

(2011) 07 DEL CK 0110

In the Delhi High Court

Case No : Writ Petition (C) 2174 of 2008

Bharatiya Janata Party and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 6 AD 718

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Alok Kumar and Manisha A. Narain, for the Appellant; Mohit Auluck, for Neeraj Chaudhari, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks mandamus to the Respondent L&DO to deliver possession of Plot No. 1, Deen Dayal Upadhyay Marg, New Delhi to the Petitioner No. 1. Though the writ petition also contains a prayer for a mandamus directing the Respondent to decide the representation of the Petitioner qua rate but the counsel for the Petitioner has not made any submissions thereon and states he does not press for the said relief.

2. The Petitioner No. 1 was vide letter dated 25th April, 2001 allotted a plot of land ad-measuring 942.92 sq. mtrs. at a provisional premium of Rs. 1,36,62,766/- and provisional ground rent of Rs. 3,41,570/- per annum to be deposited within 45 days from the issuance of the letter and on the other terms and conditions contained therein. The Petitioner claims to have deposited only a sum of Rs. 10,00,000/- with the Respondent within 45 days of issuance of the letter (supra) and made a representation to the Respondent regarding the rate of premium and ground rent. It was the plea of the Petitioner that the adjoining plot had been allotted to the Indian National Congress (INC) at a premium of Rs. 14,14,405/- and annual ground rent of Rs. 35,360/- only and thus the premium and the ground rent charged from the Petitioner was excessive. The said representation of the Petitioner remained under consideration as is borne out from the reply dated 29th December, 2006 of the Respondent to a query under

the Right to Information Act, 2005. The Petitioner No. 1 however on 8th May, 2007 deposited the balance premium of Rs. 1,30,04,366/- and called upon the Respondent to deliver possession and upon the said demand remaining unfulfilled, filed the present petition seeking delivery of possession of the plot.

3. Notice of the petition was issued. The Respondent is stated to have filed a counter affidavit. However the same is not found on record and copy of the counter affidavit in the file of the counsel for the Respondent has been perused. The counsel for the Respondent is directed to today itself place the photocopy of the said counter affidavit on record.

4. The Respondent in its counter affidavit has inter alia stated that the difference in the premium and ground rent between the plot allotted to the Petitioner No. 1 and the adjacent plot allotted to INC is owing to the date of allotment. It is pleaded that while the allotment of adjacent plot to INC was made as far back as in the year 1987, the allotment in favour of the Petitioner came to be made only in the year 2001. Else, it is contended that the premium and ground rent have been computed on identical formula. However, since the Petitioner is not challenging the said aspect, need is not felt to go into the said aspect. The Respondent in its counter affidavit has further contended that the Petitioner No. 1 was required to deposit the entire premium within 45 days of issuance of the letter dated 25th April, 2001 (supra) and admittedly deposited the same after nearly six years in the year 2007 and without paying any interest for late payment. It is further contended that on 5th February, 2009, a request had been received from the Petitioner No. 1 for allotment of plots No. 4&5 in lieu of the earlier allotted plot No. 1; that the said request of the Petitioner No. 1 was examined and placed before the Land Allotment Steering Committee and which Committee recommended allotment of the requested plots No. 4&5 in lieu of earlier allotted plot No. 1. It is thus pleaded that the Petitioner is now not entitled to the possession of plot No. 1. It is also pleaded in the additional affidavit filed on behalf of the Respondent that an allotment letter dated 12th May, 2010 qua plots No. 4&5 has been issued to the Petitioner.

5. Though No. rejoinder / reply to the counter affidavit / additional affidavit has been filed but the counsel for the Petitioner has contended that the Petitioner had consented to the alternative plot on the terms contained in the letter dated 5th February, 2009 (supra) and one of which terms was that the Petitioner "shall accept the alternative allotment of plots No. 4&5 when and after the encroachment thereon is removed" and peaceful and vacant possession of the same can be given. It is further contended that the proposal for alternative plot had in fact emanated from the then Urban Development Minister, since it was felt that two major political parties should not have their offices / buildings adjacent to each other. It is also contended that the Respondent had while making allotment of another plot on the same road to another political party, got the similar encroachment as existing on plots No. 4&5 removed from that plot.

6. The counsel for the Respondent has argued that the L&DO is merely a land

owning / allotting agency and does not have a machinery to clear the encroachment.

