NEUTRAL CITATION NO. 2022/DHC/005237

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

% **Pronounced on: 1st December, 2022**

\+ RFA 11/2012 & CM APPL. 135/2012

KHOSLA MEDICAL INSTITUTE ..... Appellant

Through: Mr. Arvind Varma, Sr. Advocate with Ms. Iti Sharma and Mr. Puneet Sharma, Advocates

versus

DELHI DEVELOPMENT AUTHORITY & ANR ..... Respondents

Through: Ms. Shobhana Takiar, Standing Counsel for DDA

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908, (hereinafter "CPC") has been filed on behalf of the appellant institution, seeking the following reliefs:-

> *"a. Set aside the order/judgment dated 14.11.2011 passed by Sh. O.P. Gupta District Judge-cum ASJ - Incharge (West)/ ARCT Delhi in suit no. 652A/2011 (Old Suit No. 2498/1995).*
>
> *b. Allow the prayers as made in the suit before the Ld. trial court.*

> *c. Pass such order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. A perusal of the record unravels the following facts that have culminated into the controversy which falls for consideration before this Court:

a. The appellant is a Society which is formed with an objective to establish, maintain, manage, control, and run a Medical Research Centre registered under the Societies Registration Act, 1860 in the year 1977. Two brothers J.C. Khosla and K.C. Khosla decided to set up the institute to establish, maintain, manage, control, and run Medical Research Centre in various systems of medicines to render medical aid/relief for the said purpose and to open establish, maintain, manage, and control Dispensaries, Hospitals, Nursing Homes, Maternity Houses, Sanitarium and medical and first aid centre at different places.

b. A lease deed was registered between the appellant and the respondent, i.e. the Delhi Development Authority (hereinafter "DDA"), for allotting two plots 8228 sq. yds. and 1452 sq. yds. at Shalimar Bagh, West Delhi on 31st December, 1996.

c. The appellant raised construction on the said land by raising funds from various sources and the structure of the hospital was completed and the occupancy certificate was granted. In the year 1993, the Ayurvedic system of medicines was proposed to be included in the services of the hospital and a new wing was

thereafter opened in the appellant Institute in the name of 'Maharishi Ayurveda Arogya Dham'.

d. During this period, the relationship between brothers J.C. Khosla and K.C. Khosla, who were running the appellant Society, started to strain and as contended before the Trial Court, J.C. Khosla initiated several cases against K.C. Khosla and the appellant Institute. Several complaints have been made including complaints dated 30th June 1994, 2nd November 1994, and 12th July 1995. A complaint was also filed before the Income Tax Authorities alleging that the appellant Institute had transferred the property to third parties by inducting them as new members in the Institute.

e. Thereafter, due to several complaints made against the appellant, the respondent no. 1 issued a Show Cause Notice to the appellant dated 11th January 1995, asking it to show cause as to why the Lease Deed should not be cancelled for violation of Clause II(5)(a) of the Lease Deed. An observation was made therein that the appellant was found to have transferred the plot and the building to another entity and thereby, had violated the terms of the Lease Deed.

f. The appellant replied to the Show Cause Notice on 17th January 1995, stating therein that no transfer or sale of property was made by the appellant of the premises in question. It was stated that the Directors of the Society decided that an Ayurvedic System

of medicine should be introduced as a part of the appellant Institute to promote benefits to the patients. The said Ayurvedic wing was being run and managed by the appellant Institute and was not transferred to a third party.

g. Ultimately, a Notice dated 7th December 1995 was served upon the appellant by the respondent no. 2 stating that upon having found the reply to the Show Cause Notice unsatisfactory, the Lease Deed of the appellant was cancelled, and it was also directed to vacate the premises and hand over the vacant possession.

h. The appellant alongwith K.C. Khosla, its Chairman, and Kanwal Khosla, Senior Vice Chairman, approached the Court of District Judge and Additional Sessions Judge, ARCT, Delhi, (hereinafter "Trial Court") seeking permanent injunction on the property in question. The plaintiffs therein sought setting aside of the order dated 7th December 1995 terminating the Lease Deed of the appellant and also sought injunction against the respondents.

i. On the said suit, the Court below passed the judgment dated 14th November 2011, observing that the appellant herein was not entitled to the relief of declaration or injunction that was sought by it before the Court, and dismissed the suit of the appellant.

j. The appellant, being aggrieved by the said judgment, has approached this Court seeking setting aside of the impugned judgment dated 14th November 2011.

SUBMISSIONS

3. Mr. Arvind Varma learned senior counsel appearing on behalf of the appellant submitted that the impugned order has been passed by the Trial Court without proper appreciation of the fact on record. It is submitted that the appellant obtained a loan of ₹2.6 crores from ICICI Bank and IDBI Bank for the purpose of construction of the Hospital building after obtaining all necessary approvals and sanctions.

4. It is submitted that while deciding the issue of non-compliance of Section 53(B) of the Delhi Development Act, 1957 (hereinafter "DD Act") the Trial court failed to appreciate that the basic objective of the provision is to settle the matter at a pre-litigation stage, however, once a matter reaches any forum or Court of law, a dismissal on a mere technical ground is erroneous. Reliance has been placed upon the judgment of a Coordinate Bench of this Court in ***Col. A.B. Singh vs. Chunni Lal Sahani,* RFA 96/2002** decided on 5th October 2011 and of a Division Bench of this Court in ***Yashoda Kumari vs. MCD and Ors.*, AIR 2004 Delhi 225.**

5. It is submitted that in the instant matter, the suit before the Trial Court was against the notice of dispossession served upon the appellant and the claim of the appellant was well within the knowledge of the respondent. It is further submitted that the purpose of notice under Section 53B of the DD Act is at par with Section 80 of the CPC, i.e., to bring to the authority the notice of a claim so that it may concede or contest such claim. In the instant case, the suit before the Trial Court was

instituted against the respondent in the year 1995 and since then the respondent has been contesting the same on merits, hence, the suit could not have been dismissed on a technical ground for the want of service of notice under Section 53(B) of the DD Act.

