(2008) 08 DEL CK 0070

In the Delhi High Court

Case No : LPA 417 of 2007

Delhi Development Authority APPELLANT

Vs

Marble Point and Others RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0070

Hon'ble Judges : Veena Birbal, J;Manmohan Sarin, J

Bench : Division Bench

Advocate : Rajiv Bansal, for the Appellant; Jayant Bhushan B.S. Mann and Jai Parkash, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Appellant-DDA has preferred this appeal against the judgment dated 6th February. 2007 passed by the learned Single Judge in WP(C) Nos. 12038- 47/2006. The learned Single Judge by his judgment had quashed the demand letter dated 12th July, 2006 issued by the appellant-DDA wherein it had raised a demand @ Rs. 38,259/- per square meter for the alternative plots allotted to the respondents. Appellant also assails the directions given by the learned Single Judge to the appellant to conduct a draw of lots and to allot plots to the respondents within eight weeks from 21st February, 2006.

2. Before considering the grounds on which appellant seeks to assail the judgment of the learned Single Judge, the facts giving rise to the present appeal may be briefly noted:

(i) Respondents are the 10 marble traders who in the year 1997 had filed WP(C) 1674/1997 seeking a writ of mandamus to DDA to allot alternate shops or sites to them on the terms and conditions as applicable to other 94 persons who had been found to be eligible for allotment of sites in the marble market at Papankalan. Respondents had submitted that marble traders who had been functioning from the Central South Ridge Mehrauli- Badarpur Road had been removed pursuant to the orders passed by the Supreme Court in a public interest litigation in the case of M.C. Mehta v. UOI. Respondents claimed that they have been removed earlier on 14th February, 1995 while 94 marble traders were removed subsequently on 26th March, 1996. Ninety four traders who were removed had been allotted sites under the Scheme of Rehabilitation of Marble Traders in Papankalan, while allotment was being denied to the respondents herein. Appellant had carried out a survey of the traders operating at Central South Ridge, Mehrauli Badarpur Road. In the said survey, the names of the 94 traders who had been evicted subsequent to the orders of the Supreme Court were included but the names of the respondents who had been evicted earlier had been excluded.

(ii) Respondents claimed that they had been carrying on their business of marble trading in khasra nos.552/310, 553/310 and 294 to 297 at Mehrauli Badarpur since 1988 and were duly registered with the sales tax authorities and were eligible for allotment on the same basis as 94 other marble traders who had been allotted sites at Papankalan.

(iii) Appellant-DDA in reply to the writ petition contended that respondents were rank encroachers of public property and they did not fall in the same category as 94 other marble traders, who were removed on 26th March, 1996 pursuant to the orders of the Supreme Court. The benefit of allotment of alternative sites was extended to only those dealers who had been removed pursuant to the directions of the Supreme Court and not to those removed prior to the passing of the orders of the Supreme Court. The said writ petition was disposed of vide orders dated 2nd April, 2003. The said order records contention of the appellant''s counsel that there was no direction passed by the Supreme Court in making alternate allotment to the 94 persons but their cases were considered on certain parameters. It was further stated that the cases of the respondents shall also be considered on the same parameters as those of 94 persons. The WP(C) No. 1674/1997 was disposed of vide orders dated 2nd April, 2003, operative portion of which is as under:

In view of the aforesaid, it is directed that petitioners should make application on the proper format used to make the application by those 94 persons and cases of the petitioners shall be considered on pari materia basis within a maximum period of three months from today. It is made clear that only those of the petitioners, who fulfil the said parameters and eligibility criteria would be entitled to the alternative allotment. The writ petition is disposed of with the aforesaid directions.'' In the aforesaid operative portion as reproduced, petitioners would refer to the respondents in the appeal herein.

3. Respondents were constrained to file WP(C) 12038-47/2006 seeking a writ of certiorari to quash the demand letter dated 12th June, 2006 issued by the appellant demanding premium payment @ Rs. 38,259/- for the alternative plots of 250 sq.metres. Respondents had urged in the said writ petition that appellant was required to take a decision regarding entitlement of the petitioners on pari

materia basis and the eligibility criteria within three months. Respondents had duly submitted an application in the prescribed format as directed. Appellant had appointed a committee which examined all the cases as per the eligibility criteria and the respondents were found eligible for the alternate plots on the basis of parity with 94 persons who had been allotted plots. The Vice Chairman, DDA and the Lt.Governor duly approved the said recommendations.

4. It is in this background that we have to consider challenge to the findings of the learned Single Judge quashing the demand letter dated 12th July, 2006 by which appellant had demanded payment @ Rs. 38,259/- and holding that respondents were entitled to the allotment and the grant of leasehold rights @ Rs. 5200/- per sq.mtr, the said price had already been deposited pursuant to the interim directions. The learned Single Judge has found that respondents were no different to the 94 traders who had been given allotment way back in 1997. Further it was on account of appellant''s action/omission that respondents were not included in the original list of marble traders to whom allotment was made in 1997. It was also noted that 14 other similarly placed marble traders who had been allotted plots as late in 2002 were charged only Rs. 5200/- per square metre. The Learned Single Judge in these circumstances held that appellant could not adopt a policy of pick and choose and quashed the demand @ Rs. 38750/- per sq.mtr.

5. Mr. Rajiv Bansal, learned Counsel for the appellant contended that respondents were rank encroachers who had occupied public land and had no right to allotment of alternative plots under the Scheme. He submitted that cases of these rank encroachers on public land could not be compared with 94 marble traders who were occupying sites either in their own right or on rent. We do not find any merit in this submission.

