

(2000) 02 DEL CK 0028

In the Delhi High Court

Case No : C.W.P. No. 217 of 1989, 218 of 1989, 219 of 1989, 3006 of 1989

Jai Bhagwan and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Delhi Development Act, 1957 — Section 21, 22

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 12, 2, 4, 6

Citation : (2000) 5 AD 440 : (2000) 4 RCR(Civil) 48

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. R.K. Anand and Mr. Arun Birbal, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Judgement

Dr. M.K. Sharma, J.—In all these writ petitions issues raised on fact and on law are similar in nature and Therefore, I propose to dispose of all the writ petitions by this common judgment/order.

2. The petitioners were owners of land situated at Revenue Estate of Village Samaipur. Land owned by the petitioners was acquired by Delhi Administration for the planned development of Delhi pursuant to notifications under 4 & 6 of the Land Acquisition Act and award was passed.

3. The Union of India promulgated a scheme in the year 1961 by virtue of which persons whose lands had been acquired for planned development of Delhi became eligible for allotment of alternative plot in lieu of their land acquired by the Government. The said scheme laid down general directions to regulate acquisition, development and disposal of lands in Delhi, avowedly, with the object to control land values in Delhi as well as to secure the development of Delhi according to plan. An Act namely - The Delhi Development Act was passed by the Parliament to provide for development of Delhi according to plan and for matters ancillary thereto and Delhi Development Authority was established under the

provisions of Section 3 of the said Act. There is also a set of rules called Delhi Development Authority (Disposal of Developed Nazul land) Rules, 1981. The said rules lay down the purposes for which Nazul land may be allotted and the persons to whom such land could be allotted and in what manner.

4. In terms of the aforesaid provisions of the scheme as also the provisions of the Act and the Rules cases of petitioner were considered by the Land and Building Department for allotment of land in lieu of acquisition of their land. On consideration of the cases of the petitioners the names of the petitioners were recommended for allotment of alternative plots measuring 250 Sq. Yards. under communication from Land and Building Department of Delhi Administration. In the light of the aforesaid decision of the Land and Building Department the names of the petitioner were recommended for allotment of alternative plot under the scheme of large scale acquisition, development and disposal of land in Delhi, 1961. Such letters have been placed on record by the petitioners. In respect of Jai Bhagwan the letter was issued on 13.10.1986 whereby the Joint Secretary of the Land and Building Department requested Delhi Development Authority to allot a plot measuring 250 Sq. Yds. to the petitioner Jai Bhagwan in North Zone. A reading of the said letter would indicate that the allotment of alternative plot by the aforesaid communication was only recommendatory and was subject to availability of plot with Delhi Development Authority, which fact is specifically mentioned in the said letter. It was also made explicit in the said letter that it did not carry any legal commitment for the allotment of any alternative plot. On receipt of the aforesaid letters Delhi Development Authority wrote letters to the petitioner intimating that they had been recommended for allotment of alternative plots and also allotment they should pay an amount as mentioned in the said letters. It was stated in the said letters that if the aforesaid amount is paid in time and upon compliance of all the requisite formalities their names would be included in the draw of lots for allotment of specific plots. All the petitioners paid the amount as demanded and waited for their allotment when they were informed that they were allotted land of lesser area than for which their names were recommended.

5. Being aggrieved by allotment of plots of lesser area than what was recommended by the Land and Building Department of Delhi Administration and what was initially accepted by Delhi Development Authority, the petitioners preferred the present writ petitions in this court, with the allegation that although bigger plots are available the same are being auctioned instead of making allotment to the petitioners and also with the allegation that there is hostile discrimination between the petitioners and other similarly situate persons. At the time of issuance of notice an order was also passed by this court that the respondents would reserve one fully developed/semi-developed 250 Sq. yards. plot for each of the petitioner if they ultimately succeed. I am now informed by the counsel appearing for the parties that pursuant to said orders plots of 250 Sq. Yards. or more are being reserved for the petitioners in North Zone.

