

Santosh Kumar and ors. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Dec-14-2004

Reported in : 117(2005)DLT440

Judge : Pradeep Nandrajog, J.

Acts : Land Acquisition Act - Sections 4 and 6

Appeal No. : WP(C) No. 3107/1987

Appellant : Santosh Kumar and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Sangita Chandra, Adv.

Advocate for Pet/Ap. : O.P. Sharma, Sr. Adv. and; K.R. Gupta, Adv

Judgement :

Pradeep Nandrajog, J.

1. Petitioners being six in number have filed the present petition praying that mandamus be issued to the DDA directing it to allot plots as per Scheme of Large Scale Acquisition, Development And Disposal Of Land In Delhi, 1961, as applicable on the date when lands of the petitioners were acquired. Allotment should be in South Delhi. Rates applicable would be the one as on 2.6.1982, when

lands of the petitioners were acquired.

2. Petitioner No. 1 purchased 10 biswa of land in village Rangpur by and under sale deed dated 2.9.1981. Petitioner No. 2 likewise purchased 10 biswa of land in same village by the sale deed dated 2.9.1981. Petitioner No. 3 purchased 11 biswa of land in same village by sale deed dated 2.9.1981. Petitioner Nos. 4, 5 and 6 also purchased 11 biswa of land each in the same village by sale deeds dated 2.9.1981.

3. On 19.2.1982 a notification was issued under Section 4 of the Land Acquisition Act notifying that certain lands were likely to be acquired. Land purchased by the petitioners were notified for acquisition. It is interesting to note that only 4 bigha and 16 biswa of land notified as being likely to be acquired under notification dated 19.2.1982. Total land of the petitioners comes to 3 bigha and 4 biswa.

4. On 2.6.1981, declaration under section 6 of the Land Acquisition Act pertaining to the aforesaid land was issued.

5. The Award was published, compensation was assessed. Petitioners received the compensation. Acquired land vested in the Government.

6. There was a policy of the Government framed in the year 1961, called the Large Scale Acquisition, Development And Disposal Of Land In Delhi, 1961. As per said policy, persons whose lands were acquired for the purposes of planned development of Delhi were entitled to be allotted residential plots on pre-determined rates. On 18.10.1963, the Deputy Housing Commissioner Delhi Administration framed certain guidelines pertaining to individuals whose lands falling in the area covered by the Delhi Development Authority's Residential Scheme West of Safdarjung were acquired. Petitioners seek benefit of the aforesaid office order dated 18.10.1963.

7. In the year, 1983, petitioners submitted applications to the Land and Building Department, Government of Delhi for allotment of a residential plot. In the year, 1985-1986, on various dates, petitioners received intimation from the Land and Building Department, Delhi Government that DDA was directed to allot alternative

residential plot to them. It was indicated that the plot size would be 200/220 sq. yds. It is stated by the petitioners that recommendation of the Land and Building Department to DDA was to allot plots in South Delhi as their acquired land fell in the South Zone. Petitioners were informed by DDA that since plots in South Delhi were not available, they would be allotted plots in West Zone.

8. It is stated by the petitioners that since letter of DDA intimating to the petitioners that they would be considered for allotment of a residential plot in West Zone required petitioners to give consent and deposit Rs. 3,000/-, petitioners deposited the sum of Rs. 3000/-. However, petitioners said that this was not in derogation of their right to be allotted of plot in South Zone.

9. Petitioners learned that at draw of lots held on on 24.6.1986, 158 persons junior to them were allotted plots. At a draw held on 15.7.1986, 26 junior person were allotted plots and at a draw held on 19.8.1986, 92 junior persons were allotted plots.

10. Alleging discrimination and a right to be allotted a plot in South Delhi, present petition was filed by the petitioners in the year, 1987.