6. It is also submitted on behalf of the appellant that the suit before the Trial Court was filed by the appellant seeking injunction and restraining the respondents and their agents, officers, servants, representative from disturbing the actual and constructive possession of the appellant on the land in question and from acting in furtherance of the notice dated 7th December 1995. It is submitted that the relief of declaration sought by the appellant in the subject suit was only with respect to the impugned notices to be declared as invalid and illegal, however, the Trial Court incorrectly held that the suit was for declaration and was not covered under the provisions of Sub-Section 3 of Section 53B of the DD Act.

7. To the findings of the Trial Court with respect to transfer of the premises in question by the appellant, learned senior counsel for the appellant further submitted that in order to facilitate proper functioning and for the benefit of the patients, the decision of introducing Ayurveda system of medicines was taken and the Ayurveda wing was opened. It is submitted that to run the new wing, Ajay Prakash Srivastava and Anand Prakash Srivastava were inducted as members to the appellant and this induction, in no manner, whatsoever, amounted to transfer of rights and title in the favour of a third party. There was no conveyance deed or other document to show that the subject land was transferred.

8. It is submitted that amongst the several cases initiated against the appellant and K.C. Khosla, one of the cases was the case bearing no. 1336/94 filed by J.C. Khosla against the appellant under Section 92 of the CPC, wherein an interim relief was granted by a Coordinate Bench of this Court vide order dated 22nd June 1994, which thereafter came into the jurisdictional limits of the Trial Court. In the said suit J.C. Khosla moved an application under Order 39 Rule 2A of the CPC alleging violation of the restraint/interim order passed by the Coordinate Bench of this Court and produced newspaper cuttings to argue that the appellant had advertised the sale of the Institute. However, the Coordinate Bench of this Court has made the observation, after considering all the issues raised by J.C. Khosla pertaining to the alleged transfer of society assets to the Maharishi Ayurvedic Products and also the circumstances such as affidavit of the property dealer and an advertisement in the newspaper held that there was no transfer of assets of the appellant society and merely induction of new members in the society and in the governing body of the society did not tantamount to transfer of assets of the society. It is therefore submitted that the issue of transfer of the premises in question no longer remains *res integra* and had already been decided by the Coordinate Bench of this Court. Thus, the Trial Court erred in adjudicating upon the same issue *qua* the transfer of assets of the appellant which had already been adjudicated upon by this Court.

9. It is further submitted that on the issue raised regarding transfer of property in the name of a third party that on a complaint of J.C. Khosla, the Assessing Officer of Income Tax Department conducted enquiry and

observed that there was a transfer of hospital to the Maharishi Ayurved Products Limited, therefore, Section 11 and 12 of the Income Tax Act, 1961 would not be applicable. However, Appellate Authority, i.e., the Commissioner of Income Tax, vide order dated 29th January 1997, allowing the appeal by the appellant against the said observation of the Assessing Officer, set aside order of Assessing Officer and held that Maharishi Ayurved has only extended a loan to the appellant and not transferred any property. Against the said order, the Income Tax Department approached the Income Tax Appellate Tribunal, however, the appeal came to be dismissed vide order dated 8th May 2002.

10. Learned senior counsel appearing on behalf of the appellant submitted that the Trial Court failed to appreciate that the respondent/DDA witness admitted in his cross-examination that there was no document in the nature of a conveyance deed in the record of the respondent or even in their knowledge showing the transfer of any right in the suit property in favour of a third party. Moreover, the respondent also acted in contravention of its Policy Decision dated 3rd June 2009, which was placed before the Trial Court, wherein it was decided that the lease of institutional plots should not be cancelled on the ground of change in management.

11. It is submitted on behalf of the appellant that the Trial Court failed to appreciate that the respondent acted unreasonably and arbitrarily on the complaint of J.C. Khosla without affording an opportunity to the appellant and issued the Show Cause Notice and thereafter, the order of cancellation of the Lease Deed was passed. The respondent authority did

not consider that similar issues had already been decided by the High Court. Moreover, the lease in favour of the fully operational appellant institute was determined without according a personal hearing to the appellant.

12. It is therefore, submitted that the impugned judgment is liable to be set aside since the Trial Court has made erroneous observations and has passed the impugned judgment contrary to the facts and evidence on record.

13. *Per Contra*, Ms. Shobhana Takiar, learned Standing Counsel for DDA, vehemently opposed the instant appeal, the contentions raised therein, and the submissions made on behalf of the appellant. It is submitted that the DDA land was allotted to the appellant Institute on pre-determined rates for public utilities and community facilities. The land as allotted to the society is held by the allottee as lessee of the President of India on the terms and conditions prescribed by these rules and contained in lease deed executed by the allottee. Therefore, the allottee is bound by the terms and conditions of the Lease Deed as executed *inter se* the parties.