6. Mr. Anand, Senior counsel appearing for the petitioners submitted that when the names of the petitioners were recommended for allotment of a plot measuring 250 Sq. Yards. and the said recommendation was accepted by Delhi Development Authority by directing them to deposit the amount as demanded and stating in the letter if such payment is made his name would be included in the draw of lots for a specific plot, the respondent/DDA could not have allotted smaller plot than what was recommended by the Land and Building Department. He also submitted on the basis of records placed along with the petition that the respondent/DDA was near about the same time auctioning plots measuring 250 Sq. yards. to various people which was illegal, for the petitioner had priority in the matter of allotment of land in view of the provisions of the scheme as also the provisions of the Nazul Rules of 1981. In support of his contention the learned counsel appearing for the petitioners relied upon the Full Bench decision of this court in *Ramanand Vs. Union of India*, AIR 1994 Del 29 and also the decision rendered by a Single Judge of this court in *Rajinder Kumar Vs. Union of India & Others*, C. W. P. No. 515/1983 disposed of on 23.11.1984.

7. Mr. Jayant Bhushan, on the other hand appearing for the respondent submitted that there is no foundation laid down in the writ petitions alleging discrimination and it is only in the rejoinder that such plea is being sought to be made out. He also submitted that in fact no discrimination has been made in the matter of allotment of plots to the petitioners and that such allotment has been made in terms of the scheme, the relevant Act and the Rules framed thereunder. He submitted that the petitioners had no vested right for allotment of plot of land in lieu of their acquired land and the only right that they had was to be considered for allotment of land in accordance with the plan. In support of his contention he also relied upon the decision of the Full Bench of this court in *Ramanand Vs. Union of India* (Supra).

8. In order to appreciate the contention of the learned counsel appearing for the parties it is necessary to notice some of the relevant provisions of the Scheme of 1961. The aforesaid 1961 Scheme envisaged large scale acquisition of land for being developed by different authorities of land for being developed by different authority for different purposes. Clause 6 provides for giving out Nazul land in the name of the President only on lease hold basis to local bodies, Co-operative societies, industrialists, individuals, and institutions etc. Clause 8 laid down, as a general policy, that disposal of developed land should be made by auction and the premium should be determined by the highest bid. An exception was, however, made in cases where land may be allotted at pre-determined rates, namely - the cost of acquisition and development, plus some additional charges, to certain categories of individuals, including individuals whose land had been acquired. The petitioners admittedly fall in the aforesaid category of persons whose lands had been acquired. As stated herein above, under Delhi Development Act the authority was established and it was empowered to acquire hold and dispose of land and other properties, carry out building, engineering, mining and other operations etc. Sections 21 & 22 thereof which are relevant for

the purpose of determining the present case are extracted herein below:-

21.(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of-

(a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner, and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.

(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (i) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirement of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirement as to its development and use as the Authority or the local authority concerned may think fit to impose.

22.(1) The Central Government may, by notification in the official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "Nazul Lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that

Government upon such terms and conditions as may be agreed upon between that Government and that Authority.

9. In exercise of powers conferred by clause (1) of sub-section (2) of section 56 read with sub-section (3) of Section 2 of Delhi Development Act, 1957 the Central Government framed a set of Rules called Delhi Development Authority (Disposal of Development Nazul Land) Rules, 1981 providing for the manner of dealing with Nazul land developed by or under the control and supervision of the Delhi Development Authority. Rule 2 of the said Rules defines "Nazul land" to mean the land placed at the disposal of the control and supervision of the Authority u/s 22 of the Act. "Pre-determined rates" is defined to mean the rates of premium chargeable from different categories of persons and determined by notification from time to time, by the Central Government, having regard to (a) cost of acquisition, (b) development charges, and (c) concessional charges for use and occupation. Rule 4 thereof lays down the persons to whom Nazul land may be allotted when it provides that the Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, body of persons, public and private institutions, co-operative house building societies, other cooperative societies of individuals, co-operative societies of industrials and to the departments of the Central Government, State Government and the Union territories. Provisions of Rules 6 & 12, on which much emphasis was placed by the counsel appearing for the parties are extracted herein below:-

