

Rajender Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Dec-17-1991

Reported in : 47(1992)DLT130; 1992(22)DRJ133; 1992RLR79

Judge : B.N. Kirpal, J.

Acts : Delhi Development Act - Sections 21

Appeal No. : Civil Writ Appeal No. 2252 of 1990

Appellant : Rajender Kumar

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Ramesh Chandra,; Anand Yadav,; B.S. Mathur and;

Judgement :

B.N. Kirpal, J.

(1) The father of the petitioner owned about 27 Bighas of land which was acquired for planned development of Delhi. In accordance with the policy of large-scale acquisition which had been promulgated by the Delhi Administration, the persons whose lands were acquired were entitled to allotment of an alternative plot.

(2) In the year 1982 the father of the petitioner applied for land. He, however, died in 1983. Thereafter the petitioner approached the Land and Building Department

of the Delhi Administration seeking allotment of land in his favor. On 17th March, 1986 a letter was written by the petitioner to the Delhi Administration in which it was stated that he was the only heir of his father and that he had deposited an affidavit and death certificate. He also, Along with the letter of 17th March, 1986, deposited the relinquishment deed and list of legal heirs.

(3) As is normally the case with the Government Departments, this citizen did not get any redress. It is thereupon that the present writ petition was filed.

(4) Notice to show cause was issued on 23rd July, 1990. On 3rd September, 1990 time was granted to file a reply-affidavit within four weeks. No reply was filed on behalf of the Delhi Administration. After 28th January, 1991 no one even entered appearance on behalf of the Delhi Administration. Notice was directed to be issued on the Standing Counsel, Delhi Administration. Thereafter again time was taken but no reply filed. It is indeed distressing to note that the Government Departments due to their laxity do not comply with the orders of the Court and do not file the replied which they are required to do.

(5) Having given sufficient opportunity to the respondent-Delhi Administration to file the reply, we see no reason as to why any further opportunity should be granted. We, therefore, propose to dispose of the writ petition on the basis that the averments made by the petitioner qua Delhi Administration go un rebutted and thereby admitted.

(6) As far as the Delhi Development Authority is concerned, its reply is very simple. It is stated that an allotment can be made in favor of the petitioner by the Delhi Development Authority only on the Delhi Administration indicating the entitlement of the petitioner. As no recommendation from the Delhi Administration has been received, therefore, the Delhi Development Authority has not allotted any plot of land. 127 Bighas of land having been acquired, the petitioner would be entitled to allotment of a plot of size not more than 400 sq.yards. The petitioner's land which was acquired was in Village Badli which falls in the North Zone. According to counsel for the petitioner, the land of the petitioner was acquired for Rohini Residential Scheme. Counsel for the petitioner has relied on a note dated 22nd January, 1983 by the then Lt. Governor of Delhi (Annexure J to the writ

petitioner in which it is stated that there is no justification for restructuring the size of the alternative plots to less than 400 sq.yards specially when the farmer has comparatively large family and when large chunks of land belonging to the farmers are required. It is further stated in this not that the size of the alternative plot should be worked out on the basis of the formula of 40% of the land acquired subject to a maximum of 400 sq.yards. There is no other document on the record which would indicate that this policy of the Lt. Governor contained in the said note of 22nd January, 1983 has in any way been varied.

(7) The petitioner's father had applied for land in 1982. 27 Bighas of land had been acquired and, therefore, the petitioner would be entitled to alternative plot of land in the North Zone in terms of the Lt.Governor's aforesaid not of 22nd January, 1983.

(8) We, therefore, issue a writ of mandamus directing the Delhi Development Authority to allot to the petitioner, on the petitioner completing all the formalities and paying the necessary price, a land measuring not more than 400 sq. yards preferably in Rohini and if no land of this size is available in Rohini then in the North Zone of Delhi. The allotment will be made by the Delhi Development Authority 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.

(9) 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 in-action 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 Administration makes no recommendation and, consequently, the Delhi Development Authority 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 respondent-Delhi

Administration has acted wrongly in not recommending to the Delhi Development Authority the land which should be allotted to the petitioner. The Delhi Development Authority is also a part and parcel of the Delhi Administration. Because of the undue delay on the part of the respondents, the petitioner cannot be penalised.

(10) We, therefore, direct that the rate which will be charged from the petitioner is the one which would have been payable by the petitioner's father when he applied for alternative plot of land in 1982. The petition stands disposed of in the aforesaid terms.

(11) The petitioner will be entitled to costs. Costs will be paid by the Delhi Administration only. Counsel's fee Rs. 1000.00.

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