
(1999) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 5412/89, 1960, 2577, 2963 and 2964/91, 1560/92 and 3632/95

Banwari Lal Sharma

APPELLANT

Vs

JDA and Others

RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1999) 2 RLW 1211 : (1999) 2 WLC 491 : (1999) 1 WLN 294

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Judgement

J.C. Verma, J.—The Jaipur Development Authority (here-in- after called as the JDA), a public sector undertaking, a State under Article 12 of the Constitution of India, is covered by the statutory provisions called the Jaipur Development Authority Act (hereinafter called the JDA Act). It is engaged with the development of Jaipur in a planned manner. One of the functions of the JDA is to develop the land for residential purposes by framing the proper scheme. Land is acquired for the purpose of development where-ever it is so needed. It has got its own set of regulations and rules for developing and for disposal of the land. In pursuance of its statutory functions, the JDA had framed a scheme called "Vidhyadhar Nagar Scheme" which scheme was situated towards Northern-Western side of Jaipur and for the purpose of the scheme, the land measuring 350 hectares was to be utilised. This scheme was situated at 4 Kms. from the railway station and 4.5 Kms. from bus stand. It was proposed to carve out the residential plots measuring 45 sq. meters. The area of 45 sq.m. was falling under the category I, area of 90 Sq.m. was falling under the category II, area of 180 sq.m. was falling under the category HI and the area of 270 sq.m. was falling under the category IV, however, the area of categories could also vary as per the situation.

2. Applications were invited for approx. 3000 plots of the above said categories.

It was mentioned in the scheme that certain plots were corner plots and any person having been allotted the corner plot shall have to pay 10% more than the fixed price being "preferential". In the pamphlet, costing Rs. 15/- contained the a map and other conditions of allotment of which the plots were to be allotted by way of draw of lots and no plot was reserved for sale by way of auction. Plots were not re-sellable for 10 years from the date of allotment and were to be given on lease of 99 years. The last date for receipt of the applications was 10.3.1987.

3. All the petitioners were the applicants for allotment of the plots. Banwari Lal, the petitioner in S.B. Civil Writ Petition No. 5412/89 had applied for a plot measuring 180 Sq.m. He was not successful in the draw but was on the waiting list at Sr. No. 19.

4. Ramesh in S.B. Civil Writ Petition No. 3632/90 who was also the applicant for category B was put on waiting list at Sr. No. 67.

5. Prahlad Ram petitioner in S.B. Civil Writ Petition No. 2577/90 was also not successful, but was on the waiting list at Sr. No. 88.

6. Nanagram was the applicant for a plot of the area of 45 sq.m. but was not successful and was put on the waiting list at Sr. No. 26.

7. Pramod Kumar was also not successful for a plot of 270 Sq.m. and was put on the waiting list.

8. Similarly Sahib Singh in S.B. Civil Writ Petition No. 1960/91 was also on the waiting list at Sr. No. 30.

9. Even though applications were invited for approx. 3000 plots of the categories as mentioned above, but it is admitted case of the parties that the draw was conducted on 28.9.1987 for only 2724 plots. All the petitioners were informed of the fact of their being on the waiting list. They were given an option to withdraw their amount or to wait for allotment if any plot becomes available subsequently for allotment. The petitioners opted for waiting for allotment. However, subsequently, the petitioners were informed that initial deposit made by them as earnest money was being refunded to them and their name in the waiting list would stand removed.

10. Facts are common in all the writ petitions and particulars are being narrated from S.B. Civil Writ Petition No. 5412/89 Banwari Lal Sharma v. JDA. Annexure-7 is a letter informing the petitioner that his name stands at waiting list at Sr. No. 19 and that he can withdraw the amount. Annexure-10 dated 15.11.1989 is a letter by which the amount deposited by him was being sent back to him. The petitioners, in all the writ petitions with a common prayer, have challenged the action of the JDA with the prayer that the order dated 29.7.1989 Ex. 7 be quashed. Initially, the petitioners had alleged that subsequently the JDA had floated another group housing scheme vide Annexure-12 in December 1989, and therefore, they were entitled to a house in this scheme and the respondents were duty bound to allot one house to the petitioners which was refuted in the