6. It may be recalled as noted by us in the factual narration that these very respondents had filed WP(C) 1674/1997 seeking alternate plots. In the reply filed by the respondet-DDA, this very plea of the respondents being rank encroachers on public land and not being eligible for allotment along with those 94 marble traders who were sought to be treated as separate class since their eviction was following the order of the Supreme Court was taken. The said plea was negatived.

7. Learned senior counsel for the respondents Mr. Jayant Bhushan and Mr. B.S.Mann have explained that the entire stretch of land from where marble traders were doing business, was the subject matter of acquisition which notifications were sought to be challenged which was claimed to be public land since the same had been acquired. The status of the respondents and other marble traders who were thus functioning from the land which stood acquired or was public land was the same. Appellant having accepted the position in the said writ petition that allotment to 94 persons was not pursuant to any directions given by the Supreme Court. Further that cases of the respondents shall also be considered on the same parameters and it is no longer open for the appellant to raise this issue. As noted earlier, it is appellant''s own committee comprising high

officials which had examined and scrutinized the cases of the respondents among others and found them eligible for recommendation which has been approved by the Vice Chairman and the Lt.Governor. It is, therefore, idle for the appellant to now raise the issue that respondents were rank encroachers and had to be treated on a different basis. Moreover the order dated 2nd April, 2003 had not been challenged and attained finality.

8. Coming to the next submission of Mr. Bansal which he sought to urge that the order dated 2nd April, 2003 passed in WP(C) 1674/1997 contained a direction for consideration of cases of those respondents on the same parameters and eligibility criteria, reference being to eligibility criteria, he contended that the said judgment did not put any fetter or restriction on determination of the rates that were to be charged. Mr. Bansal sought to place reliance on a letter dated 1st September, 2003 at page 154 of the paper book in response to the request for issuance of application form. Para 2 of the said letter is as under:

You are, therefore, advised to submit the filled in application along with documents mentioned therein within 20 days from the date issue of this letter to enable this office to examine your request for allotment of alternative plots for marble trade on lease hold basis. No premium/EMD is required to be deposited with the applications, as it will be demanded after examining the eligibility for alternative allotment and will be accordingly communicated to you.

9. Mr. Bansal submitted that this showed that rate and the premium were required to be calculated and determined. Mr. Bansal submitted that during 2003-2006, information and inputs received from the respondents were sent to the various Departments for scrutiny and verification like the Sales Tax Registration. It was thus only in 2006-2007 that possession could be given to these marble traders. As regards delay in allotment and handing over of possession, he contended that same should not be counted against the appellant- DDA to hold it in default and restrict the price charged from allottees to the price of plots allotted in 1997. The learned Single Judge after examining the record has returned a finding that appellant was in default. We see no reason to differ from the said finding. Respondents had wrongfully been excluded from the survey on an erroneous and inadmissible classification. Hence respondents were in fact entitled to be allotted plots along with 94 other traders. Secondly, their request for administrative redress was of no avail and they were constrained to file a writ petition which culminated in the order dated 2nd April, 2003 requiring the appellant-DDA to make the allotment within three months. Here again it was on account of the appellant pursuing that the allotment could be made in 2006. Moreover appellant had allotted plots in 2002 to other set of 14 marble traders @ Rs. 7500/-. In these circumstances, the learned Single Judge was fully justified in holding that appellant could not have discriminated against the respondents and adopt a policy of pick and choose, especially where the appellant itself has been in default. The normal principle enumerated in Delhi Development Authority Vs. Pushipendra Kumr Jain, that it is the price prevailing

at the date of allotment, would not apply due to the default of appellant. Similarly reliance on R.K. Kawatra, etc. Vs. D.S.I.D.C., etc., that price fixation was a matter of policy and not within the province of courts does not advance appellant''s case as it is not the right to fix the price and which is being questioned but its discriminatory application which has been assailed in the present appeal.

10. At this stage, we may also notice that during the course of hearing, learned Counsel for the appellant had submitted that 94 persons who were allotted plots were allotted undeveloped land, while the respondents who have been given possession in 2006-2007 have received developed land with facilities of sewer, water etc being available. It was urged that DDA''s own costs of acquisition worked out to Rs. 12,753/- per sq.mtr while the allocable price worked out to Rs. 38,259/- per sq.mtr which had been demanded. We had accordingly put to the respondents that even though in the instant case respondents were entitled to be allotted land at the same price as allotted to the other 94 persons and 14 others in 2002, respondents could consider paying the differential to put a quietus to the matter and end the controversy, at least by which the actual cost only could be realized by DDA. In all fairness, respondents indicated their willingness to pay the differential and the matter was adjourned to enable the appellant''s counsel to take instructions. On 28th July, 2008 further time was sought. Learned standing counsel for the appellant informed the court on 6th August, 2008 that his instructions were not to accept the concession offered by the respondents without prejudice to their rights. However, he would have the matter reconsidered at higher echelons of DDA. On 11th August, 2008, we were informed that appellant-DDA was not willing to accept payment @ Rs. 12753/- per sq.mtr.

11. The offer made by the respondents to pay the differential, in our view, was a just and fair offer which would have enabled the DDA to mitigate and recover its loss. It is unfortunate that public authorities such as DDA despite being conscious and aware of their defaults and shortcomings of their case, pursue appellate remedies for the sake of completing audit requirements or as part of defence mechanism. It is time that a system is put in place where in all such matters such as the present one, where financial implication would be over Rs. one crore that opinion of the Solicitor General, Additional Solicitor General or the Law Officer of the Union is sought before such decisions are taken.

In view of the foregoing discussion, we find the appeal to be meritless and dismiss the same with costs of Rs. 11,000/-.

Copy of this order be endorsed to the Vice Chairman, DDA and the Secretary, Ministry of Law, Justice and Company Affairs.

