to be indemnified of the action of the wrong doer.

44. Thus, constitutional jurisprudence has evolved recognising payment of compensation for constitutional tort and public law wrongs.

45. Following the principles laid down by the Apex Court, compensation has been awarded in several cases by this court including 1999 (79) DLT 432 Darshan Vs. Union of India wherein a Division Bench of this court was dealing with a claim by the widow and the minor children of one Skattar Singh, a bus driver, who had fallen into an open manhole and died of drowning. The plea taken in that case by the respondent that the writ petition was not maintainable since it involved disputed questions of fact, was rejected by reference to the decisions in Nilabati Behara and D.K. Basu. The other decisions of the court awarding compensation in the writ jurisdiction include Raj Kumar Vs. Union of India (2005) 125 DLT 653 which was upheld in Delhi Jal Board Vs. Raj Kumar (2005) 8 AD (Delhi) 533, Chitra Chary Vs. DDA (2005) 1 AD (Del) 29, Shri Chand Vs. Chief Secretary 2004 (112) DLT 37, Shobha Vs. GNCTD (2003) IV AD (Delhi) 492, Shyama Devi Vs. GNCTD (1999) 1 AD (Cr) Delhi 549, All India Lawyers' Union (Delhi Unit) Vs. Union of India AIR 1999 Del 120 and B.L. Wali Vs. Union of India (2004) VIII AD (Delhi) 341.

46. The earlier pronouncements of the Apex Court reported at (1983) 3 SCR 508 Rudul Shah Vs. State of Bihar and 1984 (1) SCR 904 Sebastian M. Hongray Vs. UOI, have also emphasized the distinction between the public law and the private law actions and the basis on which the compensation is to be awarded in such proceedings. In Nilabati Behera (Supra) at page 768, the Apex Court has observed that the purposes of the public law is not only to civilize the public power but also to assure the citizens that they live in a legal system which aims to protect their interests and preserves their rights. It is well settled that the public law remedy would be an exception having regard to the nature of inquiry undertaken by the court in exercise of extraordinary writ jurisdiction.

47. Such public law remedy when invoked, raises an issue as to the determination of the existence and extent of liability of the respondent and the consequent fastening of the liability on it. In response to a defence by the respondent that the petition involved disputed questions of facts, liability has been fastened on the respondent either by ordering an inquiry into the facts as was done in Nilabati Behera case (Supra). Where there is no dispute as to the extent itself, the courts have invoked the principles of *res ipsa loquitur*, thereby obviating any need for further inquiry into the facts.

48. In AIR 1966 SC 1750, Municipal Corporation of Delhi Vs. Subhagwanti, the court was concerned with three suits for damages at the instance of the legal heirs of three persons who had died as a result of the collapse of the clock tower situated opposite the town hall in the main bazar of the Chandni Chowk. The court held that:- “The legal position is that there is a special obligation on the owner of adjoining premises for the safety of the structures which he keeps besides the highway. If these structures fall into disrepair so as to be of potential danger to the passers-by or to be a nuisance, the owner is liable to anyone using the highway who is injured by reason of the disrepair. In such a case it is no defense for the owner to prove that he neither knew nor ought to have known of the danger. In other words, the owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect.”

49. It was further held that:- “Applying the principle to the present case it is manifest that the appellant is guilty of negligence because of the potential danger of the Clock Tower maintained by it having not been subjected to a careful and systematic inspection which it was the duty of the appellant to carry out.”

50. Following the principles laid down herein, in (1974) 1 SCC 690, Sham Sunder Vs. State of Rajasthan, it was held thus:- “The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendant, the doctrine of rest ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability.”

51. In this behalf, I find that in a case reported at (1999) 79 DLT 432 Darshan Vs. Union of India, the court held thus:- “Compensation had also been awarded by this Court as well as by the Apex Court in writ jurisdiction in several cases of custodial deaths. Coming to instant case, it is one of rest ipsa loquitur, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the record in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.”

52. The above noted cases are based on the settled legal position that in exercise of jurisdiction under Article 226 of the Constitution of India, this court can grant relief of compensation based on the strict liability principle in a situation where there is a breach of public duty. Liability of the state-respondent would lie. On the given facts of case if the writ petitioner is able to show that the respondent has acted negligently and or that the state or its instrumentality has failed to discharge the duty of care cast upon it resulting in deprivation of life or limb of a person. If the facts and circumstances so permit, while discharging the burden of proving negligence on him the claimant could urge, invocation of the doctrine of res ipsa loquitur.