14. It is submitted that upon receiving the complaint from J.C. Khosla, an inspection was carried out on the site pursuant to which the Show Cause Notice was issued to the appellant when terms and conditions of the Lease Deed were found to be violated.

15. On the issue of transfer of property, it is submitted that the complaint made by J.C. Khosla was supported by an advertisement in the

Hindustan Times on 7th July 1993 for the sale of the Hospital. Subsequently, another inspection was carried out and it was found that M/s Maharishi Vidya Mandir Society was functioning from the premises in question and two types of signboards were displayed at the site. Further, on 12th July 1995, another complaint was received that the appellant institute has sold the property to Maharishi Ayurveda, and ultimately, the Lease Deed of the appellant was determined on 7th December 1995 and the appellant was directed to handover the possession of the premises.

16. *Qua* the issue of notice under Section 53B of the DD Act, the learned counsel for the respondent submitted that the findings of the Trial Court were well in accordance with the settled law. The learned counsel for the respondent submitted that Section 53B of the DD Act is mandatory in nature and must be observed and complied with while filing a suit against the DDA. It is further submitted that the only exception under Section 53B of the DD Act is under Sub-section 3, however, the suit of the appellant herein before the Trial Court did not fall within the ambit of the exception under the provision. Therefore, the finding of the Trial Court with respect to the Section 53B of the DD Act is legal, proper, and in accordance with law as well as the facts of the case.

17. As regards the objections raised with respect to the third-party interest in the suit land, it is submitted that the Management of M/s Maharishi Ayurvedic Products gave a sum of ₹4.5 crores to the appellant for becoming member of the Board of Directors and out of total 11 members who constituted the Board of Directors, 7 members were from

M/s Maharishi Ayurvedic Products and constituted more than 2/3rd of the total constitution of the Board of Directors of the appellant Institute. Accordingly, the transfer of management has been clearly established. It is submitted that the drastic change in the internal constitution shows that the funding was for the purpose of taking over the appellant institute and change in ownership of its moveable and immoveable assets.

18. It is vehemently argued that the order passed by the Trial Court while confirming the order of cancellation of the Lease Deed was in consonance of law laid down as well as the conditions stipulated under the Lease Deed. Therefore, since there is no illegality in the impugned order and since there is nothing to show that the Trial Court has committed any error while passing the impugned judgment, the instant appeal may be dismissed for being devoid of merits.

19. Heard learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

20. This Court has perused the contents of the impugned judgment dated 14th November 2011 and has also examined the objections on record on behalf of the both the parties. Upon perusal, it is found that there are two principal issues which have stemmed out of the controversy between the parties, and which may be narrowed down to while adjudicating the instant appeal, considering the findings of the Trial Court, the contentions raised against the same by the appellant and the objections thereto raised by the respondent. These issues that are to be adjudged by this Court are as under:-

I. Whether the suit before the Trial Court was liable to be dismissed for the want of notice under Section 53B of the DD Act.

II. Whether any substantive and conclusive evidence was placed before the Trial Court to show that there was a transfer of the suit property in favour of a third party, thereby leading to the violation of condition II(5)(a) of the Lease Deed.

III. Whether there is any other illegality, perversity, or error in the impugned judgment.

ISSUE I

21. The issue framed by the Trial Court, which has been argued comprehensively before this Court is *qua* the non-service of the notice under Section 53B of the DD Act.

22. Section 53B of the DD Act provides for service of notice pertaining to suits which is to be given to the DDA. The said provision reads as under:-

> *"**Section 53B**. Notice to be given of suits.—*
>
> *(1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder*

> *until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.*
>
> *(2) No suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.*
>
> *(3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit."*

23. The provision under Section 53B of the DD Act specifies that no suit shall be instituted against the Authority, or any of its member, unless a notice of two months is served upon the DDA or the concerned member. The Section also provides for the requisites of a notice to be made under the provision and the Act, the non-compliance of which may be deemed as non-service of notice. The provision also serves as a challenge to the maintainability of a suit instituted against the DDA, and in the instant appeal the same has been invoked.

24. The Trial Court has made the following judgments regarding the issue noting the arguments on behalf of the parties:-

"22. Admittedly the plaintiff has not issued any notice under Section 53-B Delhi Development Act. The counsel for the plaintiff emphatically argued that there was not sufficient time between the issuance of notice communicating cancellation of lease and the date before which plaintiff was asked to handover the possession, to serve two months notice required by section 53-B Delhi Development Act. Thus, the plaintiff had no option but to file the suit without giving notice. In support of this submission he relied upon D.P. Rai Ahuja vs. Delhi Development Authority 1974 RLR 664 to make out that notice under Section 53-B is not required if relief is one for injunction object of which would be defeated by giving notice or postponement of institution of suit. He also relied upon Durga Chand Kaushish vs. Union of India ILR 1971, 2 Delhi 350 in which it was held that if act or subject matter of the suit is not in pursuance of the Act, no notice is required. In State of Punjab vs. M/s Geeta Iron Brass Works Ltd. AIR 1978 Supreme Court 1608 it was held that statutory notice under Section 80 CPC has become ritual because administration is often unresponsive and hardly lives up to parliament sexpectation in continuing section 80 CPC despite Law Commission's recommendations for its deletion.

23. The counsel for defendant refuted the arguments and submitted that section 53-B is mandatory m nature and admits off no exception. The same is perimeteria with Sectin 80 CPC but Section 80 CPC was amended in 1976 to introduce seeking of exemption from Court from serving notice, if relief claimed is urgent purpose of which would be defeated by postponing the institution of suit. But no such amendment has been incorporated in Section 53-B Delhi Development Act. This means that Legislature did not want to bring such an exemption in Delhi Development Act.

