

(2001) 08 DEL CK 0234
In the Delhi High Court
Case No : CW No. 5535 of 1997

Association of Plot Holders

APPELLANT

Vs

Govt. of NCT Delhi and Another

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 63 DRJ 131

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Pradeep Nandrajog, Vikram Nandarajog and S.K. Pathak, for the Appellant; Avinash Ahlawat, Vaishalee Mehra and Mohit Madan, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—The members of the petitioner-Association had applied for plots in the forthcoming Industrial Estate in Okhla pursuant to the advertisement in 1982 issued on behalf of respondent No. 2-Commissioner of Industries, Delhi Administration. In the draw of lots held in 1983, 177 successful applicants included the members of the petitioner Association also. However due to encroachment on some of the plots only 101 applicants successful in the draw of lots were given plots at Rs. 245 per sq. yds. Thereafter in 1984 the respondent No. 2 secured 15 more acres of land in 1986 the members of the petitioner-Association were informed that alternative plots would be allotted to them after handing over of the site by DDA. Most of the members of the petitioner Association were allotted and paid for substitute/alternate plots in May 1993 at Rs. 930/- per square meter and had the lease deeds stamped by the Collectorate of Stamps and some members of petitioner even paid the conveyancing fee. Due to inaction on behalf of respondents and some purported change of mind about allotment due to the then change of Government in Delhi, the lease deeds were not being executed in favor of the members of petitioner Association leading to

the filing of the writ petition No. 3170/95 in this Court Along with allied petitions seeking the execution of the lease deed by a writ of mandamus.

2. In 1996 by a judgment in CW. No. 3170/95 dated 1st July 1996 a Division Bench of this Court was pleased to direct the respondents to execute the lease deed in respect of the 1993 allotment and it further directed delivery of possession within 3 months i.e. by 1st October, 1996. This judgment of the Division Bench was unsuccessfully challenged in the Hon''ble Supreme Court's and thus became final. However, a fresh demand at the rate of Rs. 4072/- per sq. meter in 1997 for executing the lease deed subsequent and pursuant to the mandamus dated 1st July 1996 by this Court, was issued by the respondents, against which the present writ petition has been filed challenging the enhancement of the rate from Rs. 930 to Rs. 4072/- per sq. meter. The challenge in the writ petition is that no rate beyond Rs. 930/- per sq. meter could be charged from the petitioners as the clause in the allotment letter relating to rates of Rs. 930/- per sq. meter being provisional could not be so construed as to permit the charging of rate at as high a figure a Rs. 4,072/- per sq. meter.

3. In order to consider the challenge in this writ petition it is necessary to consider the scope and effect of the mandamus issued by the judgment of a Division Bench of this Court dated 1st July 1996 in CW 3170 of 1995 Brijesh Chandra Sharma v. Govt. of NCT Delhi and Ors., which covers the case of the petitioner also. While allowing the writ petition it was inter alias held as follows:

(a) The petitioners were deprived of the use of land for almost 15 years and now would not be in a position to avail the land elsewhere because the land cost has gone high astronomically in Delhi;

(b) The earnest money was retained by the respondents for a period of about 13 years;

(c) The contents of the allotment letter and conduct of the respondents 1 and 2 in allotting specified plots to the petitioners Realizing earnest money and premium as against plots with specified numbers and areas go to show that such plots were available and Therefore allotted;

(d) that most of the petitioners have deposited lease deed and conveyance charges etc.

(e) the charge of arbitrariness and unreasonableness in holding back the execution of lease deed is brought home to the respondents.

(f) The lease deeds were to be executed to materialize the allotments made in 1993.

4. In view of the above finding the Division Bench of this Curt issued the following mandamus:

"For the foregoing reasons all the petitioners are allowed. Respondents 1 and 2 are directed to execute the deeds of lease so as to materialise the allotments of

land made by them to the several petitioners. If any incidental formality is required to be fulfilled by any of the petitioners that shall be done within a period of four weeks on intimation in that regard being sent by respondents No. 1 and 2 within a period of four weeks from today. In any case, the execution of lease deeds and delivery of possession shall be completed within a period of three months from today. It will, however, be open to the respondents No. 1 and 2 to scrutinise and verify if by occurrence of any subsequent event, any of the petitioners has ceased to be entitled or become disentitled for allotment of a plot under the scheme. All these petitions stand disposed of accordingly. No order as to the costs."

5. Relying upon the aforesaid mandamus of the Division Bench of this Court. The petitioners have contended that the petitioners were entitled to be charged, if not the rates of 1983, then certainly the rates of 1993 which were Rs. 930/- per sq. meter particularly when the petitioners had complied with all the requirements and the conveyancing fees has been paid in 1993 itself pursuant to the allotment made in 1993.

6. The learned counsel for the respondents has submitted that the question of pricing could not be gone into by a Court in its writ jurisdiction and in support of this plea has relied upon the judgments reported as Bhopal Gas Peedit Mahila Udyog Sangathan and Another Vs. Union of India (UOI) and Another, G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, and Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, and Ors. judgments The learned counsel for the respondents has further contended that they have arrived at the rate of Rs. 4,072/- per sq. meter by taking the base year of 1992 when the rate was determined to be Rs. 1,662/- and the figure of Rs. 4,072/- has been arrived at by adding the figure of 20 per cent increase per annum, on the said rate of Rs. 1,662/-. The learned counsel for the respondents has submitted that the rates prescribed in the lease deed that the rates were stated to be provisional and the final rates had not crystallized and consequently the respondents were entitled to charge higher rate at Rs. 4072/- per sq. meter instead of Rs. 930/- per sq. meter provisionally indicated in 1993.

