

Ramanand Vs. Union of India and ors.

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SooperKanoon Citation : sooperkanoon.com/696462

Court : Delhi

Decided On : Jul-30-1993

Reported in : 1993(26)DRJ594

Judge : B.N. Kirpal,; A.B. Saharya and; Arun Kumar, JJ.

Acts : Delhi Development Authorities Act, 1957 - Sections 21; Delhi Development Authority (Disposal of Developed Nazal Land) Rules, 1981 - Rules 2, 4 and 6;

Appeal No. : Civil Writ Petition No. 623 of 1993

Appellant : Ramanand

Respondent : Union of India and ors.

Advocate for Pet/Ap. : B.S. Mann,; M.S. Mann,; Ravinder Sethi,;

Judgement :

A.B. Saharya, J.

(1) In this writ petition under Article 226 of the Constitution of india, in the context of large scale acquisition, development and disposal of land for purposes of planned development of Delhi, two questions of law have arisen for determination under the Delhi Development Act, 1957 (hereinafter referred to as the Act) and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as the Nazul Rules). The questions are:-

1. Whether a person whose land has been acquired for planned development of Delhi has got a vested right to the allotment of alternative plot of land for residential purposes? 2. What is the relevant date with reference to which premium at predetermined rates would be chargeable from such a person for allotment of the residential plot- should it be the date when his land is acquired, or when he makes the application to the Administrator of the Union Territory of Delhi for allotment, or when the Administrator makes the recommendation for allotment, or when the allotment is made by the Delhi Development Authority under the Nazul Rules?'

(2) The petitioner has prayed for a writ of certiorari for quashing a letter dated 13th of January 1993 (AnnexureP-I), received by him from the Delhi Development Authority (hereinafter referred to as the 'DDA'), offering allotment of plot No.6 Pocket No. 4A Sector 123 in Rohini Residential Scheme measuring 207 sq. mts., on perpetual leasehold basis, at the provisional rate of Rs. 1,650.65 per sq. mt.; and, furthermore, for a writ of mandamus directing the respondents to allot a plot of the size of 250 sq.yds. @ Rs.419.00 per sq. yd., or at the rates prevailing on the date when he submitted his application to the Administrator of the Union Territory of Delhi for allotment in the year 1986. The petitioner has made out his case on the basis of a Division Bench judgment of this Court in Rajinder Kumar vs. Union of India, reported in 1992 Rajdhani Law Reporter 80.

(3) When the writ petition came up for preliminary hearing, it was felt by the Admission Bench that the opinion expressed in the case of Rajinder Kumar required reconsideration. The matter was, therefore, referred to the Full Bench for decision. The order of reference dated 9th of February 1993 is reproduced below:-

'LEARNED counsel for the petitioner has brought to our notice a Division Bench judgment of this Court in the case of Rajinder Kumar v. Union of India, 1992 Raj LR 80 and has contended that the rate which is payable has to be as on the date of the application and not on the date of allotment. The attention of the Court, while deciding the aforesaid case, was not invited to the provisions of the Nazul Rules which contemplate predetermined rates being charged in respect of

alternative allotments. One of the elements which has to be taken into consideration while determining the predetermined rates is the cost of acquisition plus the cost of development. The cost of development obviously cannot be ascertained till the development of the land is complete. It may happen that the application for alternative allotment of plot can be filed before developed plots are available for allotment. It is, therefore, doubtful whether the proposition laid down in Rajinder Kumar's case (supra) is correct because if the price is to be as on the date of application but no plots of land which are developed and ready for allotment are available then, it will not be possible to determine the rate as specified by the Nazul Rules. The decision in Rajinder Kumar's case possibly needs re-consideration.'

(4) In Rajinder Kumar's case, the petitioner's father had applied for allotment of an alternative plot in the year 1982. After his father's death in 1983, the petitioner pursued the matter. He supplied to the Delhi Administration all the required particulars and information. In the year 1990, since his claim had not been processed, he moved a petition in this Court for a writ of mandamus directing the Delhi Administration and the Dda to give him a plot. On 17th of December, 1991, the Court proceeded to dispose of his writ petition. The averments made against the Delhi Administration were deemed to be admitted, because, in spite of several adjournments, the Delhi Administration did not file any reply. The D.D.A., however, had filed a simple reply. It stated that a plot could be allotted to the petitioner only on the recommendation of the Delhi Administration, and because no recommendation had been received, the D.D.A. had not given him a plot. The Bench, after noticing the scheme for allotment of alternative plots, held that the petitioner was entitled to a plot, and directed the D.D.A. to allot one plot to the petitioner on payment of price, at the rate which would have been payable by the petitioner's father when he had applied for allotment in 1982. D.D.A.'s plea that the price should be fixed at the rate payable as on the date of allotment was rejected. The relevant observations made in the judgment are reproduced below:-