> *25. After considering the rival submissions, I am of the considered opinion that arguments of counsel f 0t the defendants are more well founded. So long as a provision exists on the Statute it must be observed instead of being ignored. The difficulty in complying with the provision is no answer and no ground for non compliance. When the Legislature has purposely retained the provisions in its wisdom, the Court cannot dispense with the same. The act of the defendant in cancellation of lease cannot be said to be beyond the purview of the Act. It may be legal or illegal but it is within the power of the lessor to do so. Power to take a decision includes power to take wrong decision also. The plaintiff cannot take upon itself the task of deciding whether the action of the defendant is legal or not.*
>
> *26. In view of the above discussion, the issue is decided against the plaintiff and in favour of the defendant."*

25. The Trial Court while making the observations in favour of the respondents, defendants therein, observed that mere difficulty to comply with a provision would not permit the appellant to entirely dispense with the service of the notice. It further noted that due to non-service of the notice the appellant assumed that the decision of the respondent of cancellation of the Lease Deed was erroneous and hence, bypassing the provision, he approached the Trial Court without serving the notice.

26. A Division Bench of this Court in ***Yashod Kumari vs. MCD***, **2003 SCC OnLine Del 101**, made observations *qua* the nature and mandate of notice under Section 53B of the DD Act and held as is reproduced hereunder:-

> *"**11.** Apart from this, we find that the appellant's suit was already registered by the Court first and ex parte interim order was also passed in this. It was thereafter transferred to District Court alongwith the application for grant of leave. From this it could also be easily presumed that the Court had impliedly granted the leave to institute the suit or that the notice stood waived in the facts and circumstances of the case. The aspect seems to have gone totally unnoticed with Trial Court proceedings mechanically; in the matter to dismiss the suit for want of notice under Section 80, CPC.*
>
> ***13.** It is true that Section 53-B of DDA Act does not carry a provision analogous to the provisions of Section 80(2) to provide for grant of leave in filing the suit without service of two months notice. But it also contains a proviso in Sub-section (3) which makes the embargo contained in Sub-section (1) inapplicable in a suit in which relief claimed is that of injunction only.*
>
> ***14**. But this apart, taking in regard that this Court had registered the suit and granted the stay order and that respondents had contested it all though, even notice under Section 53-B should be deemed waived in the facts and circumstances of the case. After all the purpose of notice under Section 53-B of DDA Act is the same as that of Section 80, CPC i.e. to bring the claim to the authority's notice so that it may concede or contest it. Once the authority had contested it on merits even at preliminary stage, it could not complain of non-service of notice under Section 53-B now. Nor could it be held fatal to justify the dismissal of the suit."*

27. A Coordinate Bench of this Court in ***Delhi Development Authority vs. Ashok Kumar,* 2016 SCC OnLine Del 5738,** while adjudicating upon

a similar question while referring to the findings of the Court in ***Yashoda Kumari (supra)*** observed as under:-

> *"**7.** Learned counsel for the appellant argued that the suit was bad for want of notice to the appellant/defendant under Section 53B of the Delhi Development Act, 1957, however, this issue is squarely covered against the appellant/defendant by a Division Bench judgment of this Court in the case Yashod Kumari v. MCD, AIR 2004 Delhi 225 and in which judgment it is held that the object of giving notices prior to the filing of the suit is to ensure a settlement before filing of suit, but, once the suit is contested to the hilt, the requirement of the prior notice pales into insignificance."*

28. Further, the Division Bench of this Court in ***DCM Ltd. vs. DDA,* 2009 SCC OnLine Del 1675,** while discussing the principle observed as under:-

> *"**20.** The next contention of the appellant's counsel is that even if it is assumed that Section 53-B was applicable, nevertheless, no notice under Section 53-B of the Delhi Development Act was necessary under the circumstances because the DDA had complete knowledge of the appellant's claim in respect of the suit premises and, therefore, no useful purpose would have been served by issuing the requisite notice under Section 53-B. In support, he has referred to a decision of this Court in Nehru Place Hotels v. DDA etc. 1991 Rajdhani Law Reporter 389. There, it was held by a Single Judge of this Court that in a case where notice is issued to the DDA on a writ petition filed by a party, and that writ petition is thereafter withdrawn with permission to institute a suit against the DDA instead, the DDA cannot oppose the suit for lack of*

statutory notice as required by Section 53-B because all the requirements of the notice are contained in the earlier writ petition instituted by the party, and on service of notice in that writ petition, the defendant DDA was fully aware of the plaintiff's claim. In arriving at its conclusion, the Court relied upon a decision of the Madras High Court in N. Parameswara v. State, AIR 1986 Mad 126 where that Court had held that after the dismissal of a writ petition with permission to the petitioner to seek his remedy by way of a suit, the plaintiff was not required to serve a notice under Section 80 of the Civil Procedure Code before filing that suit since the notice served in the writ petition amounted to sufficient compliance of Section 80 CPC. In this context, the Court also held, inter alia, in para 23 as follows:

