

Sumit Gahlot Vs. D.D.A.

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Court : Delhi

Decided On : Mar-27-2006

Reported in : 129(2006)DLT194

Judge : Pradeep Nandrajog, J.

Appeal No. : WP(C) No. 4821/05

Appellant : Sumit Gahlot

Respondent : D.D.A.

Advocate for Def. : Sushil Salwan, Adv.

Advocate for Pet/Ap. : Raghubir Singh Rana, Adv

Judgement :

Pradeep Nandrajog, J.

1. 91 bigha and 19 biswa of land owned by the petitioner in village Nangli Syed were acquired vide award No. 2202 dated 10.2.1969. Post acquisition, lands were placed at the disposal of DDA for the purposes of planned development of Delhi.

2. In consultation with the Union of India, Delhi Development Authority had framed a policy as per which persons whose lands were acquired for purposes of planned development of Delhi could apply for allotment of a shop at a reserve price to be

determined by DDA.

3. Vide Resolution No. 118 dated 22.9.1980 DDA decided that allotment of shops to a person would be in the same area/zone where the land has been acquired.

4. Somewhere in the month of November-December 2000, DDA issued a public notice inviting applications from the scheduled castes and scheduled tribes, ex-service men, physically handicapped, freedom fighter and those who were eligible under the category of land acquired persons. It was notified that applications could be submitted for built up shops/stalls on free hold basis.

5. Being desirous of obtaining a shop, petitioner procured a form from the office of DDA. Unfortunately, the form did not contain any column under which applicant could state whether he/she was opting for a shop or a stall.

6. However, while submitting the form, petitioner clearly indicated that he was applying for a shop. Not only that, he even indicated his preference for a particular shop, being No.A-4 on plot No. 40 to 47 Paschim Vihar, CSC.

7. While issuing a receipt to the petitioner on 2.1.2001 when DDA received his application, DDA specifically noted as under:

Received application form bearing number, as indicated above, for consideration of allotment of shop to reserve category'

8. Notwithstanding that the petitioner had applied for allotment of a shop, a stall at Dwarka was allotted to the petitioner for the reason name of the petitioner was included at a draw held on 20.2.2001, in which draw, even stalls were entered.

9. It is not in dispute that the stall is nothing but a cement platform without a roof or even a temporary shade overhead.

10. Since he had never applied for a stall, additionally for the reason that the stall allotted was in an area other than where the acquired lands were situated, petitioner immediately wrote back to DDA when he received the allotment letter qua the stall, informing that the allotment was wrong. That petitioner had never applied for a stall. That he had applied for a shop. Petitioner requested that the

wrong be undone.

11. Processing the application received from the petitioner, on 3.8.2001, concerned Deputy Director, DDA opined as under:

The policy of DDA provides that the shop should be allotted in the same zone where the land has been acquired. His case on merit needs consideration for allotment of shop in the west zone subject to the availability. If agreed, we may consider his request for change of allotment from Dwarka to West Zone.?

12. Thereafter, the file moved from table to table. It took another 1 year before DDA could finally decide what had to be done. Finally, on 28.10.2002, evidenced by a note of even date in the file produced by DDA, it was recorded that shop No. 38/19, GF, CC Block G, Vikas Puri be allotted to the petitioner.

13. However, while noting as aforesaid, it was directed that the allotment should be at the current price charged by DDA.

14. On 8.11.2002 a demand cum allotment letter was issued to the petitioner informing him that the aforesaid shop at Vikas Puri was allotted to him. He was informed that he had to pay a premium of Rs. 9,19,145/-. Maintenance charges and documentation charges were also indicated to be paid. In all, Rs, 9,19,145/- was demanded.

15. Petitioner wrote back. He pointed out that the shop allotted to him at Vikas Puri admeasured 16.25 square meters. He pointed out that 2 shops numbered 38/16 and 38/18 on the ground floor, each admeasuring 16.25 sq. meters in the same complex were allotted in November 2001 at a price of Rs. 5,85,000/-. He informed that these allotments were pursuant to a tender. He informed that if the market price for 2 shops in the same complex, as of November 2001, was Rs.5,85,000/- there was no reason why he should be charged Rs. 9,10,000/- for an identically covered shop in the same market. Additionally, petitioner pointed out that his rights actually matured in the month of February, 2001 when a draw was held. But for the fact that DDA wrongly included his name at a draw of lots in which even stalls were entered, he would have received a shop in the month of February, 2001.

16. DDA did not paid any heed to what was stated by the petitioner. Petitioner feared that DDA may cancel the allotment for non payment. Without prejudice to his rights and under protest, on 9.12.2002 petitioner deposited the premium demanded. He, however continued correspondence with DDA. He, thereforee, wrote numerous letters to DDA seeking refund.