'THE allotment will be made by the Dda in accordance with the provisions of Section 21 of the Delhi Development Act. The rate which will be payable would be the rate which would have been payable at the time when the father of the

petitioner had applied in 1982. We may here note the contention of Mrs .Mala Goel that the rate at which the allotment is to be made is to be determined as on the date of allotment. We find little justification for this. Because of the delay or inaction on the part of Governmental authorities the right of a citizen to get alternative plot of land when that right accrues at the rate applicable on that date cannot be defeated. The petitioner's father got a vested right to the allotment of the land at the appropriate rate in 1982. If for nine years the Delhi Adm. makes no recommendation and, consequently, the Dda makes no allotment, the Dda is under no justification to charge the present market price. Grave injustice would be caused if we were to accept the contention of Mrs. Goel in this regard. It is a well known principle that no party can take advantage of its own wrong. The Delhi Adm. has acted wrongly in not recommending to the Dda the land which should be allotted to the petitioner. The Dda is also a part and parcel of the Delhi Adm. Because of the undue delay on the part of the respondents, the petitioner cannot be penalised.'

(5) In the present case, there is no controversy on facts, which may be briefly stated. A large chunk of land comprising several villages, including the petitioner's agricultural land measuring 7 bighas in the revenue estate of village Samaipur, was acquired by the Central Government, acting through the Delhi Administration, for purposes of planned development of Delhi, The award was made in March 1986. After payment of compensation, the Delhi Administration took over physical possession of the land. Then, on an application made by the petitioner, the Delhi Administration, by a letter dated 28th of December 1988 (Annexure P.2) addressed to the Dda, made a recommendation in favor of the petitioner for allotment of a plot measuring 250 sq.yds. in the north zone. A copy of the letter was endorsed to the petitioner. On the basis of this recommendation, the Dda informed the petitioner, by the impugned letter dated 13th of January 1993 (Annexure P. 1), that it had been decided to offer him a plot measuring 207 sq. mts. on perpetual leasehold basis in Rohini Residential Scheme, and that the allotment will be made at predetermined rates, to be decided by the Govt. of India/DDA for the year 1992-93 for this area. In the meanwhile, it was proposed to offer allotment to him at the provisional rate of Rs. 1,650.65 per sq.mt. Certain other terms and conditions, inter alia, regarding payment of earnest money and

payment of the total premium in three Installments, were also incorporated in the letter. He was called upon to convey, if he was interested in obtaining allotment of the plot, acceptance of the proposed terms and conditions within 30 days. Feeling aggrieved, the petitioner has approached the court for redress.

(6) The Act was passed by Parliament to provide for the development of Delhi according to plan and for matters ancillary there to. Dda was established under Section 3 of the Act, and it was empowered, under Section 6, inter alia, to acquire, hold and dispose of land and other property, carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto. Under Sections 7, 8, and 11 of the Act, the Dda was required to carry out a civic survey of, and prepare a master plan for Delhi and simultaneously to proceed with the preparation of Zonal Development plans for development of each zone. Section 15 of the Act envisages acquisition of land for purposes of planned development of Delhi under the provisions of the Land Acquisition Act, 1894. Sections 21 and 22 govern development and disposal of land by the DDA. The former provides for development and disposal of land acquired by the Central Government and transferred to the Dda, and the latter regulates the manner in which the Dda shall deal with Nazul land which is placed at the disposal of the Dda for the purposes of development. Section 56 empowers the Central Government to make rules to carry out the purposes of the Act. In the exercise of this power, the Central Government framed Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 (hereinafter referred to as the Development Rules). These Rules indicate in detail what should be included in the Civic Survey and in the Master Plan and the Zonal Development Plans.

(7) In the year 1961, the Central Government made and published a Scheme laying down general directions to regulate the acquisition, development and disposal of lands in Delhi, avowedly, with the object to control land values in Delhi as well as to secure the development of Delhi according to plan. The 1961 Scheme envisaged large scale acquisition of land for being developed by different authorities for different purposes, namely, the Central Public Works Department -

for housing of Government Employees; the Dda - for making provision for plots for private housing, industries, shopping centres, public and private institutions, public utilities and community facilities etc. by the Delhi Municipal Corporation - for slum clearance projects; and by Cooperative societies - for house-building and for use by industrial Cooperative Societies. Clause 6 provided for giving out Nazul land in the name of the President only on lease-hold basis to local bodies, cooperative societies, industrialists, individuals, and institutions etc. Clause 8 laid down, as a general policy, that disposal of developed land should be made by auction and the premium should be determined by the highest bid. An exception was, however, made in cases where land may be allotted at 'pre-determined rates', namely, the cost of acquisition and development, plus some additional charges, to certain categories of individuals, including individuals whose land had been acquired.

(8) In 1981, in exercise of powers conferred by Section 56(2)(j) read with Section 22(3) of the Act, the Central Government made the Nazul Rules, providing for the manner of dealing with Nazul land developed by the DDA. Provision has been made in these Rules, for all matters that were earlier governed by the 1961 Scheme in so far as it concerned disposal of developed Nazul land by the DDA. Rule 3 stipulates that Nazul land may be allotted, inter alia, for residential purposes. Rule 4 specifies the categories of persons to whom Nazul land may be allotted. Provision has been made for regulating the method and manner of making such allotments and also for determination from time to time, of price or premium for allotment of Nazul land to different categories of persons. Allotment of land to 'individuals' is regulated by the provisions made, inter alia, in Rules 6, 12, 13 and 24 of the Nazul Rules.