> *"After all the purpose of giving notice under Section 80 of the CPC or under Section 53-B of the Act is to enable the authorities to examine the claim of the person giving the notice so that the authorities could settle the said claim without the said person being made to institute legal proceedings. In the State Bank of Patiala v. M/s Geeta Iron & Brass Works Ltd., (1978) 1 SCC 68 : AIR 1978 SC 1608, it was held that a statutory notice of the proposed action under Section 80 of the CPC is intended to alert a State to negotiate a just settlement or at least for the courtesy to tell the potential suitor as to why the claim is being resisted. In Ghanshyam Dass v. Dominion of India, (1984) 3 SCC 46 : AIR 1984 SC 1004, it was observed by the Supreme Court that the point to be considered is whether a notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation."*

21. *Similarly, in the case of Yashod Kumari v. MCD, (2004) 111 DLT 33, a Division Bench of this Court has held that the object of a notice under Section 53-B of the Delhi Development Act, 1957 is the same as that of Section 80 of CPC; which is to bring the plaintiff's claim to the notice of the Authority so that it may make up its mind whether to concede the claim or to contest it. In that matter, the provisions of both Sections 80 CPC as well as Section 53-B of the Delhi Development Act, 1957 came up for consideration. The plaintiffs contended that since no objection had been taken to the non-issuance of the requisite notice under Section 80 CPC by the defendants, and since the suit had proceeded and an ad interim injunction had also been granted, therefore, the requirement of notice under Section 80 CPC be deemed to be waived. It was also prayed that under the circumstances, leave may be granted under Section 80(2) of the CPC to institute the suit without service of requisite notice. The Court held that the object of a notice under Section 80 is to afford the government an opportunity to examine the nature of the claim and if it thinks fit to settle the claim and to avoid unnecessary litigation. On the facts, the court held that the plaintiffs' application under Section 80(2) CPC praying for leave to institute the suit without issuing notice under Section 80 CPC ought to have been disposed of by the trial court. At the same time, the court also held that in view of the fact that the suit had already been registered, and an ex-parte interim order was passed in the suit, it can be presumed that the court had impliedly granted leave to institute that suit or that the notice stood waived on the facts and circumstances of the case. As regards, the non-issuance of notice under Section 53-B of the Delhi*

Development Act, the Court held that although it is true that Section 53-B of the Delhi Development Act does not have any provision analogous to Section 80(2) of CPC, however, since the Court had registered the suit and granted stay, and the respondents had contested it all through, notice under Section 53-B should be deemed to be waived for the reason that the purpose of notice both under Section 53-B of the Delhi Development Act as well as under Section 80 of CPC is the same, which is, to bring the claim to the notice of the Authority concerned so that it may either contest it or concede the same. It felt that once the authority concerned had contested the matter on merits even at a preliminary stage, it could not complain of non-service of notice under Section 53-B thereafter.

22. *This decision has also been noticed by another Division Bench of this Court in Smt. Prinda Punchi v. Municipal Corporation of Delhi, (2005) 4 Apex Decisions (Delhi) 639 cited by learned counsel for the respondent for the proposition that since there is no provision under the Delhi Development Act akin to Section 80(2) of the CPC for leave of the Court to bring a suit without prior notice, therefore, the appellant could not have filed the instant suit against the DDA without giving the notice required under Section 53-B of the Delhi Development Act. In paragraph 26 of the said decision, the Division Bench has sought to distinguish the aforesaid decision in Yashod Kumari's case (supra), inter alia, on the ground that in Smt. Prinda Punchi's case, the defendants had raised a specific objection with regard to the want of statutory notice and a preliminary issue to that effect was also framed by the trial court, consequently, there could be no plea of waiver of notice. It, therefore, held that,*

> *"In the facts of the present case it cannot be said that there could be waiver of any such notice as provided for under section 53-B of the Delhi Development Act. Objection was taken and issue was framed thereon."*
>
> ***23.*** *In the instant case, on the facts we find that the respondent defendant had duly filed its written statement in the suit without raising any objection to the maintainability of the plaint due to the absence of the requisite notice contemplated under Section 53-B of the Delhi Development Act. Furthermore, this written statement only came to be filed after 23rd March, 1992 when the interim orders staying dispossession were made absolute. Thereafter, the respondent moved an application under Order 7 Rule 11 of the Code of Civil Procedure praying that the plaint be rejected on the ground of non-compliance of Section 53-B. In reply, the appellant took the stand that since no such plea had been raised by the respondent in its written statement, it should be presumed that the respondent had waived the requirement of notice under Section 53-B."*

29. In ***Karamvir Singh vs. DDA*****, 2008 SCC OnLine Del 333,** a Coordinate Bench of this Court made findings with respect to Section 53B of the DD Act and held that where there was knowledge of proceedings or grievance of against the Authority, there did not remain question of notice under Section 53B of the DD Act. In the instant matter, prior to reaching the Trial Court, J.C. Khosla had already obtained an interim order in his favour, restraining the appellant herein to dispose of the premises in question. It was not the issue at that time that the notice under Section 53B of the DD Act was not issued and the respondent herein, DDA was also a party to the said suit.

30. The position was reiterated by a Coordinate Bench of this Court in ***I.P. Power Generation Company Ltd. vs. Siddhartha Extension Resident Welfare Association & Ors.*, 2013 SCC OnLine Del 4956,** wherein the following was observed:-

> *"**28.** I am afraid, the judgment in DCM Ltd. cited by the counsel for respondent/defendant No. 1 has been overruled in DCM Ltd. v. DDA MANU/DE/0728/2009 (DB). The other judgments cited by the counsel for the appellant/plaintiff hold that the right under the said provision is capable of being waived or that the suit cannot be dismissed on such technical ground after it has been contested and that notice under Section 53B is not required when there is earlier litigation between the parties."*

31. The interpretation as made by the predecessors of this Court, including the Coordinate Benches as well as the Division Bench clarify the position with respect to notice under Section 53B of DD Act and provides that the intention and object of the provision is to intimate the Authority and bring to its knowledge that a suit may be filed against it so that if remediable, the matter does not see the day of light in the Court of law and is resolved/settled at the pre-litigation stage.