17. Rather than refund the excess amount which petitioner claims that he deposited, Realizing that while raising the demand it had not given credit adjustment of a sum of Rs. 5,000/- deposited with the DDA as earnest money when he submitted his application for allotment of a shop on 2.1.2001, DDA entered into a useless correspondence, calling upon the petitioner to submit a certificate from the banker which had issued the bankers cheque in sum of Rs.5,000/- which was deposited by the petitioner along with his application, to the effect that the bank had not remitted any payment to DDA under the said cheque.

18. After corresponding on the issue for nearly 3 years, present petition was filed on 14.3.2005 seeking a refund of Rs. 4,51,145/- together with interest. Additionally, Rs. 5,000/- deposited as earnest money, credit whereof was not granted is also sought to be got refunded in the present petition.

19. On facts, assertions made by the petitioner have been denied by DDA.

20. Learned Counsel for the petitioner submitted that the petitioner cannot be made to suffer due to defaults committed by officers of DDA. Counsel urged that DDA had no business to include name of the petitioner at a draw of lots in which stalls were entered. Had DDA not committed a mistake, a shop would have been allotted to the petitioner in the month of February, 2001. Counsel urged that the assertion of the petitioner that 2 shops in the same shopping complex, on being sold through tenders fetched a price of Rs.5,85,000/- being not denied, and the fact that the said offer was accepted in the month of November, 2001, there was no reason why DDA should not refund the amounts claimed by the petitioner.

21. At the outset, I may note that in paras 32-35 of the writ petition, petitioner has averred as under:

That the shop was to be allotted on the initial draw held on 20.2.2001 on ?AS IS WHERE IS BASIS? on reserve price applicable at that time and not on the basis of rates as per sq.mtr. and also not on the average cost of highest tenders for the general Categories so far as the allotment of shops to the persons under the Land Acquisition Category on reserve price in the area/zone where the land of the aspirants was acquired, is concerned.

That as per policy of allotment of shop to the persons of a Land Acquisition Category, if the petitioner had been allotted a specific shop (as applied) in the specific West Zone (as applied), as per the prevailing price of shop of the equivalent size of 16.250 sq.mtr (now allotted to the Petitioner) would have been total price of Rs.5,85,000/- (assuming the rate of price prevailing as on 20.02.2001) though even the price of Rs.5,85,000/- was for a shop of General Category based on average price of highest tenders as per draw held on 28.11.2001. Copy of the extract of draw held on 28.11.2001 is annexed as Annexure p-21. Even if the cost of the shop of same size of 16.250 sq.mtr. Was Rs.5,85,000/ in that event the shop, of allotted to the petitioner, would have less than 20% of RS. 5,85,000/- as on 20.2.2001 because the cost of Rs.5,85,000/- assessed/reserved in November 2001 that too for General Category reserve price and the cost of the shop allotted to the petitioner as on 20.2.2001 would have been less than the price fixed for the General Category. For the sake of example the estimated cost of the shop ought to have been allotted to the petitioner on 20.2.2001, would have as follows-

- i) Cost of shop measuring 16.250 sq.mtr. in the area of Vikas puri as on 20.11.2001 (subsequent to 9 months after the initial draw held on 20.2.2001 in which stall was allotted instead of a shop to the petitioner) - Rs. 5,85,000/-
- ii) Less 20% of cost (as on 20.2.2001 preceding to 20.11.2001) being presumed escalation. - Rs. 4,68,000/-

Thus out of Rs. 9,19,145/- Less Rs. 4,68,000/- = Rs. 4,51,145/- is computed against the shop now allotted to the Petitioner, in the area/zone (West Zone) Vikas Puri. It is pertinent to mention here that even the shop in the area in the Paschim Vihar is less cheaper than the area of Vikas Puri and further cheaper if the same is

allotted on reserve price of Land Acquisition Category and not as per the reserve price of General Category.

34. That the premium of Rs. 9,19,145.00 has been calculated arbitrarily, whimsically and not as per reserve price policy of LAC category and without any basis charged from the Petitioner and the Respondent is liable to refund a sum of Rs. 4,51,145.00 and even much higher in addition to interest accrued thereon @ 25% thereon from the date of the deposit of the same till the same is refunded to the petitioner and for this lapse respondent is purely and squarely liable to pay as no lapse is attributable on the part of the petitioner.

35. That the respondent is also liable to pay the compensation to the petitioner on account of harassment and delay in allotment of the shop to the petitioner and the petitioner can not suffer due to the negligence and delay in allotment of the shop to the petitioner by the respondent.