(9) Extracts of the relevant statutory provisions contained in the Act, the Development Rules, and the Nazul Rules, that may have to be read for a proper interpretation and application in the present case, are reproduced below:-

'A. Delhi Development Act, 1957 2. In this Act, unless the context otherwise requires,- (d) 'development' with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes

redevelopment. (f) 'engineering operations' includes the formation or laying out of means of access to a road or the laying out of means of water supply;

7.(L) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for Delhi. (2) The master plan shall- (a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and (b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared. (3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.

8. (1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi maybe divided. (2) A zonal development plan may- (a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extends of land-uses proposed, in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses; (b) specify the standards of population density and building density; xxxxxxxx (d) in particular, contain provisions regarding all or any of the following matters, namely :- (i) the division of any site into plots for the erection of buildings; (ii) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes; xxxxxxxx (viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided; xxxxxxxx (xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and (xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing building being erected haphazardly in such zone or area.

15.(L)If in the opinion of the Central Government any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894. (2) Where any land has been acquired by the Central Government, that Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

21.(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of - (a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon: or (b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan. (2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing , comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them: Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it. was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

22.(1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that

Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as 'nazul lands') for the purpose of development in accordance with the provisions of this Act. OWc3 (2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of the Authority after such land has been placed at the disposal of the Authority under sub-section (1). (3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf. (4) If any nazul land placed at the disposal of the Authority under subsection (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority.

56.(L)The Central Government, after consultation with the Authority, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act: Provided that consultation with the Authority shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Authority may make in relation to the amendment of such rules after they are made. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:- xxxxxxxx (e) the form and content of the master plan and a zonal development plan and the procedure to be followed in connection with the preparation, submission and approval of such plans and the form, and the manner of publication, of the notice relating to any such plan in draft; xxxxxxxx (j) the manner in which nazul lands shall be dealt with after development; B. Delhi Development Authority (Master Plan and Zonal DevelopmentPlan) Rules, 1959:

3.Civic Survey - The civic survey to be carried out by the Authority may include survey and analysis of the physical, economic and sociological featured of Delhi, with reference to natural resources, distribution of population, industry, communications, housing requirements and such other matters as in the opinion of

the Authority relate to development of Delhi.

4. Form and contents of Master Plan-

(1) The draft master plan shall, subject to the provisions of sub-section

(2) of Section 7 of the Act, consists of such maps, diagrams, charts; reports and other written matter of an explanatory or descriptive nature as pertaining to the development of the whole or any part of Delhi.

(2) The written matter forming part of the draft master plan shall include such summary of the main proposals and such descriptive matter as the Authority may consider necessary to illustrate or explain the proposal indicated my maps, charts diagrams and other documents.

(3) The draft master plan may include all or any of the following: (a) reports of the survey and analysis Of the socio-economic features of Delhi with special reference to the trends, growth of population, industries, business commerce and such other matters as may relate to planned development. (b) 'a land use plan' based upon such survey of the present use of land as may be necessary as well as analysis of estimated future needs and consisting of comprehensive proposals for the most desirable utilisation of land such as land for agricultural, government, commecial, industrial, residential, cultural, educational, recreational, transportation and other activities. xxxxxxxx (d)'a public utilities plan' consisting of proposals for provision of water, electricity, drainage and disposal of sewage and refuse; (e) 'a housing plan' consisting of estimates of housing requirements and proposals relating to standards of new housing units; (g)'education, recreation and community facilities plan' indicating proposals for parks, open spaces, recreational, educational and cultural centres. .. (h) 'a financial plan' containing capital improvement programme, estimate of revenues and resources, estimates and objective of public services any such other fiscal matter and proposals for the implementation of the master plan in stages;

14. Contents of Zonal Development Plans-Section 56(2)(a): A zonal development plan may also include any of the contents that form part of the Master Plan. C.

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 G.S.R.872 In exercise of the powers conferred by clause (i) of sub-section (2) of section 56, read with sub-section (3) of section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby makes the following rules providing for the manner of dealing with Nazul land developed by or under the control and supervision of the Delhi Development Authority. 1. (1) These rules may be called the Delhi Development Authority (Disposal of Developed Nazul land) Rules, 1981. (2) They shall come into force on the .date of their publication in the Official Gazette (26.9.1981). 2. Definitions.- In these rules, unless the context otherwise requires,- (b) 'Administrator means the Administrator of the Union Territory of Delhi; (i) 'Nazul land' means the land placed at the disposal of the Authority and developed by or under the control and. supervision of the Authority under section 22 of the Act; (j) 'Notification' means a notification published in the Official Gazette; (k) 'Plan' means the Master Plan or the Zonal Development Plan for a Zone, referred to in sections 7,8 and 11 A of the Act; (1) 'Pre-determined rates' means the rates of premium chargeable from different categories of persons and determined by notification from time to time, by the Central Government, having regard to (a) cost of acquisition, (b) development charges, and (c) concessional charges for use and occupation:-

3.Purposes for which Nazul land may beallotted.- Authority may allot Nazul land for public utilities, 'community facilities, open spaces, parks, playgrounds, residential purposes, industrial and commercial uses and such other purposes as may be specified from time to time by the Central Government by notification.