32. Upon perusal of the provision as well as the interpretation attached by this Court, it is found that once the claim culminated into a litigation and reached any forum or any Court of law, requirement of the prior notice befalls to be insignificant. A dismissal on the ground of non-service after the Authority had contested the matter for over 10 years on merits of the case and after a comprehensive and elaborate proceedings

on merits, facts and circumstances, considering the material on record as well as the evidence adduced including examination and cross-examination of parties and witnesses and after deploying judicial machinery to the matter, would not only be in contravention of the intention and nature of the provision but would also not meet the ends of justice. In the instant matter, there is no doubt that before the suit reached the Trial Court, amongst the same parties an interim order was also passed by the Coordinate Bench of this Court. Therefore, it is also not the issue that the respondent did not have the knowledge of the suit filed and injunction passed in relation to the premises/land in question, which is admittedly a DDA plot leased to the appellant. The prior knowledge of the Authority that a suit has been filed or a claim has been raised against it, would not invoke the bar to maintainability under Section 53B of the DD Act.

33. The relevant contents of the said termination of Lease Deed and vacation order dated 7th December 1995 are reproduced hereunder:-

> *"WHEREAS show cause notice dated 11.1.1995 was served upon the lessee to explained with the Lease of entire plot may not be determined for the aforesaid breach.*
>
> *Further, the reply of your Society dated 11.1.95 has been examined by the lessor and is not found satisfactory. Hence it has been decided to determine the lease of above referred plot allotted to your Society by the Lessor.*

> *You are therefore; requested to please hand over the land back to our Asstt. Engineer (IL) on or before 18.12.95."*

34. It is the case of the appellant that since it was seeking injunction against the Authority and the time prescribed by the Authority for vacating the premises was a period of 10 days, there was no scope for service of notice under Section 53B of the DD Act, which necessitates two months' notice alongwith all the relevant and requisite details. Admittedly, the order of the respondent directing the appellant to vacate the premises in question within 10 days, was passed and communicated to the appellant on 7th December 1995, pursuant to the finding that the reply dated 17th January 1995 to the Show Cause Notice dated 11th January 1995 was found to be unsatisfactory. A bare reading of Sub-section 3 of the Section 53B of the DD Act, reveals that the legislature, while drafting the Act, intended to accommodate the persons seeking injunction and immediate relief against the act purported to be done by the DDA or any of its members. If the intention of the legislature is not given effect, the operation of the Act itself and the provisions thereunder may fall flat on its face in fulfilling the objective of Act. Similarly, in the case of the appellant, it was seeking injunction against the respondent from eviction from the subject land and hence, the relief sought was urgent and immediate. A service of notice of two months would have changed the entire course of the proceedings between the parties and would have even defeated the purpose of the suit. Therefore, this Court finds force in the argument advanced on behalf of the appellant.

35. Accordingly, with respect to the Issue I, it is found that the Trial Court failed to appreciate the intention of the legislature and the spirit of the provision under Section 53B of the DD Act as well as the interpretation attached to the provision by the various benches of this Court.

ISSUE II

36. While Issue I pertained to an issue of maintainability of the suit, the Issue II related wholly to the merits of the case.

37. It has been argued, extensively, on behalf of the respondent, that the appellant had parted with the title and ownership of the appellant Institute by transferring the same in the name of a third party and had thereby violated the terms of the Lease Deed. On the other hand, the appellant had submitted that the respondent had failed to establish before the Trial Court that there was a transfer of ownership to the third party and despite the same the Trial Court had recorded a finding against the appellant and in favour of the respondent.

38. The Trial Court, while adjudicating this question made the observations which are reproduced hereunder:-

> *"**28.** The counsel for the plaintiff strongly argued that there is no conveyance document to show that the plaintiff transferred the land to a third party. To that extent he is correct. The Court cannot lose sight of a fact that the violators of law are always a leg ahead the framers of law. They always take sufficient care to avoid detection of wrong acts done by them. Most of the properties are transferred by way of*

Agreement to Sell, GPA, Will which are indirect methods of transferring the property. The superior lessor such as DDA is not a party to the transaction and cannot be expected to possess the documents of transfer of title. The same has to be gathered from the facts and circumstances. Viewed from that angle the plaint read as a whole gives sufficient impression that the plaintiff has virtually admitted that it transferred the premises. The case set up by the plaintiff that it was running in financial crises was not able to repay the loan taken from financial institution, decided to set up an Ayurvedic set up of medicines all show that the plaintiff practically transferred the property. The advertisement for sale published in newspaper is another indication of the said transfer. Affidavit of Sh. Subhash Gupta, property agent is the other circumstance to show the transfer. Reply of Income Tax Department that there was transaction of sale of the property for consideration of Rs.4.5 Crores as alleged by the brokers and other circumstantial evidence reflected in document Ex.DW1/6 is yet another act in the series to show the transfer. The plea of the plaintiff that there could be post facto permission for transfer of payment on 50% unearned increase is yet another half hearted admission on the part of plaintiff to show that property has been transferred. Last but not the least is the step taken by the plaintiff to compound the matter with the defendant after filing of the suit. Now once that request for compounding has been declined by the defendant, plaintiff cannot take a round tum and say that there was no transfer.