7. Per contra, the counsel for the Petitioner has argued that the Petitioner is willing to take either plot No. 1 or plot Nos. 4&5 if encroachment from the latter is removed.

8. As far as the claim of the Respondent of the Petitioner having not paid interest is concerned, admittedly No. demand for interest has been raised as yet. The occasion for raising the said demand for interest appears to have not arisen owing to, after the Petitioner having deposited the demanded premium in 2007, the proposal for change having been under consideration. Without any demand being raised, it is not deemed expedient to deal with the said aspect and the said aspect is left open for adjudication if any dispute survives with respect thereto.

9. I may notice that the allotment letter dated 25th April, 2001 with respect to plot No. 1 also provided that the encroachments if any will have to be cleared by the allottee. The same Clause finds mention in the allotment letter dated 12th May, 2010 qua the alternative plots No. 4&5. The counsel for the Petitioner however states that while there is No. encroachment on plot No. 1, there is encroachment on plots No. 4&5. It is contended that the Petitioner had agreed to the change and / or agreed to accept the alternative plot subject to the condition that the vacant possession of the plots No. 4&5 shall be delivered. It is contended that now that the Respondent has in the allotment letter of 12th May, 2010 offered allotment of plots No. 4&5 without vacant possession, the same will not be acceptable to the Petitioner.

10. A perusal of the letter dated 5th February, 2009 whereby the Petitioner had agreed to the alternative plot shows that the said proposal / offer / agreement was conditional. The Respondent could have either accepted the same in toto or not and could not have accepted the same in part. The Respondent in the allotment letter with respect to plots No. 4&5 having not agreed to give vacant possession, it cannot be said that the rights of the Petitioner qua plot No. 1 stand superseded or relinquished. The counsel for the Petitioner has also stated that the Petitioner is willing to take either of the two, plot No. 1 or plots No. 4&5. It is for the Respondent to take a decision thereon and if the Respondent chooses to deliver possession of plots No. 4&5, they are obliged to deliver vacant possession thereof to the Petitioner. I am even otherwise of the opinion that the Government as the transferor of land, particularly when the Government has reserved unto itself rights over major tracts of land in the city, cannot offer land with encroachment and owes a duty to deliver vacant and peaceful possession of the land allotted. It has also come on record that the allotment aforesaid to the Petitioner is in pursuance of the right of the Petitioner to such allotment recognized by the Respondent in an earlier writ petition being W.P.(C) No. 4484/2006 preferred by the Petitioner.

11. This Court in Vardan Cooperative Group Housing Society Ltd. Vs. Delhi

Development Authority, held the DDA as the land allotting agency, being obliged to remove the encroachments on the land and to ensure that the allotted land is free from encumbrances. The Apex Court also in Haryana Urban Development Authority and Others Vs. A.K. Rampal, observed HUDA as the agency allotting the plot which had been encroached upon and which was defective, to be under obligation to allot some other plot or get the encroachment removed and defects cured. Thus, the term in the allotment letter making the allottee responsible for removing the encroachments himself is arbitrary and contrary to law. Allotments of land by agencies such as Land and Development Office (in the present case) are made only to those eligible for allotment. It is unfair on the part of the L&DO to while fulfilling its said obligation allot an encumbered or encroached upon land. There is considerable merit in the contention of the counsel for the Petitioner that while the Respondents have the State machinery available to them for removal of encroachment, an allottee will have No. option but to initiate long drawn civil litigation. The same if permitted would make the allotment illusory. The obligation of the Respondent is to allot a land for utilization for the allottee and not to allot litigation. The contention of the counsel for the Respondent that L&DO has No. machinery to remove the encroachment is fallacious. A visit to the official website of the L&DO describes "eviction of squatters of Government Land" as function of the L&DO and "removal of encroachment on such land" as a major activity of L&DO.

12. The writ petition is thus disposed of with the following directions:

- (i) The Respondent to on or before 31st October, 2011 put the Petitioner into vacant possession either of plot No. 1 or of plots No. 4&5 (supra);
- (ii) The Respondent shall be entitled to before that date raise a demand on the Petitioner for whichever plot the Respondent decides to allot to the Petitioner for the further amounts if any claimed to be due with respect to either of the plots;
- (iii) The Petitioner shall be at liberty to impugn / contest the said demand if aggrieved thereby.

No order as to costs.