4.PERSONSto whom Nazul land may be allotted.- The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, body of persons, public and private institutions, co-operative house building societies, other co-operative societies of individuals, co-operative societies of industrials and to the departments of the Central Government, State Governments and the Union territories.

6.Allotment of Nazul land at pre-determined rates.-Subject to the other provisions of these rules the Authority shall allot Nazul land at the predetermined rates in the

following cases namely:- (i) to individuals whose land has been acquired for planned development of Delhi after the 1st day of January, 1961, and which forms part of Nazul land: Provided that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted; (ii) to individuals in the low income group or the middle income group, other than specified in clause (i) (a) who are tenants in a building in any area in respect of which a slum clearance order is made under the Slum Areas Act; (b) who, in any slum area or the other congested area, own any plot of land measuring less than 67 square metres or own any building in any slum area or other congested area; (iii) to individuals, other than those those specified in clauses(i) and (ii), who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee; (iv) to individuals belonging to Scheduled Castes and Scheduled Tribes or who are widows of defense personnel killed in action, or ex-servicemen, physically handicapped individuals subject to the provisions of rule 13;

12.Priority of allotment for residential purposes.- Subject to the availability of land for allotment for residential purposes, among the individuals referred to in clause (i) to (ii) of rule 6, the individuals referred to in clause (i) shall be preferred to the individuals referred to in clause (ii) and those in clause (ii) shall be preferred to those in clause (iii).

13.Reservation for Scheduled Castes, Scheduled Tribes and others.- (1) The Authority shall, with the previous permission of the Central Government, reserve such percentage 'of Nazul land available for allotment for residential purposes at any given time, to individuals in the low income group or the middle income group, who are members of the Scheduled Castes and Scheduled Tribes, widows of defense personnel killed in action, ex-servicemen, physically handicapped individuals or such other category or individuals as may be specified in the permission.

24.Manner of realisation of premium or price of plots.- (1) Save as otherwise provided in Rules 29,36 and 40, premium or price of plots of Nazul and chargeable in accordance with the provisions of these rules shall be realised in Installments in the following manner, namely:- (a) 25 per cent of the total land premium for the plot, along with such earnest money not exceeding 10 percent of the premium, as may be decided by the Authority, shall be deposited at the time of submitting the application for allotment of land; (b) 50 percent of the premium shall be deposited within 60 days of the issue of demand-cum-allotment letter and (c) balance premium after adjusting the earnest money shall be deposited before taking over possession of the land or within two months of the receipt of communication from the Authority offering possession, whichever is earlier. (2) If the premium or price of land as provided in sub-rule (1) is not deposited, the earnest money deposited shall be forfeited and it shall be competent for the. Authority to allot the land to any other person including a cooperative society in accordance with the prescribed procedure.'

(10) The petitioner's grievance is that the Dda has unauthorisedly reduced the size of the plot, although the Administrator had recommended allotment of a plot of a larger size, and that the Dda is demanding payment of an exorbitant amount as premium on the basis of the pre-determined rates said to be chargeable for the year 1992-93. It is contended that the Dda was duty bound to allot him a plot, of the size recommended by the Administrator, at the rate of premium chargeable on the date when his right to allotment had accrued. According to the petitioner, the said right accrued in his favor on acquisition of his land in 1986, or at the rate that Was prevailing when he made the application to the Administrator for allotment, or, latest, when the Administrator made the recommendation, thereby establishing his right to be allotted a plot, on 28th of December 1990. It is further contended that Dda is responsible for delay in making the allotment, and that it should not be allowed to take advantage of its own wrong and burden the petitioner with the demand of premium at the higher rate applicable for the year 1992-93.

(11) On the other hand, on behalf of the Dda, the procedure for allotment of alternative plots has been explained byRajeshSomaal,O.S.D.(Housing) in his counter affidavit dated 16th April 1993. It is stated that the person whose land is