31. *There is substantial identity between Maharashi Vidya Mandir Society and Maharashi Ayurvedic Arogyashala. The signboard of Maharashi Arogyashala was found displayed at the spot. The same lends support to the claim of the defendant that a third person has come in existence and the*

> *property has been transferred to him. That is how the signboard of that third person was found at the spot. The plaintiff did not dare to deny the existence of that third person or the inspection or the displaying of signboard of that third person. He has simply tried to make out that it was a case of transfer of management. For that it has not brought on record the details of management of the Maharashi Ayuvedic Arogyashala. If said society is an independent society registered separately, it has its own identity. Simply because the management of the two is somewhat common, it does not mean that the two societies are one and same.*
>
> ***34.*** *Another reliance on Rama Association Pvt. Ltd. vs. DDA 45(1991) DLT 630 is equally unfounded. There the question was whether change in share holding of a company directors amounts to sub-letting. Moreover in that case injunction was granted before termination of the lease whereas in the case in hand the lease has already been terminated before the filing of the suit.*
>
> ***35.*** *To sum up the issue is decided against the plaintiff and in favour of the defendant."*

39. It is, therefore, evident that to decide the issue in question, the Trial Court relied upon the affidavit of one Subash Gupta, examined as Ex. DW 1/4, and arrived at the conclusion that there was a newspaper advertisement which showed that the appellant had put up the Institute for sale that signboard of and that as per the reply of Income Tax Department that there was transaction of sale of the property for consideration of Rs.4.5 Crores.

40. The respondent had relied upon the affidavit of one Subash Gupta, property agent, whose affidavit was placed on record which stated that the third party, i.e. Maharishi Vidya Mandir was operating from the premises in question. The said person was admittedly not an Official appointed for inspection at the premises, neither appointed by the Court, nor with the consent of both the parties to inspect the property in question and give a finding to that effect. Moreover, the contents of the affidavit were never verified by the respondent/DDA which is also evident from the testament of the DDA witness, Mohan Lal Ranga, Assistant Director, Institutional Land, DDA, which is reproduced hereunder:-

> *"We had never called MR. Subhash Gupta in regard to the affidavit given by him. We had not made any inquiries from MR. Subhash Gupta in regard to his affidavit. The complaint was filed by Sh. J.C. Khosla which was supported by affidavit of Sh. Subhash Gupta. We have never supplied copy of this affidavit to the plaintiff. We had not given a copy of complaint from Mr. J.C. Khosla to the plaintiff society."*

41. Therefore, without the verification of the contents of the affidavit as well as the legitimacy/competency of the witness, the affidavit in question could not have been one of the primary grounds for deciding the issue in favour of the respondent.

42. The second ground for deciding the issue was the advertisement issued for sale of the appellant institute, however, there is no dispute to the fact that a mere offer to sale does not imply a sale of the property and its transfer to a third party thereof. The principle, which has also been discussed in the landmark judgments of ***Carlill vs. Carbolic Smoke Ball***

***Company,* [1893] 1 QB 256** and ***Partridge vs. Crittenden,* [1968] 2 All ER 421,** and has also been discussed widely in the law of contract, is that an advertisement, is an invitation to offer and not implied sale. In the instant case, the advertisement which has been relied upon by the respondent before the Trial Court could not have been said to be a proof of sale or transfer of the appellant Institute. This Court does not agree with the findings of the Trial Court to this respect and finds that mere advertisement did not conclusively prove that the transfer was actually completed in favour of a third party.

43. Another consideration before the Trial Court was whether the appellant had transferred the property in name of the third party for a consideration of ₹4.5 cr. It has been contented by the appellant, that the appellant institute was not able to sustain itself and its complete operation thereof due to financial crunch and constraints. Thereafter, by inducting concerned persons, Ajay Prakash and Anand Prakash, the new wing of Ayurveda medicines and treatment was introduced to the appellant institute to not only facilitate the financial constraints faced by the institute but also to set up a new field of medicine in the appellant hospital so as to provide a better infrastructure and medical facilities to the public at large. On this aspect, an observation which is imperative to be seen is that the Trial Court itself noted that there is no conveyance deed or even any other document, including document of agreement to sale, title or ownership deeds, to show that the appellant institute had been transferred in the name of the third party. The entire observations of the Trial Court in the impugned judgment passed and the submissions and

contentions of the respondents were not substantiated by any title or ownership document to conclusive establish that there was a transfer of the suit property by the appellant to the third party.

44. Another contention which has been raised by the respondent before this Court, is that the management was internally altered to accommodate the transfer of institute when the third party, i.e., Maharishi Ayurved Mandir was given 2/3rd share in the management. However, the Trial Court has not made any observation to this contention raised by the respondent before this Court. Hence, a fresh plea before this Court which has not been raised before the Trial Court and has not been adjudicated upon by the said Court, cannot be looked into by this Court at this stage.