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 pre-determined rates in the following cases namely:-

(1) to individual whose land has been acquired for planned development of Delhi after the 1st day of January, 1961, and which forms part of Nazul land;

Provided that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted;

(ii) to individuals in the low income group or the middle income group, other than specified in clause (i)-

(a) who are tenants in a building in any area in respect of which a slum clearance order is made under the slum areas act;

(b) who, in any slum area or the other congested area, own any plot of land measuring less than 67 square meters or own any building in any slum area or other congested area;

(iii) to individuals, other than those specified in clauses (i) and (ii), who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee.

(iv) to individual belonging to Scheduled Castes and Scheduled Tribes or who are widows of defense personnel killed in action, or ex-servicemen, physically handicapped individuals subject to the provisions of rule 13;

(v) to (vi)

.....

12. Priority of allotment for residential purposes - Subject to the availability of land for allotment for residential purposes among the individuals referred to in clause (i) to (ii) of rule 6, the individual referred to in clause (i) shall be preferred to the individuals referred to in clause (ii) and those in clause (ii) shall be preferred to those in clause (iii).

10. While contending that Delhi Development Authority has unauthorisedly reduced the size of the plot although on behalf of Delhi Administration recommendation was made for allotment of a plot of a larger size, Mr. Anand submitted that on the facts and circumstances of the case the ratio of the decision of Ramanand's case (supra) would not apply to the facts of the present case, for according to him the decision rendered by the Single Judge in Rajinder Kumar's case (supra) is more appropriate to the facts and circumstances of the present case. The aforesaid submission however, was refuted by the counsel for the respondent and Therefore, it would be necessary to notice the aforesaid Full Bench decision rendered by this court. The said decision took notice of the scheme of 1961, provisions of Delhi Development Act as also the provisions of the Nazul Rules and on consideration thereof it was held that the provisions earlier made in the 1961 scheme stood implied repealed by the more comprehensive and detailed provisions made later in the subject and in the said field by the Nazul Rules in 1981. The Full Bench also noticed various provisions of Nazul Rules and in paragraph 22 held that the contention on the basis of rule 12 that the individuals whose land has been acquired, as against the others should be given over-riding and preferential right to allotment of residential land. It added that the said proposition would hold good only to the extent of priority for allotment inter se the individuals referred to in clause (i), (ii) and (iii) of Rules 6 and that rule 12 does not place the individuals mentioned in clause (i) at any advantage or over-riding position in relation to the other sub-categories of individuals referred to in clause (iv) or clause (v) of rule 6 itself, much less in relation to the other categories of persons named in rule 4.

11. In paragraph 20 of the said decision it was laid down that Rule 4 confers on the DDA a power to allot land to the specified categories of persons, but it cannot be said that it confers upon any one a right to allot land for it does not cast upon the DDA any obligation or duty to make such allotment to any particular person or category of persons mentioned therein. It was also held that the rule gives to the DDA, by use of the word "may" a discretionary power to allot land to all or any of the named category or persons, and in that context it was held that an individual whose land has been acquired for planned development of Delhi has no

absolute right to allotment but he is eligible to be considered for allotment of alternative plot for residential purposes and that the DDA may allot nazul land to the categories of persons specified in Nazul Rules.

12. Paragraph 25 of the aforesaid judgment is also relevant and contents of the said paragraph are extracted below:-

Rule 6(1) proviso, undoubtedly, provides for determination of the size of the plot by the Administrator if an individual is to be allotted residential plot. But, the power to make the allotment lies within the domain of the DDA. The Administrator, being the land acquiring authority, is to verify whether the land of an individual applicant is acquired, and the area and value thereof. On these facts, then the DDA, who is entrusted with the power and function of development and disposal of land, would examine the matter, in the light of the plans and the other rules, and decide whether a plot may be allotted to him, and, if so, or what size and where. It cannot be said, on the basis of this provision, that the right to allotment of a plot would accrue, merely on verification of the claim, and even on the basis of recommend corporation made by the Administrator in favor of the individual whose land is acquired."

