

(2003) 10 DEL CK 0050

In the Delhi High Court

Case No : LPA No's. 213, 263 and 519 of 2003

India Iron Stores and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-10-2003

Acts Referred:

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 6

Citation : (2004) 112 DLT 949

Hon'ble Judges : B.C. Patel, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : P. Chakraborty, Adv Anusuya Salwan, for the Appellant;

Judgement

A.K. Sikri, J.—Common issues are raised in these appeals. In fact, these appeals arise out of three writ petitions filed by these three appellants and the learned Single Judge has also disposed of the writ petitions by common order dated November 25,2002 which is impugned in these appeals. These appeals were heard together and that is the reason we are disposing of all these three appeals by this common order.

2. The issue involved is in a narrow compass. All the appellants were unauthorized occupants of public land in Basant Nagar. From there the appellants were carrying on business of iron and steel. They were removed from these sites during the period 1975 to 1977, when an operation was carried out by the DDA in various parts of Delhi for shifting of non-conforming trade and industry. With the intention that the business interests of the appellants do not suffer even when they were encroachers on public land in Basant Nagar, the respondent-DDA agreed to allot plots of 84 sq. metres to each of the appellants at Madangir. This offer was made to the appellants fixing the rate of Rs. 4,183 /- per sq. metre. Appellants felt aggrieved by this rate and that is why writ petitions were filed by them.

3. According to the appellants, they should have been given plots at

predetermined rate of Rs. 69/- per sq. yard. This claim is based on a scheme which was formulated by the DDA for relocation of iron and steel traders situated at Motia Khan. It is a matter of record that there was huge unauthorized market of iron and steel business in Motia Khan, When Government decided to shift the said market, a comprehensive scheme for this purpose was framed and those who were eligible as per the scheme were allotted plots at Naraina. A policy decision was taken to charge from those traders rate of Rs. 69 /- per sq. yd. The contention of the appellants is that since DDA fixed a rate of Rs. 69/- per sq. yard, for those traders there could not have been a discrimination meted out to the appellant by charging rate of Rs. 4,183 A per sq. metre. The parity is claimed by emphasizing that appellants herein were also doing the same business, namely, iron and steel which was the business of those traders situated at Motia Khan. If appellants were unauthorised occupants so were the traders at Motia Khan. The appellants were shifted from non-conforming area in the same manner as the traders operating from Motia Khan. Therefore, the appellants could not be treated differently when they were identically situated. Other submission in support of the case of the appellants is that they are entitled to the benefit of pre-determined rate under Rule 6(v) of the DDA (Nazul Land) Rules, 1981 (herein referred to as the "Rules" for short).

4. In so far as the plea of discrimination is concerned, the learned Single Judge repelled the same in the following words:

"The second contention which arises for consideration is whether the resolution relating to Motia Khan would ipso facto apply to the case of the petitioners by reason of the fact that the petitioners were carrying on a similar trade of Iron and Steel and were also removed from their earlier occupation of the public land. Admittedly the resolution has not been made applicable to other areas and is confined to Motia Khan. In my considered view unless the said resolution or decision is made specifically applicable to other areas the same cannot be said to ipso facto apply to all other areas merely by reason of the category of persons being of encroachers on public land and carrying on similar trade.

The rationale for the deference in pricing has also been explained in the counter affidavit by respondent No. 2. It has been stated that Madangir LSC is a superior commercial area and commercial plots had been allotted. Thus these persons were relocated in the same South Delhi area and as a consequence thereof the rates had been fixed. In fact the petitioners should have been more than satisfied that they were given alternative plots where they would have legal title even though they did not have legal title for such allotment being encroachers on public land carrying on business on the said land.

In so far as issue of discrimination is concerned, the same would not arise in the present case because areas where the two groups of people have been relocated is dissimilar."

5. We are in agreement with the aforesaid reasons given by the learned Single

Judge in rejecting the plea of hostile discrimination. Neither the scheme framed for the traders of Motia Khan was applicable to the encroachers of land at other places even when they were doing the same business, nor the persons like the appellants were relocated at Naraina. On the other hand, the appellants herein are given alternate site at Madangir Local Shopping Complex. It could not be denied by the learned Counsel for the appellant that it is a superior commercial area, Learned Counsel for the respondent at the time of argument also informed the Court that at Madangir sites allotted to the appellants they are allowed 100% coverage in construction which fact also was not denied by the learned Counsel for the appellants. Thus, appellants who were situated at different place and were allotted land also at different place, cannot claim parity with the traders who were operating from Motia Khan. It is a matter of record that the rates are different at different places in Delhi. Many times this issue is abnormal. Moreover, it is also a matter of common knowledge that there were hundreds of such traders during the business of iron and steel at Motia Khan for whom comprehensive scheme was formulated and all those who were eligible under the scheme Were accommodated at Naraina. The consideration for relocation of such traders while framing such a scheme would be totally different which cannot be the yardstick when few persons operating in different area than Motia Khan are to be removed from those non-conforming areas and again when they are shifted to different area than Naraina. In fact, such persons have no legal right even to claim alternate land. Since appellants had applied for alternate land, their request was considered by the respondent dehors the scheme prepared for Motia Khan traders, and offer was made to them for places at Madangir for which rates were fixed having regard to the location where they were shifted. The appellants were, Therefore, differently situated than the traders of Motia Khan and, Therefore, no case of discrimination was made out.

6. In so far as contention based on Rule 6(v) is concerned, in order to appreciate this contention we may first take note of this provision. Relevant portion of Rule 6 reads as under:

"6. Allotment of Nazul land at pre determined rates--Subject to the other provisions of these rules the Authority shall allot Nazul land at the predetermined rates in the following cases namely:

- (i) xxx
- (ii) xxx
- (iii) xxx
- (iv) xxx

(v) to industrialists or owners and occupiers of warehouses who are required to shift their industries and warehouses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act."

7. A bare perusal of this Rule makes it abundantly clear that it is applicable only in those cases where persons operating in no-conforming areas are to be shifted to conforming area under the Master Plan. The persons who are operating in the non-conforming area are the owners of the land in question. In those cases where Master Plan does not permit them to do a particular industrial activity etc. from that area they are not required to be shifted. It is because of this reason that this rule provides that they would be allotted Nazul land at pre-determined rates. This becomes abundantly clear when we notice that in Sub-rule (v) of Rule 6 even those persons whose land is acquired or proposed, to be acquired, are also covered. This provision thus relates to those who are the owners of the land and for some reason they are to be shifted from the land which they own. By no stretch of imagination benefit of such provision can be taken by those who are encroachers on public land like the appellants.

8. No other argument was raised. As the appeals are devoid of merits they are dismissed with cost which is quantified at Rs. 5,000/-.