written statement filed by the respondents. No doubt if the houses are not available in the scheme, the unsuccessful candidates are to be refunded the amount at the earliest possible as per the commitment made in the conditions circulated. For the reason that no plots were available, the waiting list was cancelled. The JDA was authorised to cancel the waiting list in case of non-availability of the plots. However, in the present case and also in the connected matters even though it was not pleaded in the original writ petition by Banwari Lal, but in the other connected writ petitions, it has been so pleaded that at the time when the waiting list was cancelled, as many as 95 plots were available and, therefore, the respondents were duty bound to allot the plots to the persons on the waiting list. The petitioner had also annexed the list of plots with details of numbers of the plots and sectors and the area where such plots were available but had not been allotted or were not included for draw of lots. According to the petitioners those plots were available in Sectors 1, 2, 3, 4, 5, 6, 7 and 10. It was further averred in their application and also in rejoinder that if the respondents had invited applications for 3000 plots, the number of plots could not have been reduced to 2724. Additional affidavit was filed on 17.7.1991 wherein it was alleged that the respondents were auctioning the plots instead of exhausting the waiting list during the pendency of the writ petition. It was further averred in the additional affidavit sworn on 5.8.1994 to the effect that for the plots mentioned in Annexure-13, there was no notification or publication for disposing the said plots by conducting the auction etc. etc. Auction notices have been attached as Annexures 16 and 17 with the additional affidavit.

11. Counter affidavit to the applications has been filed by the JDA in addition to the written statement already filed. It is stated that initially there was proposal to dispose of 3000 plots at fixed reserve price by way of draw of lots. It is stated that 10,500 applications for allotment of plots were received. In the meeting held on 1.5.1987 a decision was taken to demarcate the plots at site which were to be allotted by way of draw of lots. The Project Officer had reported as per Annendix A and B to the effect that out of 3000 plots, plot Numbering 2390 were earlier clearly available whereas 334 plots were retrieved and thus a total plots of 2724 were available which were included for draw of lots. It is stated that certain plots were not available because of the existing electric lines, electric poles, water lines, pump Houses and land in occupation of Cooperative Societies, therefore, for the reason of non-availability of the plots, the waiting list was cancelled. It is stated that further 409 plots were made available which were the bigger in size and corner plots out of which 95 plots have been shown in Annexure-13. It is stated that out of 409 plots, it was decided to sell 109 plots by way of auction and thus the corner plots were sold by auction. Along with the application/arguments dated 29.1.1996, the respondent had attached Appendix A and B, the proceedings of the meeting of the year 1987 showing the availability of the plots in different sectors. Appendix E has been attached, a report dated 23.5.1990 submitted by the Project Officer mentioning therein; the number of 109 plots made available in different sectors. On the said report a note has been given by

the Chief Revenue Officer (CRO) that the plots mentioned in Appendix E should be sold by auction. Along with Appendix E there was attached a list and details of corner plots attached which had not been allotted but were made available for allotment.

12. From the above said facts the situation which emerges is as under--

1. There was a publication for inviting applications for 3000 plots of various sizes of category I to Category IV which were to be allotted by way of drawing lots.

2. Instead of 3000, as certain plots were clearly not available because of certain obstacles i.e. sewerage, electric lines, water pipes etc. etc. and only 2724 plots were sold by way of draw of lots.

3. The petitioners were put on waiting list and later on they were asked to withdraw their amount and cheques were also sent to them.

4. By retrieving number of other plots were made available which were required to be allotted by way of draw of lots as per the priority of draw of lots already prepared on the reserve price under the UIT Rules.

5. Without there being any order from the competent authority an officer, the Chief Revenue Officer, passed the order to put such available plots to auction by one line order.

6. There is no meeting what-so-ever of the JDA, nor any officer who might have been competent to look into the matter had applied its mind to put these plots to auction instead of allotting them to persons who were available for such allotment on the priority list.