53. It may also be noted that in all the afore-noticed cases, the petitioners were seeking compensation on account of loss of life of their relatives or injury from state's action or inaction.

54. The Apex Court has held in several judgments that the right to shelter is a fundamental right available to every human being. In (1996) 2 SCC 549 Chameli Singh Vs. State of U.P., a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. In para 8, it has been held thus:- “In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.” Emphasizing further on the right to shelter, the court in this case held that:- “Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.”

55. Having regard to the disparate economic status of the citizens in this country, in (1990) 1 SCC 520 : AIR 1990 SC 630 *Shantistar Builders Vs. Narayan Khimalal Totame*, upholding the importance of the right to a decent environment and a reasonable accommodation, the court held thus:- “The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation, which would allow him to grow in every aspect “ physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in Indian can even be mud-built thatched house or a mud- built fireproof accommodation.”

56. The observations of the Apex Court in the context of dispensation of state largesse in relation to right to residence as made in (1997) 11 SCC 121 *Ahmedabad Municipal Nagarpalika Vs. Nawabkhan Gulabkhan* are useful and read as follows:- “The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including *Hawkers' case*, *Olga Tellies case* and the latest *Chameli Singh's case* and host of other decisions which need no reiteration. Suffice it to state that right to life would include right to live with human dignity. As held earlier, right to residence is one of the minimal human rights as fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the state, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence. Though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to

life meaningful, effecting and fruitful. Right to livelihood is meaningful because no one can live without means of his living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make like miserable and impossible to live.....” “.....Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions.”

57. The DDA is concerned with development in Delhi. It is dealing with large tracts of land acquired under the provisions of the Land Acquisition Act for planned development, a public purpose. The duty to act fairly and reasonably cast on DDA is thus even more onerous which it has failed to discharge.

58. In the instant case, reliance is placed on the pronouncement of the Apex Court in 2005 (10) SCC 309 Bangalore City Corporation, Bangalore Vs. P.A. Kulkarni and Others to urge that right to shelter forms an integral part of right to life constitutionally guaranteed under Article 21 of the Constitution of India. The petitioner has claimed that he has no other residence and has proposed to shift to Delhi. It is not disputed that the petitioner was the applicant and the allotment letter was issued to him. It is also not disputed that that the conveyance deed has been executed and registered in the name of an impostor and building plans sanctioned construction permitted to impostor.

59. The duty of the DDA in respect of the manner in which it has to carry out its functions relating to development is undoubtedly governed by the provisions under the Delhi Development Act, 1968.

60. The DDA admits that the petitioner has submitted all required documents with it on 12th May, 1997 and was therefore in possession copy of his ration card, photographs etc. The petitioner would have clearly

indicated his identity as well as the fact that he was residing in Madhya Pradesh. Despite these admissions, the lease deed has been registered by the DDA on 28th November, 1996 registered on 2nd December, 1996 in favour of the impostor. The DDA has admittedly received the demanded amounts.

61. The staff of the DDA was entrusted with the task of ensuring allotment and execution of conveyance deed of property in favour of applicants who were successful in allotment of plots. In the instant case, its officials have admittedly colluded with the impostors. Even when the correct facts have brought to the notice of the DDA, no action at all has been taken by the DDA. The petitioner is being made to run from pillar to post for all these years.

62. The DDA has taken a stand that it would await action in the case filed by the respondent no.2 and the criminal proceedings. Certainly, neither of these is concerned with tracing out the record of the property in question which is missing. Even otherwise, the DDA does not stand prohibited from identifying the person who is responsible for the illegal acts and taking action as well as taking appropriate steps under the terms of the lease deed.

63. In view of the position in law, it is evident that the statutory duty was cast on the DDA to act as per prescribed procedure. The DDA has also public law obligation to ensure that it protects the rights of the persons as well as the properties for which it has been statutorily created. There can be no manner of doubt that the DDA has miserably failed to do so in the instant case and a lease deed has been executed in favour of impostor without following the prescribed procedure. In fact, not even bare minimal care appears to have been exercised.

64. No outsider has access to the office of the DDA and entry is permitted only after a proper record is maintained in respect thereof. There is no allegation of any illegality against the petitioner. The DDA has permitted the record to be lost. Its fault is writ large on the record.