22. In response, DDA has stated in the counter affidavit as under: ¶32-35. In reply to para 32-35 of the petition it is submitted that initially the allotment of the shop was made to the petitioner in the year 2001 and shop no.9 ground floor measuring 4.33 sq. meters in pocket 20 C Dwarka was allotted to him. Thereafter, on the request of the petitioner, the change was allowed and shop no. 38/19 was allotted to the petitioner through the computerized draw held on 20/8/2002. This shop was un-allotted under the same category with a cost of Rs. 9,31,000/- which was put to draw on 30th April 2002. The cost of the locality was revised on lower side in the tender held in the month of October-November 2002. The demand letter to the petitioner was issued on the reserve price of Rs. 9,10,000/-. It is the respondent's submission that the request of the petitioner for change of reserve price would not be acceded as the same was against the policy. Rest of the contents in the petition are not admitted. The illustration given by the petitioner has no bearing to the facts of the case. It is false that the premium of Rs. 9,90,945/- has been calculated arbitrarily, whimsically or not on reserve price policy of LAC policy. It is absolutely incorrect that the petitioner is entitled to refund of Rs. 4,51,145/- along with interest. The calculations of the petitioner are totally misconceived. It is submitted that the petitioner was allotted a stall earlier which was subsequently

changed at his request and hence the consequences of the change necessarily are to be borne by the petitioner. The petitioner cannot take relief on the basis of the analogy given by him. It is absolutely incorrect that the respondent is liable to pay a compensation to the petitioner on account of the alleged harassment or the alleged delay in allotment of shop. There has been no negligence on the part of the respondent.

23. DDA has not denied that the 2 shops listed as per Annexure P-21, in the same market and on the ground floor, having covered area of 16.25 sq. meters attracted a market offer of Rs.5.85 lacs. It is not denied by DDA that the shop allotted to the petitioner admeasured 16.25 sq. meters.

24. It is thereforee apparent that tested in the free market, a similarly situated shop had a market value of Rs. 5.85 lacs as of November 2001. 25. Indeed, petitioner has been doubly wronged by DDA. Firstly, by allotting a stall which was never applied for and as a consequence denying a shop to the petitioner, DDA denied gainful employment to the petitioner. Second wrong visited upon the petitioner is that DDA has charged him at a rate much higher than the rate at which petitioner would have had to pay, under normal circumstances, had DDA not been negligent.

26. Draw of lots were held in the month of February, 2001. Demand cum allotment letters were issued in March, 2001. Petitioner is certainly entitled to a shop at the rate at which shops were allotted in Paschim Vihar/Vikas Puri (West Zone) in the month of March, 2001 pursuant to the draw held in February, 2001. Petitioner cannot be made to suffer due to defaults committed by officers of DDA.

27. In the decision reported as : AIR 2004 SC3648 , Hira Tikkoo v. UT, Chandigarh and Ors., the Supreme Court observed that the rule of reasonableness and fairness by which every statutory authority is bound, demands that the allottees who, for no fault of their part, were deprived of the original plots should not be made to suffer by demanding from them higher price for the alternative plots allotted.

28. Ratio aforesaid is fully attracted to the facts of the present case.

29. Admittedly, price charged from the petitioner is as of September, 2002. There is intrinsic evidence of an excessive price rise evidenced by the fact that in November 2001, 2 shops, similarly situated, in the same market attracted offers of Rs.5.85 lacs. In any case, DDA cannot charge price more than what was charged to allottees of shops in March, 2001 to whom allotment in the reserved category was made.

30. I see no reason why DDA should not have refunded petitioner the sum of Rs. 5,000/- deposited by the petitioner as earnest money when he submitted his application on 2.1.2001. Admittedly, this earnest money had to be adjusted against the price demanded. It is for DDA to maintain its records and DDA ought to check up from its Accounts Department whether DDA had encased the bankers cheque. Petitioner cannot be made to run around.

31. Petition accordingly stands disposed of issuing a mandamus to DDA to forthwith refund the sum of Rs. 5,000/- to the petitioner together with interest @ 10% per annum with effect from 9.12.2002 (the date on which petitioner paid Rs. 9,19,185/-) till date of payment. Further mandamus is issued to DDA to revise the demand in respect of the shop allotted to the petitioner by charging the price which was demanded by DDA from allottees of shops to whom shops were allotted at the draw of lots held in the month of February, 2001. After adjusting the demand, excess amount paid by the petitioner be refunded together with interest @ 10% per annum with effect from 9.12.2002 till date of payment.

32. Petitioner is also held entitled to costs in sum of Rs. 10,000/- to be paid by DDA.