13. Even though the refund of the amount could not be held to be illegal, but the subsequent event occurring immediately had changed the situation when number of plots were made available. The petitioner had strengthened his case by filing replication, rejoinder and other applications. In normal cases if any fresh fact is alleged or annexure is attached, the writ petition is required to be amended accordingly. Until and unless the pleadings are mentioned in the writ petitions, filing of the additional affidavits at the wish of the petitioners without any orders from this court should not be taken cognizance of. Law in regard to provisions of amendment should be invariably resorted to in case any new fact is brought on record or any new document is to be placed on record at the instance of the parties and only in those circumstances, it can be included in the pleadings. However, it is being noticed by this court time and again in number of writ petitions that instead of amending the writ petitions only additional affidavits are filed without the permission of the Court and those additional affidavits are replied to by the respondents and then there is rejoinder to the reply to the additional affidavits. It is also noticed that the writ petitions contain some times more than one additional affidavits, additional replies and many rejoinders and in certain cases there are as many as 5-6 additional affidavits with additional replies and additional rejoinders which are not incorporated in the main writ

petition by way of amendments. It may create problem when the case is decided as normally while deciding the case it is the averments in the writ petition original or amended and its reply which are to be looked into. In these circumstances, it is not only advisable but mandatory that the averments in the additional affidavits, unless these additional affidavits are directed to be filed by the orders of court itself, to incorporate invariable by way of amending the writ petition or the written statement itself for completing the pleadings. No new fact or new annexures be treated as part of the writ petition unless they are incorporated in the pleadings of the writ petition itself. Even though CPC is very clear about the amendment of the pleadings (general principles of CPC are applicable to the writ petitions), but it is the duty of the party to amend suitably the petition or the written statement when new averments are alleged or new annexures are attached and also obtain orders from the Court for such amendments.

14. For the reasons that in some of the connected petitions, there are pleadings about the auctioning of the additional plots in the Vidhyadhar Nagar Scheme, the matter is being taken cognizance by this court as if it is pleaded in the writ petition itself, in case of Banwari Lal as well. It is known fact that the applications were invited after framing the scheme and also in the map 3000 plots were earmarked for allotment by way of lots. However, on a second thought a survey report was made to the effect that 2764 plots are available for immediate draw of lots. Public at large was entitled to know as to what had happened to remaining 236 plots. Report had further been received that certain plots after retrieving them from the trespassers or shifting of the electric lines have also been made available. They were termed as corner plots. In the Vidhyadhar Nagar Scheme the corner plots were also to be allotted by way of drawing lots, but with 10% enhanced price. Primarily the waiting list was prepared for the purpose that if any allottee forfeits his plots or some other plots are made available, the applicants on the waiting list can be accommodated. It is true that under the JDA Rules certain plots can be sold by auction as well, but those plots are to be earmarked in advance. Rajasthan UIT Rules, 1961 are admittedly applicable in the present case. Rule 13 provides that when the scheme is sanctioned by the committee, the improvement of land and demarcation of the plots shall be carried out in accordance with the approved scheme under the control and supervision of the Trust. Rule 14 provides that the Residential plots not reserved for allotment shall be disposed of through public auction. Rule 15 provides allotment and sale of non-residential land. Relevant Rules 13 and 14 are reproduced as under:

13. Improvement and demarcation of plots and supervision-Once the scheme is sanctioned by the Committee, the improvement of land and demarcation of plots shall be carried out in accordance with the approved scheme under the control and supervision of the Trust concerned.

14. Sale of residential plots through public auction-Residential plots not reserved

for allotment shall be disposed of through public auction in the manner prescribed in Annexure-A.

15. Admittedly, in the present case all 3000 plots were to be allotted by way of draw of lots on reserved price as per the scheme. When and how and by whose orders the plots available out of these 3000 plots were ordered to be auctioned is a mystery. Respondents were directed time and again to produce the record. Number of opportunities were taken by the respondents to produce the complete record.