11. Response of DDA by way of a short affidavit is that only petitioner Nos. 1, 2 and 4 deposited the sum of Rs. 3000/- demanded by DDA vide letter dated 5.6.1986. Other petitioners did not deposit the amount. A complaint was received of benami transaction. Matter was referred to the CBI. Due to matter being investigated by CBI, allotment was kept on hold.

12. As per detailed counter affidavit thereafter filed by the DDA, it is stated that no plots were available in South Zone. On 5.6.1986, petitioners were offered plots in West Delhi of the size 162 sq. meters each. Petitioners were to signify acceptance by depositing Rs. 3000/- each. Only petitioner Nos. 1, 2 & 4 deposited the sum of Rs. 3000/-. Other petitioners gave no proof of having deposited the amount. Thereafter, benami transaction was suspected and matter was referred to CBI. It was stated that plots No. 62 and 65 in Chowkhandi Residential Scheme had been kept reserved for the petitioners.

13. It is stated that even the deposit aforesaid by the petitioners 1 and 4 was a belated deposit and, therefore, their names could not have been put in the draw of lots which was proposed to be held by DDA.

14. It is further stated that DDA could not proceed to make allotment as matter was being investigated by CBI.

15. In 1989, counsel for CBI, Sh. Adeesh Aggarwal made a statement in Court, recorded on 29.8.1989, that CBI had returned the files to DDA. Based on the statement aforesaid, an order was passed that DDA could proceed to dispose of the request of the petitioners for allotment of a plot to them.

16. Unfortunately, a writ petition being W.P(C) 60/90 came to be filed. In the said writ petition, an order was passed on 12.1.1990 restraining DDA from making any allotment of residential plots to persons whose land was acquired.

17. Petition aforesaid i.e. W.P(C) 60/98 was filed by the petitioners therein praying that letter dated 7.10.1988 withdrawing recommendation in favor of said petitioners to be allotted a plot be quashed. It may be noted that by said letter, Delhi Administration, Land and Building Department withdrew recommendation in favor of Sohan Singh & Ors on the ground that their land was not acquired for planned development of Delhi.

18. Since on 12.1.1990 DDA came under an injunction not to make any further allotment, case of the petitioners could not be processed.

19. On 16.1.1991, interim order dated 12.1.1990 passed in W.P(C) 68/1990 was confirmed.

20. It was modified on 30.7.1992 with a direction that name of writ petitioners of W.P(C) 60/90 be entered in a draw of lots. Plots identified by them would be reserved for said petitioners.

21. It was only on 30.7.1992 that DDA became entitled to process further allotments for those in whose favor recommendation was made by Land and Building Department, Delhi Administration for allotment of a residential plot under

the large scale acquisition policy.

22. On 23.10.1993, Lt. Governor, Delhi passed an order tht persons whose lands were acquired in South Zone and were recommended for allotment of a residential plot would be allotted alternative plots in Dwarka. The reason thereof was that number of plots available in South Zone were less and recommended more in number.

23. I may note that a Division Bench of this Court has upheld the said decision not to allot plots in South Zone to persons whose acquired lands were in South Zone.

24. Record of the DDA would reveal that the petitioners continued to insist that they should be allotted plots in Chowkhandi. Petitioners were not willing to accept plots at Dwarka.

25. As noted above, 3 of the petitioners were did not deposit the sum of Rs. 3,000/- when DDA had written a letter on 5.6.1986 that it was prepared to allot plots in Chowkahandi, provided petitioners accepted said offer by depositing Rs. 3,000/- within 10 days of the letter dated 5.6.1986. 3 of the petitioners did deposit the sum, but belatedly.

26. Counter affidavit of DDA would show that it did not disentitle the petitioners, on ground of either non deposit or late deposit, to be allotted plots in Chowkhandi but denied allotment on the ground that the CBI was investigating the matter. Plot No. 60-65 at Chowkhandi were kept reserved for the petitioners.

