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

% **Date of Decision: 25.04.2013**

\+ W.P.(C) 5180/2012

NEERA SHARMA ..... Petitioner

Through: Mr S.K. Rungta, Sr. Adv. with Mr. Prashant Singh, Mr. Jeevan Chandra and Ms. Prateti Rungta, Advs.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Kamal Nijhawan with Mr. Sumit Gaur, Advs. for DDA

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court was issued a Letter of Intent (LOI) by IBP Limited for setting up a petrol pump. As per the terms and conditions of the said LOI, the petitioner leaved out her agricultural land situated in revenue estate of Village Pooth Khurd, Delhi to the said company i.e. IBP Limited for the purpose of opening a petrol pump outlet. The said company, applied to DDA for change of land use of the above referred agricultural land so that it could be used to run a petrol pump. The petitioner deposited a sum of Rs.12,15,000/- with DDA towards conversion charges for changing the land use of the said land. Since no such, change of land use was forthcoming from the respondent, the petitioner filed W.P(C) No.2365/2007. A number of other persons who were similarly aggrieved

also filed writ petitions in this regard. Those writ petitions were disposed of vide order dated 21.5.2008. To the extent it is relevant, the said order reads as under:

> "...All these petitioners are claiming parity with the other three cases, which were accorded approval by the Technical Committee. These petitioners have also raised a grievance that once in those three cases, taking into account the said regulations in force, permission was granted then why these petitioners were discriminated against. I find merit in the submission of the counsel appearing for the petitioners. Let the Technical Committee reconsider the cases of all these petitioners in paramateria with the cases of other three parties who were accorded approval under the said regulation to run the petrol pump. Let Technical Committee take the decision in their meeting within a period of two months from the date of this order. In the event of these petitioners not being satisfied with the outcome of the decision of the Technical Committee then they would be at liberty to approach this Court again. With these directions the writ petitions are disposed of."

2. Pursuant to the abovereferred order passed by this Court, the matter was examined by the Technical Committee of DDA in its meeting held on 14.8.2008 and then in the subsequent meeting held on 10.10.2008. The decision taken in the meeting dated 10.10.2008 reads as under:

> "9. All the cases were reconsidered by the Technical Committee in its meeting held on 10.10.2008. The decision in the instant case is as under:
>
> *"As per MPD 2021, 'Fuel Stations' are permissible on Master plan Zonal Plan roads and shall not be permitted in absence of an approved zonal plan of the area. The*

proposal therefore does not conform to MPD 2021 provisions hence it is rejected."

3. The petitioner filed a contempt petition in this Court whereupon, the matter was reexamined by the Technical Committee of DDA in its meeting held on 6.3.2009 and the pursuant to the decision taken in that meeting, a letter dated 2.4.2009 was issued conveying grant of permission for setting up of petrol pump on the land which is owned by the petitioner. The conversion charges payable by the petitioner were worked out in the following manner:

Area of Plot	1080(36x30)
CLU Charges deposited on 25.5.2006	Rs.12,15,000
CLU Charges Payable: Rs.1099/- psm. (Provisional) for the year 2009-2010 in which the permission was accorded (23.4.2009)	36x30 (1080 sqm) 1080x1099 = Rs.11,86,920/-
Excess Amount	1215000(--) 1186920 = Rs.28,080/-
Processing Fee	(-)Rs.05,000/-
Refundable Amount	Rs.23,080/- (provisional)

Since the petitioner had already deposited a sum of Rs.12,15,000/-, refund of Rs.23,080/- became due after adjusting the processing fee of Rs.5,000/-.

4. The grievance of the petitioner is that though other persons in cases of whom the concerned oil company applied for change of land use at the same time at which IBP Limited applied on behalf of the petitioner, were charged @ Rs.750/- per sq. metrs, in her case, the CLU charges have been calculated @ Rs.1099 per sq. mtrs without there being any justification for such a treatment being made out to the

petitioner. The petitioner is accordingly seeking a direction to the respondent to refund the sum of Rs.4,05,000/- being the excess amount payable to her in case the CLU charges are calculated @ Rs.750/- per sq. meters.