16. There are orders on 24.4.1995 of the court for production of the record on the basis of which additional affidavit was filed by the JDA. On 22.11.1995 counsel for the JDA had stated that he was not able to acquire the complete record because of certain difficulties and time was granted. On 9.4.1996 again two weeks time was granted to produce the record in the court by the order of Hon'ble Justice Anshuman Singh, as he then was. On 17.9.1996 a statement was given by the officer that he was not able to produce the record. Arguments were heard on 24.9.1996, and the judgments were reserved.

17. As a matter of fact it reveals from the court orders in Civil Writ Petition No. 5412/89 that right from April 1995, time was being sought repeatedly by the JDA to produce the record. On 24.9.1996 direction was given to produce the record on the same day. On 4.11.1997 arguments were heard and concluded and it was ordered that the case be put up for dictation on 5.11.1997 with the direction to the respondents to produce the original record for perusal.

18. Arguments were heard finally by me and the respondents were directed to produce the record to the effect as to how under what rules or decision of the meeting of the JDA or by whom certain plots reserved for allotment by way of draw of lots were ordered to be sold by way of auction.

19. Record was ultimately produced. However, when this court had taken up the case for dictating the judgment, it revealed that the record after production had been taken away by the JDA officers from the reader of this Court without the permission of the court and had not been returned back. This fact was brought to the notice of this Court and ultimately the case was fixed in the list under the heading "to be mentioned" so that the concerned counsel be directed to return the record for dictation of judgment. On 2.4.1998, Mr. Lahiri had appeared and informed the court that the record had been taken away by him at the instance of the department. He was not able to suggest as to when he will be able to produce the record. He had promised to produce certain correspondence between him and the department about the original record. The court at that time was of the opinion that removing of the original record from the court without its permission for whatever reason and without moving a proper application was definitely an interference in the administration of justice.

20. However, the record had been produced containing two files and some notings. On both the files, there are no notings whatsoever, of any competent

authority of the JDA to order the disposal of the said plots which were made available for allotments by way of auction. On the proposal of the Project Officer who had mentioned that certain plots had become available, the CRO an employee of the JDA had passed an order that the plots be sold by way of auction. Photo-stat copies are on record (original)- - - - -but some how has again been taken away by the JDA authority). Who is this CRO under the JDA Act to order the auction of the plots of his own without any order from the competent authority is not answered by the respondents. Admittedly, there is no meeting of the JDA committee to show that any such decision had been taken in this regard. I have gone through the file produced by the respondents. Some officer had sent the note which is available at page 367 of the file No. F6/PA/DP/JDA/87/68 relating to Vidhyadhar Nagar Project wherein the Deputy Commissioner Zone A- II and Vidhyadhar Nagar Scheme had observed that whole of the record had been looked into but no such decision had been found nor any such decision has been mentioned in any of the proceedings of the meeting which may show that in this regard any discussion had taken place at any level to put certain ear-marked plots to auction instead of allotting by draw on reserved price.

21. However, even upto the last date the JDA had failed to produce any record to show as to how, 236 plots out of 3000 plots published for allotment by way of draw had been put to auction by the orders of any competent authority. In my opinion, the Chief Revenue Officer in short CRO who is an official of the JDA cannot pass any order of policy. It was for the committee appointed by the JDA to pass any such order or to take any policy decision. Therefore, the subsequent available plots out of these 3000 plots were ordered to be put to auction by incompetent persons without any authority. The auction of the plots have been going in parts right upto December 1995 as is clear from the proceedings produced before the court.

22. Even though such auction of the residential plots was held without the orders of any competent authority and it was illegal on the face of it, but because of the reason that in none of the writ petitions the auction as such has been challenged and in the circumstances when auction purchaser does acquire a right to safeguard his interest. I refrain at this stage to pass any order for setting aside the auction of the plots which were auctioned out of these 3000 plots meant for allotment by way of draw of lots on reserved price.