65. The instant case is not even a case of negligence but a case where it is an admitted position that the DDA officials have connived and conspired to cause loss to the petitioner. It is trite that the rights in immovable property flow from a registered title deed. The respondent no.2 is claiming right, title and interest in the property based on a registered document executed by the DDA in favour of an impostor.

66. Interestingly none informed the petitioner on 12th May, 1997 when he has submitted the documents with it that the lease deed stood registered in his favour as back as on 2nd December, 1996. Therefore, in any case, the petitioner deserves to be compensated for the deprivation of his property w.e.f. 28th November, 1996 when the fraudulent conveyance deed was executed by or on behalf of the DDA in favour of the impostor and then it was registered and the petitioners rights in the subject property were illegally conveyed by the DDA in favour of the impostor. Apart from deprivation of his rights in the property, the costs of construction are stated to have also increased considerably between 1996 till date.

67. It is an admitted position that the petitioner filed the suit as back as in the year 1999 which remains pending in view of the defence taken by the DDA. It was stated therein that the DDA cannot take any action till the outcome of the criminal case as well as the outcome of the case filed by the respondent no.2.

68. So far as the criminal case is concerned, the same would determine the criminal liability on the part of the persons whose conduct was being tried therein. So far as the case of the respondent no.2 is concerned, the same would determine the claim of the respondent no.2 who has claimed to be a bona fide purchaser without knowledge of the rights of the petitioner. It is the DDA's case that the lease deed was executed by it in favour of an impostor. The failure and refusal of the DDA to take action to ensure availability of the plot to the petitioner is not justifiable. Certainly, adjudication on the claim of respondent no.2 would not impact the rights of the petitioner who certainly cannot be deprived of property to which he is admittedly entitled on account of illegal acts of the officials of the DDA who have caused lease deed to be registered in favour of the impostor till the date of handing over possession of a plot in terms of the present judgment.

69. In this background, it has to be held that in addition to property, the petitioner is entitled to compensation for the deprivation of residence to the petitioner on account of DDA's failure to discharge its statutory duties and public law obligations resulting in violation of valuable rights of the petitioner.

70. So far as the date from which the compensation is to be assessed, I find that the DDA has stated that the petitioner had been given possession of the plot.

71. The petitioner has prayed for a lumpsum award of compensatory damages of Rs.20,00,000/-. There is, however, no basis or explanation for the same.

72. The only issue which, therefore, remains to be decided is as to what would be a fair compensation for deprivation of property. In Bangalore City Corporation case (Supra), relied upon by the petitioner the Apex Court has held that where factual controversies are involved, a writ may not issue.

73. Needless to say, it may not be possible to undertake the exercise of arriving at a fair and reasonable compensation for deprivation of the plot for all these years in these proceedings. The same would require to be based on mesne profit; market rentals of immovable property; the rental or other expenses which may have been incurred by the petitioner in arranging alternative accommodation; increase in the cost of construction, loss of rent, harassment and mental agony. Each of these is a factual matter requiring evidence which may be oral and/or documentary for the purposes of ascertaining a fair and reasonable compensation.

74. In view of the above, this writ petition is allowed to the extent that the DDA is directed to consider the petitioner for allotment of a plot in the similar colony and on the same terms and conditions as the plot bearing no.36, Pocket II, Block B, Sector 16, Rohini admeasuring 60 sq. meters allotted to him, within a period of eight weeks from today. In case there is no such plot available in Pocket 11, Block `B', Sector 16, Rohini, Delhi, the DDA shall ensure that a nearest plot in the immediate vicinity, is allotted which is similar in value and location. The allotment will be at the rate at which the petitioner was allotted the aforesaid plot no.36.

75. In view of the above discussion, it is further held that the petitioner would be entitled to be compensated for deprivation of his right, title and interest in the property allotted to him with effect from the date of execution of the conveyance deed on 28th of November, 1996 in favour of an impostor by the DDA. It is further held that the writ petition to the extent that it makes the prayer for award of compensation is not maintainable. It shall therefore be open for the respondent to file a suit or appropriate proceedings in respect

thereof. Inasmuch as the entitlement of the petitioner in respect of the compensation has been determined by this judgment, the limitation for filing a suit for compensation shall commence from the date of the present judgment.

76. The petitioner shall, however, be entitled to costs of the present petition which are assessed at Rs.55,000/-. Costs shall be paid to the petitioner within four weeks.

Sd/-  
(GITA MITTAL)  
JUDGE