7. The learned counsel for the petitioner, on the other hand, has contended that even if we look at the pleadings of the respondents contained in the counter affidavit detailing the expenses of Rs. 418.02 lacs which were incurred by the respondents as development charges and taking into account the land of Rs. 2.69 hectare involved in the present petition, the charges on the respondent's own showing could not be more than Rs. 1,457/- per sq. mt. I am of the view that mathematical calculation and exactitude cannot be brought in while deciding the validity of pricing restored to by the respondent while considering the fact whether the development charges were correctly reflected in the rise in rates.

8. However, if respondents take a plea of rates having shot up due to development charges incurred then the raised prices must have some nexus and connection to the expenses said to be incurred. However, it is unnecessary to go

into this plea due to what I perceive to be the effect of the mandamus issued by this Court in 1996. The rates which are liable to be charged can certainly be considered on the basis of the base figure in the year 1992 determined by the respondent themselves which is Rs. 1,662/- per sq. meter with the base year 1992 and 20 per cent increase per annum as contended by the respondents themselves. The question of the pricing policy being scrutinized by this Court in such a situation would not arise as this Court is not examining the prices determined by the respondents but is only concerned with the relevant year the rates of which would be applicable in the present situation. Consequently since I am proceeding on the basis of the prices adopted by the respondents themselves, it is unnecessary to consider the applicability of the judgments cited by the respondents qua pricing.

9. The effect of the mandamus issued by the Division Bench in its judgment dated 1st July 1996 is clear. According to the said judgment the lease deeds were to be executed so as to materialize the allotments made by the respondents to the petitioners in 1993 and after completion of formalities the execution of lease deeds and delivery of possession was to be completed within a period of three months of 1st July, 1996.

10. In my view since the execution of lease deed as per the Division Bench judgment was to materialize the allotments made in the year 1993, I am required only to consider the rates applicable in 1993 which after 20% increase from the base figure of Rs. 1,662/- per square meter would be Rs. 1,963/- per sq. meter even according to the figures as submitted by the learned counsel for the respondents. Significantly the selection of the petitioners were made from a large number of technically qualified aspirants in 1983 and it is not in dispute that the petitioners are entrepreneurs in the field of electronics; For no fault of petitioners they were not allotted plots in 1983 but were eventually offered plots in 1993 at Rs. 930/- per sq. meter which also was sought to be wrongly cancelled and the allotment materialized only due to the mandamus in 1996 issued by the Division Bench of this Court. Even for the allotment made in the year 1993 the rates charged from the petitioners were much higher than what ought to have been charged in 1983 if the allotments which were said to be on no profit no loss basis had materialized then. Furthermore the Division Bench of this Court while directing the execution of lease deeds had limited the option of the respondents only to the extent that it could consider whether in the meanwhile any of the allottees had become disentitled to be allotted plots. No other option having been left with the respondents by this Court, the charging of higher rates has no basis in law and is wholly arbitrary and unsustainable. I am, Therefore, of the view that the petitioner cannot be charged the rates of 1997 and can only be charged the rates of 1993 as determined by the respondents which could come to Rs. 1,963/- per square meters. Out of this all the petitioners had paid at the rate of Rs. 930/- per square meters. I am, Therefore, of the view that the provisional rate of Rs. 930/- indicated in 1993 by the respondents even on the respondent's own calculations cannot Therefore, extend to beyond Rs.

1,963/- per sq. mt. The delay spreading over 4 years even after the issue of a time bound mandamus was only due to the recalcitrant attitude of the respondents and the members of the petitioner association cannot be made to pay for it. As it is the members of the petitioner association have waited for about 18 years for no fault of theirs. It may not be out of place of mention that that the other 101 applicants got allotments in 1983 at the rate of Rs. 245/- per square meter and were in no way differently placed from the writ petitioners in this petition. I am satisfied that apart from the fact that the mandamus of this Court had the effect of fixing prices as applicable for the year 1993, the interest of justice also are wholly in favor of the petitioner in view of the facts enumerated above. The learned counsel for the respondents has submitted that if the petitioner's plea is accepted the interest should be charged at 18 per cent per annum on the balance price due in which event she says that there is hardly any reason to invite the interference of this court under Article 226 as the rise in prices per annum was only 20%. She has further submitted that the land is very valuable today fetching a market rate of at least Rs. 30,000/- per square meter. I am of the view that the market rate today is not a consideration germane for determining the rate of the interest liable to be charged as it not the case of any of the parties that the initial allotments were made at market rates in 1983 or at any time thereafter. The scheme of allotment was for a particular kind of entrepreneurs on a no profit no loss basis and hence market rates cannot guide the Court. However, it is necessary to also consider and take into account the amount of Rs. 970/- per sq. meter which was deposited by the members of the petitioner association in the year 1993 in considering the amount on which the petitioners are liable to pay interest. I am of the view that considering the facts and circumstances of the case including the fact that the petitioners have suffered for no fault of theirs and similarly situated applicants have infact secured the plots in 1983 at the rate of Rs. 245/- per sq. meter, that interest should only be charged at the rate of 6 per cent per annum calculated on the difference between Rs. 930/- paid for by them in 1993 and Rs. 1,963/- per sq. mt. which even according to the respondents was the rate livable in 1993. The petitioner shall pay the difference between the figures of Rs. 930/- & Rs. 1,963/- from the date of payment of Rs. 930/- up to the date of payment made to bring up the figure to Rs. 1,963/- Along with 6 per cent interest per annum on the said amount calculated up to 31st August 2001 within a period of 6 weeks from today.

Accordingly the writ of certiorari will issue quashing the fresh letter of demand in the month of September 1997 calling upon the petitioners for premium at the rate of Rs. 4,072/- per sq. meter. A writ of mandamus will also issue directing the respondent to forthwith execute the perpetual sub leases.

Accordingly the writ petition is allowed to the extent indicated above.