acquired, if he desires to get an alternative plot, has to make an application to the Delhi Administration, who recommend the case, if found fit, to the DDA. The Dda maintains a seniority list of eligible persons, which is prepared on the basis of the date of recommendation made by the Delhi Administration, for allotment of residential plots after the land is developed in accordance with the plans. As and when specific plots of the requisite size are available, allotment of the same is made, by draw of lots on the basis of the seniority list and premium is charged on the basis of the predetermined rates prevailing on the date of allotment. Predetermined rates for allotment of plots, it is stated, is fixed on no-profit no-loss on a project basis, taking into account, inter alia, the cost of acquisition and the cost of development of land. It is asserted that the actual market rates are many times higher than the predetermined rates at any given point of time, and that the allottee stands to gain in a big way when he is charged premium on this basis. It has been explained further that the Dda has made the offer of allotment to the petitioner in Rohini on the basis of provisional rate of Rs.1,650.00 persq. mtr., without waiting for notification of the predetermined rates for this particular area. On the- basis of the rates notified by the Central Government for the year 1992-93, in respect of another project, which is being simultaneously developed and is known as 'Dwarka'. It is clarified that the exercise for arriving at the break-even cost for fixing the pre-determined rates for allotment of land in Rohini and Narela is presently under way, and if it were to wait till the predetermined rates are finalised, then the allotment of plots and further development of land would be delayed for a longer period, and the rates also may go higher for the project inhand. It is contended that an individual whose land is acquired does not get a vested right to allotment of an alternative plot, but he becomes eligible to be considered for allotment of a plot, and that too subject to certain conditions, in accordance with the plans. As such, the question of specifying a particular point of time at which such a right would accrue does not arise. Further, it is contended that an allottee is liable to pay premium at the pre-determined rates prevailing at the time when a specific plot is allotted to him.

(12) So far as the size of the plot is concerned, it is pointed Out on behalf of the Dda that there is not much of a difference between size of the plot offered to the petitioner and that recommended by the Delhi Administration. It is stated that the

Dda makes every effort to adhere to the size recommended by the Delhi Administration but slight variation cannot be avoided inasmuch as plots of different sizes have to be allotted in accordance with plans and it may not be possible to allot to every one a plot of exactly the same size as recommended by the Delhi Administration. In view of this Explanationn,learned counsel for the petitioner did not press the case regarding difference in size of the plot as recommended and as allotted.

(13) The right to allotment is asserted firstly, on the basis of Section 21 of the Act and clause 8 of the 1961 Scheme. In the alternative, it is contended that such a right would flow from Section 22 of the Act, and rules 4 and 6 of the Nazul Rules.

(14) According to learned counsel for the petitioner, a duty is cast upon the Dda, by sub-section (2) of Section 21, to so exercise its power of disposal of the acquired land as to give to the persons who are living or carrying on business or other activities on the said land, if they so desire, accommodation thereon suitable to their reasonable requirements. Careful reading of Section 21, however, shows that it is not at all applicable to Nazul land, and that it applies only to land which belongs to the Dda, and is referred to as land acquired by the Central Government and transferred to the DDA. This is the particular kind of land that is clearly described,insomanywords,inclause (a)of Sub-section (1) of Section 21. In the next clause, the expression 'such land' obviously, eludes to the land mentioned in the earlier clause. The only difference in the two clauses is in respect of disposal of such land, under clause, (a) without development, and under clause (b) after development. Sequentially, Sub-section (2) proceeds to regulate the exercise of power of the Authority to dispose of that very land, which is the subject matter of sub-section (1), i.e., the land which belongs to the DDA. It is, thus, clear that Section 21 does not apply to acquired land which continues to vest in the Central Government and is known and described as Nazul Land. It appears that the impression, reflected in the case of Rajinder Kumar (supra),that allotment of Nazul Land will be made in accordance with the provisions of Section 21 of the Act, is not quite correct.

(15) The provision made in clause 8 of the 1961 Scheme also is of no help to the petitioner. It was envisaged there under, as a general policy, that disposal of developed land should be made by auction and premium should be determined by the highest bid. An exception was, however, made for allotment of land at predetermined rates in the case of certain individuals including those individuals whose land had been acquired. As a result, in cases where allotment, was made to certain individuals, who were covered by the exception, premium was chargeable at the pre-determined rate and not at the market rate. But, this clause cannot be construed to mean that a right to allotment of alterna positive plot was conferred upon such persons.

(16) Section 22 of the Act regulates development and disposal of Nazul land, which is the subject matter of the present case. Sub-Section (1) authorises the Central Government to place at the disposal of the Dda Nazul lands for the purpose of development. Subsection (2) prohibits development of such Nazul land by anybody except by, or under the control and supervision of, the DDA. Then, sub-section (3) stipulates that after such land has been developed, it shall be dealt with by the Dda, and that the Dda shall deal with it in accordance with rules made and directions given by the Central Government.

(17) The provisions made in the 1961 Scheme, in respect of the land developed by the Dda may well be taken, as asserted by learned counsel for the petitioner, as directions given by the Central Government in the exercise of power vested in it under sub-section (3) of Section 22. But, nothing would turn on it. The reason, why we say so, is that the Nazul Rules also were made by the Central Government, in the exercise of this very power under sub section (3) of Section 22, in addition to the rule making power conferred upon it under Section 56(2)(j), for regulating the manner of dealing with Nazul land developed by the DDA. In this way, the provisions earlier made in the 1961 Scheme p73 stand impliedly repealed, by the more comprehensive and detailed provisions made later, on the same subject and in the same field, by the Nazul Rules in 1981. The provisions, thereforee, need no further discussion.