23. I am strengthened also by the judgment of this court in Civil Writ Petition No. 4261/90 Shri Niketan Gruop Housing Society v. State of Raj. and Ors. decided on 23.10.1991 wherein almost in similar circumstances while allotting the land to the housing group societies, certain allotable land was left out and the JDA had taken a decision to sell the left out land by way of auction of the area 2654 sq.m. and 5056 sq.m. in Sectors 2 and 7 in this very scheme. It was observed by this court that despite availability of the land of group housing, instead of allotting the same to the groups who have applied for the land in terms of advertisement and

who had deposited the money with the JDA, the JDA had decided to auction the land meant for group housing by refunding the amount with mis-representation that no land was available with the JDA in relation to the group housing scheme. This court had observed that there was malice in law in the conduct of the JDA and all attempts on the Courts part to trace out even the glimpse of fair play in action have failed.

24. In the above said case a direction was given to the JDA to allot the land to the petitioner group housing societies in Vidhyadhar Nagar Scheme and further not to allot the land by mode of auction.

25. In the present case nothing has been brought on record to show that any decision was taken by the JDA at any time to sell the land by auction except an order of the officer of the JDA who was not competent or authorised to take any policy decision.

26. I have been given to understand that earlier also in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, the Hon''ble Supreme Court in the case of the present JDA had adversely commented on the functioning of the JDA officers.

The facts of these cases expose the blatant misuse of public office by the Minister of Urban Development, Government of Rajasthan as Chairman on the appellant-Authority; they, in particular demonstrate the danger involved in entrusting unbridled dual powers in a single individual leading to abuse of office on account of lack of counter-check. It would be appropriate to extract from the enquiry report dated 12.11.1992 of the Lokayukta of Rajasthan u/s 10 of the Rajasthan Lokayukta and Up Lokayuk-tas Act, 1973 (9 of 1973) as under:

In view of what has been stated above, it is prima facie established that Smt. Kamala, the then Hon''ble Minister, Urban Development and Housing Department, Government of Rajasthan-cum-Chairman, JDA, Jaipur Shri M.D. Kaurani, IAS, ihe then Commissioner, Jaipur Development Authority and Shri Subhebbhan Mitra, the then Zonal Officer, Lal Kothi Scheme, JDA, Jaipur, have blatantly misused their official position to favour a few influential and highly placed individuals and have also thereby caused wrongful gain to them and wrongful loss to the Jaipur Development Authority and the public at large. But Smt. Kamala, the then Hon''ble Minister, Urban Development and Housing Department-cum-Chairman, JDA is not now a public servant as defined in Section 2(1) of the Rajasthan Lokayukta and Up- Lokayuktas Act. 1973 (for short'' the Act'') because she has ceased to be a Minister. So investigation is not being commenced against her but the investigation deserves to be commenced against S/Shri M.D. Kaurani, IAS and Subhebbhan Mitra u/s 1 of the Act, and I order accordingly.

All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the department. All government actions, therefore, means actions performed by individual persons to further the

objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions, social and economic democracy set down in the Preamble, Part III and Part IV of the Constitution. The intention behind the government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest,, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same.

27. At the time of hearing it was brought to the notice of the court by the counsel for the JDA that there are still certain plots lying vacant as un-allotted in the said scheme and those plots are still available for allotment. Had the auction not been held of the plots which were available by way of draw of lots on the reserve price, in all probability each of the petitioner would have been accommodated.

28. The court has been told that the plot Nos. 1/425 measuring 157 sq.m. 3/266/8, 3/298/11, 7/243 and 8/334 are still available for allotment. Rather, from the record produced even the department had moved to allot these plots to the eligible petitioners, however, because of the pendency of the writ petition no final action/decision was taken and it was ordered to await the decision of the court. In the circumstances of the case, it shall be appropriate that the plots lying vacant be allotted to the petitioners to the nearest size of their applications and nearest to the category they had applied on the reserve price. The petitioner with the low income category shall be accommodated first and in case any such petitioner declines to accept the plot of variable category, it shall be offered to the next petitioner on the waiting list for the category of his entitlement.

29. With the above said observations, the writ petitions are disposed off with a cost of Rs. 2000/- per petition to be paid by the JDA to the petitioners.