45. Keeping in view, the aforesaid consideration, this Court does not find reason in the finding of the Trial Court that the subject land and the appellant Institute had been transferred in the favour of the third party. The Trial Court while deciding the issue while coming to the conclusion that the property and management of the appellant Institute was transferred to a third party, passed certain vague observations, which are reproduced hereunder, and were not substantiated by any conclusive evidence, by way of any document of title or conveyance deed etc. to show that the transfer was made in the favour of a third party:

> *"The counsel for the plaintiff strongly argued that there is no conveyance document to show that the plaintiff transferred the land to a third party. To that extent he is correct. The Court cannot lose sight of a fact that the violators of law are always a leg ahead the framers of law. They always take sufficient care to*

> *avoid detection of wrong acts done by them. Most of the properties are transferred by way of Agreement to Sell, GPA, Will which are indirect methods of transferring the property. The superior lessor such as DDA is not a party to the transaction and cannot be expected to possess the documents of transfer of title. The same has to be gathered from the facts and circumstances."*

ISSUE III

46. The order/notice dated 7th December 1995 was served upon the appellant thereby cancelling their Lease Deed and directing them to vacate the premises in question. The relevant terms of the Lease Deed are stated under:-

> *"(5)(a) The Lessee shall not sell, transfer, assign or otherwise part with possession of the whole or any part of the said land or any building thereon except with the previous consent in writing of the lessor which he shall be entitled to refuse in his absolute discretion."*

47. The aforesaid clause stipulated that the lessee shall not transfer the possession of the land in favour of a third party. This clause became the primary ground for cancellation of the Lease Deed in the order dated 7th December 1995.

48. The relevant portion of the said order is reproduced hereunder:-

> *"AND WHEREAS under clause II (5) (a) of the Lease Deed in respect of Leased land, the lessee shall not sell, transfer assign or otherwise part with the possession of the whole of any part of the said*

land or any building thereon except with the previous consent in writing of the Lessor (DDA).

AND WHEREAS it has come to notice that you have sold out/ transferred the plot together with building standing thereon to another body/entity, namely 'Maharishi Ayurved' without the prior consent of the Lessor.

AND WHEREAS for the breach of the said clause II (5) (a) of the Lease Deeds, the Lessee of the said land had become liable to be determined in terms of Clause III of the said Lease Deed.

WHEREAS show cause notice dated 11.1.1995 was served upon the lessee to explained with the Lease of entire plot may not be determined for the aforesaid breach.

Further, the reply of your Society dated 11.1.95 has been examined by the lessor and is not found satisfactory. Hence it has been decided to determine the lease of above referred plot allotted to your Society by the Lessor.

You are therefore; requested to please hand over the land back to our Asstt. Engineer (IL) on or before 18.12.95."

49. A perusal of the said notice cancelling the Lease Deed of the appellant reveals that the principal ground that the property in question was transferred to a third party which led to the violation of the condition of Lease Deed. However, as found earlier, the findings of the Trial Court *qua* the transfer of property were erroneous and not in accordance with the principles of law as well as the facts and circumstances of the case. Therefore, when the sole ground invoked has already been negated by

this Court, the question of violation of terms of the Lease Deed is not held to be proved and remained unsubstantiated.

50. Hence, in the absence of evidence substantiating that the terms of the Lease Deed were violated, the basis for cancellation in the notice dated 7th December 2011 did not survive.

CONCLUSION

51. Keeping in view the material on record, contentions raised in the pleadings, arguments advanced on behalf of the parties, facts and circumstances of the case, as well as the discussion in the foregoing paragraphs, this Court is of the opinion that the Trial Court has erred while passing the impugned order on the following counts:-

Firstly, the Trial Court failed to appreciate the intention of the legislature and the spirit of the provision under Section 53B of the DD Act as well as the interpretation attached to the provision by the various benches of this Court, according to which once the suit had been instituted, reached the Court of law, argued on merits comprehensively for over a decade then the notice under Section 53B of the DD Act is rendered insignificant and irrelevant. The dismissal of the suit on this ground was unfounded and erroneous.

Secondly, the Trial Court also failed to consider that there was no conclusive evidence or document on record to establish that the title and ownership of the appellant Institute was transferred to a third party, since:

a. there was neither any conveyance deed, title deed or any other document to show that the property, land or the institute was transferred;

b. mere advertisement did not imply that a sale was concluded by the appellant;

c. and, affidavit of the property agent, Subhash Gupta, was not verified at the time of examination of evidence.

52. It is travesty of justice that an institution contributing for noble cause being that of running a charitable hospital on a public land and providing for sound research and treatment facilities has been made to suffer the rigors of cancellation of the Lease Deed and vacation of the property. Law that should be an instrument for ensuring welfare is being reduced to a tool of atrocity in the instant case. Being a constitutional court and the conscience-keeper of the democracy, this Court cannot lend a blind eye when the ends of justice are being bulldozed in broad daylight. The institution is imparting the state's welfare functions and should otherwise be done by the instrumentalities of state. Even in such a case, undue harassment being caused to the appellant will lead to an anathema of the rule of law.

53. Therefore, this Court, in light of the observations made above finds that the instant case has sufficient merits to be allowed and therefore, in terms of the following directions, the instant appeal and the reliefs sought there are allowed in the following terms:

a. The judgment dated 14th November 2011 passed by the Court of District Judge and Additional Sessions Judge, ARCT, Delhi is set aside.

b. The Order dated 7th December 1995, cancelling/terminating the Lease Deed of the appellant Institute is also set aside, since the finding of the concerned authority was not supported or substantiated by any conclusive document.

54. With the aforesaid directions, the instant appeal is allowed.

55. Pending applications, if any, also stand disposed of.

56. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 1, 2022
dy/ms