(18) In the absence of a specific provision for alternative accommodation in Section 22 (unlike Section 21) of the Act, strong reliance was placed on rules 4, and 12 of the Nazul Rules, to set up the right claimed by the petitioner. In our opinion, however, a combined reading of these rules, and some of the other rules, proves just the opposite.

(19) Rule 3 provides for allotment of Nazul land for public utilities, community facilities, open spaces, parks, play grounds, industrial and commercial uses, and for residential purposes. Allotment of land for residential and various other purposes is indeed necessary for planned development of any zone.

(20) Rule 4 envisages allotment of Nazul land to different categories of persons, i.e.. individuals, association of persons, public and private institutions and co-operative societies etc. It provides that the Dda may allot Nazul land to the categories of persons specified therein. The rule uses the word may. In the context in which this word is used, it cannot be construed as shall. This rule confers on the Dda a power, a power to allot land to the specified categories of persons. It does not confer upon any one a right to allotment, nor does it cast upon the Dda any obligation or duty to make such allotment to any particular person or category of persons mentioned therein. In other words, the rule gives to the Dda, by use of the word may, a discretionary power to allot land to all or any of the named categories of persons. This is clear from the frame of the rule itself, and the same would emerge more clearly from the following discussion.

(21) Rule 4 requires that allotment of land shall be made in conformity with the plans. What are these plans? 'Plan' means the Master Plan or the Zonal Development Plan for a zone. These plans are prepared on the basis of the factors indicated in rule 3, so as to cater to the requirement of land for various activities, facilities, purposes and uses, such as utilisation of land for agricultural, Government, commercial, industrial, cultural, educational, re-creational and residential activities, for provision of roads, water, electricity, drainage and disposal of sewage and refuse, and for parks, open spaces, recreational, educational and cultural centres etc. enumerated in clauses (a) to (g) of rule 4 of the Development Rules. Since provision has to be made for these

various purposes, the availability of land for residential use, that too for allotment only to individuals, for residential use, in conformity with the plans, becomes very much restricted.

(22) Further, rule 4 directs that allotment has to be made subject to other provisions of the Nazul Rules. It was contended, on the basis of rule 12, that the individuals whose land has been acquired, as against the others, should be given over-riding and preferential right to allotment of residential land. This proposition would hold good only to the extent of priority for allotment inter-se the individuals referred to in clauses (i), (ii) and (iii) of rule 6. Rule 12 does not place the individuals mentioned in clause (i) at any advantage or over-riding position in relation to the other sub-categories of individuals referred to in clause (iv) or clause (v) of rule 6 itself, much less in relation to the other categories of persons named in rule 4. In any event, the provisions made in rule 13 expressly impinge upon availability of residential plots for allotment to various categories of individuals. It casts upon the Dda a duty, in mandatory terms, to reserve a certain percentage of Nazul land available for residential purposes at any given time, for allotment to individuals placed in a special category, who are members of the Schedule Castes and Schedule Tribes, widows of defense personnel killed in action, ex-servicemen, physically handicapped individuals etc. So, rule 4 has to be read, subject to the provisions made in rule 13 of the Nazul Rules.

(23) Moreover, the category of 'individuals' mentioned in rule 4, is further divided into various sub-categories referred to in clauses (i), (ii), (iii) and (iv) of rule 6. The whole lot of the individuals, referred to in these sub-categories, including the individuals whose land has been acquired, must all be treated on par with each other for determination of the question whether they have a right to allotment of land or they are merely eligible to be considered for such allotment, by virtue of rule 4. Where the number of claimants in the category of individuals, or even in the sub-category of individuals whose land has been acquired, is more than the available number of residential plots, obviously, the claim of each and every individual cannot be fulfilled. It is, thus, clear that out of the different categories of persons, and even within the category of individuals mentioned in rule 4, only some and not all of them may get a plot.

(24) Rule 6, in reality, controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein. In other cases, the rules provide for sale of land at the market price determined by the highest bid on public auction of land.. Thus, the principle expressed in the form of exception in clause 8 of the 1961 Scheme, which has already been discussed above, is embodied into the Nazul Rules. Where the Dda decides to allot Nazul land to the persons named in this rule, it is bound to charge premium from the allottees only at the predetermined rates. The right and corresponding duty contained in this rule is of a different kind than that sought to be invoked by the petitioner. The right or entitlement of any one to allotment of Nazul land is not regulated by this rule. It regulates only the rate at which premium shall be chargeable in certain cases, and it restricts the liability of allottees, in specified cases, to pay premium for allotment of Nazul land at the pre-determined rates, and no less and no more.

(25) Rule 6(i) Poviso, undoubtedly, provides for determination of the size of the plot by the Administrator if an individual is to be allotted a residential plot. But, the power to make the allotment lies within the domain of the DDA. The Administrator, being the land acquiring authority, is to verify whether the land of an individual applicant is acquired, and the area and value thereof. On these facts, then, the Dda, who is entrusted with the power and function of development and disposal of land, would examine the matter, in the light of the plans and the other rules, and decide whether a plot may be allotted to him, and, if so, of what size and where. It cannot be said, on the basis of this provision, that the right to allotment of a plot would accrue, merely on verification of the claim, and even on the basis of recommendation made by the Administrator in favor of the individual whose land is acquired.