5. In its counter affidavit, DDA has stated that the amount of Rs.12,15,000/- was deposited by the petitioner along with the application of the oil company, on her own and though the rates in the year 2006 were Rs.750/- per sq. meter, the same were periodically revised later and in the in year 2009-2010, the rates were Rs.1099 per sq. meters. According to DDA since the permission in case of the petitioner came to be accorded only in the year 2009-2010, she was required to land use conversion charges at the aforesaid rate @ Rs.1099 per sq. meters.

6. It is specifically stated in para 15 of the petition that the DDA had charged CLU charges @ Rs.750 per sq. meter from the persons who applied for CLU permission with the petitioner and on the basis of whose cases the CLU permission was granted to her. In the counter affidavit of DDA, it has not been disputed that in the case of the persons whose cases were highlighted by the petitioner during the hearing of the W.P(C) No.2365/2007 deposited CLU charges at the same time when those charges were deposited by the petitioner. It is also not disputed by DDA that the application for conversion in the case of the petitioner came to be filed at the same time when the applications for conversion in the case of those persons were filed. The only difference in the case of the petitioner and the case of other persons who were charged @ Rs.750 per sq. meters is that the permission to the petitioner came to granted in the year 2009-2010 whereas those persons were granted permission in the year 2006 itself.

7. In my view, if the application in the case of the petitioner was submitted at the same time when the application in the case of other persons with whom parity is being claimed by her were submitted, it was not open to DDA to charge a higher

rate from the petitioner while charging lower rates from those persons, in whose cases, an order dated 21.5.2008 was passed by this Court in W.P(C) No.2365/2007.

8. Had the petitioner not deposited the charges along with the application, DDA could probably have some justification for charging higher rates from her. But, when the petitioner deposited more than the amount ultimately found payable by her towards CLU charges and the DDA utilized the money of the petitioner for about three years before granting permission for change of land use, it is not open to the agency to charge higher rates from her on the ground that there has been revision in the rates between the date of the application and the date on which the permission was ultimately granted. The respondent-DDA has not brought to my notice any such rules or regulations which provides that the CLU charges at the rates prevalent on the date of grant of permission would apply. In any case, there can hardly be any justification for such a stipulation when the charges are already deposited along with the application. In fact, it is only the applicant and not DDA who suffers on account of delay in processing the application since, her money is utilized by DDA whereas she is not able to use the land in respect of which change of land use is sought. In these circumstances, there is neither any legal basis nor any justification on facts, for DDA charging from the petitioner, the conversion charges as prevalent in the year 2009-2010. Therefore, DDA is required to refund the balance amount which becomes payable to the petitioner after calculating CLU charges @ Rs.750/- per sq. meters.

9. For the reasons stated hereinabove, DDA is directed to refund, the amount which has become payable to the petitioner in terms of this order, within a period of eight weeks from today.

10. Before parting with this case, one aspect needs to be highlighted. Vide its decision dated 10.10.2008, the Technical Committee of DDA rejected the

application filed by the oil company on behalf of the petitioner for change of land use on the ground that the proposal did not conform to the provisions of MPD-2021. Without there being any change in the provisions of MPD-2021, the Technical Committee of DDA, made a summersault and in its meeting held on 6.3.2009, it decided to approve the very same proposal which it had rejected in the earlier meeting held on 10.10.2008. One thing is thus quite clear. Either the decision taken in the meeting held on 6.10.2008 was not in consonance with the provisions of MPD-2021 and that is why it was reviewed in the meeting held on 6.3.2009 or the decision taken by the Technical Committee in its meeting held on 6.3.2009 was contrary to the provisions of MPD-2021. If the decision taken in the meeting held on 6.3.2009 was contrary to the provisions of MPD-2021 and the decision taken in this regard in the meeting held on 10.10.2008 was correct, the change of land use granted in other cases, where applications were submitted at the same time when the application on behalf of the petitioner was submitted by the oil company would also be equally wrong. This is a matter which needs a careful examination at an appropriate level. Therefore, one copy of this order be placed before the Lt. Governor/ Chairman of DDA for looking into the matter and taking such administrative action as he may deem appropriate in this regard.

The petition stands disposed of.

V.K. JAIN, J

APRIL 25, 2013/*rd*