**(2011) 09 DEL CK 0051**

**Delhi High Court**

**Case No:** Letters Patents Appeal 799 of 2011

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| Delhi Development Authority | | APPELLANT |
| | Vs | |
| Suresh Gupta and Others | | RESPONDENT |

**Date of Decision:** Sept. 29, 2011

**Hon'ble Judges:** Dipak Misra, C.J; Sanjiv Khanna, J

**Bench:** Division Bench

**Advocate:** Ajay Verma and Manu Parashar, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

Sanjiv Khanna, J.

CM No. 18271/2011

1. This is an application for condonation of delay of 221 days in preferring the appeal.

2. Before issuing notice on the application for condonation of delay, we have thought it apt to examine the matter on merits.

3. Contention of the Appellant-Delhi Development Authority (DDA) is that the Respondent Nos. 1 and 2 should be asked to pay land rates prevalent in 2006. It is submitted that the learned single Judge in the impugned order dated 10th January, 2011 has erred in holding that the land rate prevalent as on 1st January, 1993 should be applied. It is submitted that the initial allotment by the Appellant-DDA to one K.D. Sikand vide perpetual sub-lease deed dated 28th December, 1987 was illegal.

4. Plot No. E-1091, Government School Teacher CHBS was allotted to K.D. Sikand vide perpetual sub-lease deed dated 28th December, 1987. She transferred her rights in the plot vide General Power of Attorney (GPA)/Agreement to Sell dated 18th March 1988 in favour of Anil Kumar/ Sarla Devi/ Sadhana Devi. There was another

transfer by the said purchasers on 8th December, 1989 in favour of the Respondent Nos. 1 and 2. The said Respondents applied to Municipal Corporation of Delhi (MCD) for sanction of building plan and after approval, constructed a two and a half storeyed building on the plot in 1990-91.

5. In order to regularize the transfers made on Power of Attorney basis and convert lease hold rights in the plots into free hold, Appellant-DDA had promoted a conversion scheme. Respondent No. 1 on 20th May, 1992 applied to the DDA for conversion of the leasehold rights to freehold rights in respect of the said plot and paid the entire conversion charges. The said Respondent also paid additional penalty charges to the DDA as the original sub-lessee had transferred/parted with possession of the plot to third parties contrary to the terms of the sub-lease deed and the said Respondent was the beneficiary.

6. It is not disputed and denied by the Appellant that the Respondents were bona fide purchasers for value and were not aware of any defect or fraud played by the original allotee to procure allotment. In fact, DDA itself was not aware of any such fraud.

7. By communicated dated 28th September, 1992, the Appellant informed the Respondent No. 1 that the original sub-lease deed dated 28th December 1987 executed in favour of K.D. Sikand had been cancelled and, therefore, the request for conversion from lease hold to freehold stood rejected. It was alleged that K.D. Sikand has failed to disclose that she already owned a flat and, therefore, was not eligible for allotment of the plot in 1987. The Respondents kept on corresponding with the DDA but without success and ultimately, as a last resort, approached the Court by way of W.P.(C) 820/2008, which has been disposed of by the impugned order dated 10th January, 2011.

8. We have already noticed the facts in detail above. There cannot be any doubt that the Respondent Nos. 1 and 2 purchased the sub-lease rights in respect of the plot, which was originally in 1987 allotted to K.D. Sikand. They paid the entire sale consideration in 1989 and thereafter constructed a two and a half storeyed building on the plot. They had in 1992 applied for conversion of the lease hold rights into free hold and had paid the conversion charges as well as the penalty charges to regularize the purchase pursuant to which the lease hold rights and possession of the plot was transferred.

9. The dispute is whether the said Respondents should be asked to pay the price prevailing as on 1st January, 1993 or in 2006. In our considered opinion, the learned single Judge has rightly held that the price prevalent as on 1st January, 1993 is payable by the Respondent Nos. 1 and 2 and not the price prevailing in 2006. The Respondents had applied for conversion from lease hold to free hold in May, 1992 and had also deposited payment including penalty charges. The said payment has remained with the Appellant. It was for the Appellant-DDA to take a decision in such

cases, which are peculiar, as the said Respondents who applied for conversion had deposited the payment and penalty amount, are not guilty of fraud and if at all they have also suffered on account of the fraud committed by the original allottee. There is no explanation why the Appellant-DDA took nearly 14 years from 1992 till 2006 to decide how to deal with such peculiar cases. Lapse and delay on the part of the Appellant cannot be a ground to enhance liability, which is payable and is now being demanded from the Respondent Nos. 1 and 2. The Respondent Nos. 1 and 2 have paid the conversion costs, penalty amount for illegal transfer, and the purchase price to the sub-lessee or her attorney. The Respondent Nos. 1 and 2 have been now asked to pay the purchase price to the Appellant-DDA.

10. It may be noticed here that the averments made in the application for condonation of delay of 221 days are vague and except for stating that the matter was being debated and examined at various levels, no other reason or ground is given.

11. In view of the aforesaid, there is no justification to issue notice on the application for condonation of delay and, accordingly, the application for condonation of delay stands rejected and as an evitable corollary, the appeal also stands dismissed in limine.