

Moonlight Electronic Vs. Delhi Development Authority

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Court : Delhi

Decided On : Dec-06-1993

Reported in : 1994RLR71

Judge : Mahinder Narain, J.

Acts : Delhi Development Act - Sections 53B

Appeal No. : Suit No. 674 of 1991

Appellant : Moonlight Electronic

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : K. Venkataraman and; T.R. Chopra, Advs

Judgement :

Mahinder Narain, J.

(1) A preliminary issue was framed vide order dated 27.5.1992. It is : 'Whether the plaint is liable to be rejected for want of notice u/S. 53(B) of the Delhi Dev. Act or whether the suit could be entertained or the suit is maintainable without such a notice on the facts and circumstances of this case Opp'

(2) It is not disputed by the deft. Dda that a civil W.P. was filed between the parties. In that W.P. and in the instant suit, the question is what is the unearned

increase to which the deft. is entitled to upon sale of 90% of the land covered by plot No. W-38, Okhla Industrial Estate, Phase-11.

(3) The purpose of S. 53(B) of the Delhi Dev. Act is to give notice to the deft. of the facts on which the plaintiff wishes to rely for purposes of seeking relief from this Court.

(4) I have seen the order which has been passed by D.B. of B.N. Kirpal and Sunanda Bhandare, JJ. in C.W.P. No. 2716/88, D./25.01.91 which is Annexure-A to the plaint.

(5) It is not disputed that in the writ both the parties to the suit were parties & order of 25.1.1991 was passed. The writ was disposed of for the reasons that the D.B. would not go into the rate which was to be charged as market rate as on 8.1.81. The amount payable has already been deposited by the plaintiff in the instant suit, and petitioner in the W P. with the DDA.

(6) In my view, filing of the W.P. is sufficient notice. It is also sufficient notice, in my view, that this suit has been filed. Counsel for the petitioner also refers to and relies upon 1991 Rajdhani Lr 389. Same view has been taken by P.K. Bahri, J.

(7) I decide the preliminary issue in favor of the plaintiff by holding that the suit is maintainable.