(26) In the present case, letter dated 28th of December 1988 (Annexure P.2) did not convey even a firm offer to the petitioner for allotment of a plot. Indeed, copy of the said letter sent by the Delhi Administration to the petitioner made the position abundantly clear that it did not carry any legal commitment for allotment of a plot. The relevant portion reads thus:

'THE allotment of alternative plot is subject to the availability of plot with the Delhi Development Authority. However, it may clearly be noted that this letter does not carry will the legal commitment for the allotment of alternative plot.'

(27) Lastly, on the basis of certain observations made in a Full Bench decision of this Court in *Shiv Devi V. Lt. Governor, Delhi*, 1986 R.L.R.557, it was contended that it is in public interest that individuals who have lost their land as a result of acquisition should be given alternative accommodation, and that it is the duty of the State to give the same. In our opinion, observations to this effect were made, in paras 20 and 21 of the judgment, for explaining the beneficial object of the scheme for allotment of alternative plots, in a different context. In that case, reference to the Full Bench was made on the question as to who is entitled to the benefit of allotment of a plot on the acquisition of land. This question had arisen in the light of three phases of acquisition proceedings envisaged under the Land Acquisition Act, namely, when the notification under Section 4 is issued, when the declaration under Section 6 is made, and when the land is actually acquired by making an award. Earlier, 'the view taken by various Benches was that individuals whose land has been acquired would be. considered for allotment of an alternative plot for residential purpose in certain circumstances. Then, in *Krishan Kumar Manik V. Union of India and others*, it was held that the person who owned the land at the time when the notification under Section 4 was issued, and not the subsequent transferees, would be entitled to apply for an alternative plot. The Full Bench disagreed with the view taken in *Krishan Kumar Manik's* case and confirmed the view taken earlier that individuals whose land had been acquired would be 'entitled to be considered' for allotment of a plot 'in certain circumstances'. It was further held that any one whose land has been acquired 'is entitled to apply' for allotment of an alternative plot. The observations made in this judgment really go against the proposition sought to be advanced on behalf of the petitioner.

(28) As a result of the above discussion, we find that an individual whose land has been acquired for planned development of Delhi, has no absolute right to allotment, but, he is eligible to be considered for allotment of an alternative plot for residential purposes; and that the Dda may allot Nazul land to such an individual,

in conformity with the plans and subject to other provisions of the Nazul Rules.

(29) Now, let us turn to the second question. It may be stated at the outset that individuals whose land has been acquired, are not given residential plots in lieu of acquisition of their land, for which they are paid full compensation, under the Land Acquisition Act. This is an additional benefit envisaged for resettlement of the displaced individuals, and premium is chargeable from such individuals at predetermined rates for allotment of alternative plots under the Nazul Rules.

(30) The definition of predetermined rates in Clause (1) of rule 2 makes it clear that the rates of premium chargeable from different categories of persons shall be determined by notification from time to time, by the Central Government. The expression 'from time to' time' implies that the rates may be determined as and when required, and that the rates once notified would operate during the period that may be specified, or till such time that the rates may be changed as and when necessary. Further, the definition requires the Central Government to fix the predetermined rates having regard to development charges and two other factors specified therein.

(31) The Dda has explained that development of land, even after plots for residential purposes are demarcated, requires the formation and laying out of roads, means of water supply and sewerage etc., in conformity with the plans. This, naturally, involves a lot of expenditure spread over a long period of time. It executes such projects on no profit no loss basis. It gets funds for undertaking development of land on realisation of premium on allotment of land. Development of land, and the input of funds for meeting the cost of development, therefore, must go on side by side, and from stage to stage, for expeditious disposal of land in any area or zone.

(32) In a transaction for sale of immovable property, among other material terms, the price/premium should be settled to conclude a valid and binding contract between the parties. Where the Dda enters into such a transaction, it is bound to charge premium only at the predetermined rates in force at the time when it proceeds to allot a plot of land under rule 6 of the Nazul Rules. Rule 24 of the Nazul Rules lays down the manner for realisation of the price of land in

Installments. The first Installment of 25% of the total premium is to be deposited at the time of submitting application for allotment of land. Here, the application for allotment, it may be noted, is not the same application that is initially required to be made to the Administrator which was the subject matter of the earlier discussion. The application under this rule is required to be made to the Dda if the individual accepts the terms and conditions, including the rate of premium, offered by the Dda for allotment of a specific plot. The second Installment of 50% of the premium is required to be deposited within sixty days of the issue of demand-cum-allotment letter; and the balance amount, after adjusting the earnest money, to be deposited before taking over possession of the land or within two months of the receipt of communication from the authority offering possession, whichever is earlier. Rule 24 would really come into play when the Dda makes a firm offer to the individual for allotment of a specific plot, at the specified premium, and he accepts the offer. It requires the allottee to communicate his acceptance in the form of the application, and act upon it by making payment of the first Installment of the stipulated premium. Thus, this rule indicates that it is the premium calculated at the rate prevailing at the time when a firm offer of allotment of a plot is made by the Dda to the allottee that would properly constitute the consideration for concluding a valid contract between the parties.