27. It may be noted that each of the petitioners has purchased only 10 or 11 biswa of agricultural land. What use would one have of 500 sq.yds of agricultural land is not understood by me. It is obvious that K.K. Gupta, petitioner No. 4 learnt that the government was was to acquire the land. He was aware of the policy of alternative allotment. He got his relatives to join Along with him to purchase 6 plots measuring 500-550 sq.yds of agricultural land.

28. I find nothing wrong with the DDA in requiring the matter to be investigated by the CBI.

29. By the time CBI cleared the investigation, as noted above, an injunction tied the hands of the DDA in W.P(C)68/90, till said injunction got vacated. Thereafter decision of the Lt. Governor came to be passed requiring plots to be allotted only in Dwarka.

30. Petitioners were rightly offered plots in Dwarka. They chose not to take plots in Dwarka and insisted that the plots at Chowkhandi should be allotted to them.

31. Decision to allot plots only in Dwarka to wait listed recommended has been upheld by this Court.

32. Since the petitioners continue to insist on a right which could not be granted to them, I find nothing wrong in the decision of DDA to insist that if the petitioners wanted, plots would be allotted only in Dwarka.

33. It is not denied that during pendency of the writ petition, 3 of the petitioners accepted the offer of DDA. They paid the premium. They have taken possession of the plots offer. Issue as far as said petitioners being K.K. Gupta, Ashok Kumar and Mrs. Ravi Aggarwal are concerned stands closed. They have accepted the offer without any reservation. No documents has been produced by said petitioners to show that they have accepted the allotment at the price without prejudice to their rights in the present writ petition.

34. As far as the other petitioners are concerned, I may note that when the matter was on Board and was yet to be taken up for arguments, counsel for the petitioner was verbally informed to ensure that petitioners are present in Court. Petitioners never appeared in Court. On 22.11.2004 I had passed the following order:-

'Ms. Sangeeta Chandra states that CBI enquiry appears to have been over somewhere in the year 1990-91. She further states that in addition to Shri K.K. Gupta and Shri Ashok Kumar, whose names have been mentioned in the additional affidavit as the persons who had paid the premium demanded when allotment was made in the year 1999, petitioner No. 5 has also deposited the premium demanded. She further states that allotment letter issued to Smt. Bimla Devi was returned back by the postal authorities with the remarks 'no such person

in residing at the given address'.

Arguments heard. Judgment reserved.'

35. An affidavit has been filed on 18.8.2004 by petitioner No. 1, purporting to be on behalf of the petitioners. In the said affidavit, for the first time, it has been indicated that petitioners would be accepting the plots at Dwarka but prayed that premium to be charged should be the premium which was charged by DDA from the persons immediately junior to the petitioners.

36. The Supreme Court, in the decision : AIR 1995 SC1 , DDA v. Pushpinder Kumar has held that the premium to be charged is the premium as on the date of allotment.

37. Since it has been held by me that DDA was not at fault in not allotting the plot to the petitioners till 1994, and thereafter, it was the petitioners who denied themselves the benefit of a plot by insisting that plot should be allotted to them at Chokhandi coupled with the fact that only in August, 2004, as per affidavit filed by the first petitioner, the said petitioner and others expressed willing to accept plots at Dwarka, petitioners would not be entitled to maintain a claim to be allotted a plot at a premium other than the premium applicable on the date when allotment is made.

38. Claim as prayed in the writ petition is declined. Since three of the petitioners, being petitioners 4, 5 and 6 have accepted the allotment already made and have paid the premium, no directions need be issued qua them.

39. Qua petitioners 1 to 3, it is directed that on said petitioners agreeing to accept allotment at current pre-determined rates, DDA would proceed to make allotment in their favor by including their names in the next draw of lots to be held. It is made clear that to be entitled for said allotment, petitioners 1 to 3 would be required to submit to DDA an affidavit undertaking to accept the allotment at current pre-determined rates within a period of 4 weeks from the date of the present judgment.

40. Writ petition is disposed as aforesaid.

41. No costs.

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