(33) In any event, development can be undertaken only after land is acquired. How can development charges be ascertained without undertaking development in a particular area or zone? Obviously, predetermined rates, having regard to development charges, cannot be worked out at the time when the land is acquired. For this simple reason alone, the plea that premium for allotment of a plot to an individual whose land has been acquired, should be chargeable at the predetermined rates prevailing at the time when his land was acquired, cannot be accepted. The position would be the same at the next two stages also, when the application is made to the Administrator for allotment of a plot, and when the Administrator may recommend the case for allotment. Logically, predetermined rates would come into play for calculation of the amount of premium chargeable from the concerned person only at the time when the offer is made to him for allotment of a plot in a particular area or zone.

(34) We, therefore, proceed to answer the second question, and hold that the rates of premium chargeable from different categories of persons, including an individual whose land has been acquired, shall be the predetermined rates in force at the time when the offer is made to the concerned person for allotment of a specific plot of land in a particular area or zone, under rule 6 of Nazul Rules.

(35) Lastly, we may also deal with the plea urged on behalf of the petitioner that individuals whose land has been acquired should not be burdened with the higher cost of development, because the Dda is responsible for the delay in development of the land after it was acquired, and it should not be allowed to take advantage of its own wrong. In support of this proposition, learned counsel has placed reliance upon Division Bench judgment of this court in *Dev Raj Gupta and Others vs Union of India and others*, : 39(1989)DLT298 ; *Mrs. Neirah Bhargava v. Lt. Governor & others*, 1991 Rlr 68 and the judgment in *Rajinder Kumar's case*(Supra). But, we feel that these decisions are of no help.

(36) In the case of *Dev Raj Gupta*, the petitioner was holding a plot of land on perpetual lease for residential purpose. On the other hand, the Master Plan and the Zonal Development Plan prescribed user of the land for commercial purpose. The petitioner made an application for conversion of the land use. Dda granted the permission, but 3 years after the date of the application, and demanded payment of conversion charges calculated at the rate prevalent at the time when the permission was granted. It was found that the petitioner Was. entitled to the grant of permission for conversion of the land use, but Dda was at fault for it did not act diligently. It was, therefore, held that Dda could not take advantage of its own delay and penalise the petitioner by asking him to pay conversion charges at rates higher than the rates that were in vogue on the date of the application.

(37) Likewise, the case of *Neirah Bhargava*, the petitioner made an application to the Dda for permission to sell her leasehold rights in respect of a plot. Dda did not take any action for a long time and then it claimed payment of unearned increase and interest for the period between the date of the application and the date when permission was granted. Dda threatened to cancel the petitioner's sub lease as the payment was not made. This was challenged. It was held that Dda could claim

unearned increase due on the date when the application for permission to sell was made, and that it could not take advantage of its own wrong by claiming interest on the amount of unearned increase for the period when the application was pending disposal. It was held further that since the petitioner had agreed to pay the amount demanded subject to lawful adjustment, Dda was not entitled to seek cancellation of the lease. Here again, it was found that the petitioner was entitled to sell her interest in the plot on payment of unearned increase, and a proper application had been made for this purpose. In these circumstances, imposition of interest was wholly unjustified.

(38) In Rajinder Kumar's case, certain observations were made. in somewhat peculiar circumstances, regarding inordinate delay in giving an alternative plot to the petitioner. The observation made in that judgment, if it be taken a proposition of law, that a right to get alternative plot accrued on the date when the application was first made for that purpose by the petitioner's father in 1982, we have found, for reasons discussion above, was not correct.

(39) In the present case. there are no allegations of mala fides nor any motive has been attributed to the Dda or to any of its officers for causing delay in development of the land or in allotment of the plot. The allegations of delay are made in vague and general terms. In the absence of any specific pleading or other material on record, no fault can be found with the Dda on this score. The Dda has called upon the petitioner to pay premium for the plot at the same rate that is being uniformly charged from all other similarly placed persons. It is not as if the Dda has made any allotment earlier to the others, or that in dealing with the claim of the petitioner there is delay. In these circumstances, the question of inaction or delay on the part of the respondents does not arise, and the principle that no party can take advantage of its own wrong is not applicable.

(40) For the foregoing reasons, we over-rule the decision in the case of Rajinder Kumar (supra). We hold that an individual, whose land is acquired, does not have an absolute right to the allotment of alternative plot of land for residential purposes, and that such a person is only eligible to be considered for allotment of a plot, subject to certain conditions. Further, we hold that premium shall be

chargeable from such a person at the pre-determined rates prevailing on the date when the offer is made to him by the Dda for allotment of a specific plot of land in a particular area or zone, under the Nazul Rules.

(41) Consequently, the writ petition is dismissed. No costs.

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