13. It is thus, crystal clear that the petitioners do not have a vested right for allotment of a plot of land in lieu of their acquired lands nor do they have any vested right to claim that a plot of particular size should be allotted to them. The Full Bench decision has categorically set at rest the position that they only have a right to be considered for allotment of a plot of land and the also a plot of the size which is available with Delhi Development Authority. In relation to the contention that instead of giving a bigger plot to the petitioner such plots are being auctioned, reference may be made to the provisions of Rule 24 of the Nazul Rules under which auction of plots of different sizes are made by Delhi Development Authority. It was stated by the respondent in their counter affidavit that allotment of plot is subject to availability of the plots and that does not carry with it any legal commitment for the allotment of alternative plot. It was also stated that due to non-availability of sufficient fully developed plots in Peetampura, it was decided to offer semi developed plots in Rohini and accordingly offer letters were sent to the petitioners. An additional affidavit was subsequently filed by Development Authority contending inter alias that the petitioner had been allotted a bigger plot through draw of lots than the size of plots offered by letter dated 8.12.1988. It was also stated that the availability of plots of bigger size in blocks H4 & 5 in Peetampura although are available they are very few in number which have become available due to cancellation of the allotment and revision of the plan of the Pockets H-4 and 5, Peetampura. It was also stated that said plots so reserved however, cannot be allotted to the petitioners for the reasons that the seniority position of the petitioners according to the seniority list are much below and if the said bigger plots are allotted to the petitioners several other persons who are senior to the petitioners would come forward for allotment of bigger plots to them, which would create an

embarrassing position.

14. The petitioners have also placed on record a list containing names of all the persons who have been allotted alternative land in lieu of their acquired land and in the said the names of the petitioners are shown. So far the petitioner jai Bhagwan is concerned he is placed at Sr. No. 70 of the said list and he has been allotted with a plot of land measuring 144 Sq. Meters. I have perused the said list carefully. All the persons have been allotted either a plot measuring 120 Sq. Meters. or a plot measuring 144 Sq. Mtrs. except for 5 persons who have been allotted a plot of land measuring 162 Sq. Mtrs. The contents of the aforesaid list placed on record by the petitioners have been explained by the respondent in their counter affidavit contending inter alias that 236 semi-developed plots in Rohini Sector 4 measuring 120 Sq. Mtrs. became available on 26.10.1978 to Delhi Development Authority for alternative allotment in North Zone, and that the same were offered on 8.12.1988 to the eligible recommended in the order of seniority which include the petitioners. It is also stated that in the month of March, 1989 55 more semi-developed plots which include 50 plots measuring 144 Sq. Mtrs. and 5 plots measuring 162 Sq. Mtrs. In pocket 11, Sector 5, Rohini became available with the DDA consequent upon which offer letters were issued to the eligible persons in the order or seniority list on 9.6.1989. It is also stated that after receipt of earnest money and after obtaining their consent for the draw the draw was held through computer on 13.7.1989, to avoid any discrimination, and that in the said draw the petitioners got allotment of plots of land.

15. The aforesaid procedure adopted by the respondent appears to be reasonable and valid. The petitioners were entitled to be considered for allotment of a plot of land which was subject to availability of such plots. It is explicitly clear from the documents placed on record that plots of 120 Sq. Mtrs., 144 Sq. Mtrs. and 162 Sq. Mtrs. were available for allotment which were so allotted after draw of lots, in which the petitioners also got plots of land measuring 144 Sq. Mtrs. The contention that the petitioner could have been allotted plots of land which were auctioned by Delhi Development Authority, in my considered opinion such land could not have been allotted to the petitioners, for the plots of land which are to be auctioned are distinct and separate according to the plans and no one has an indefeasible right to claim a particular plot of land of a particular size, which according to the authority is required to be auctioned in order to cope up with the expenditure incurred on development of plots and providing community facilities by Delhi Development Authority. Similar pleas as taken by the petitioners appear to have also been taken before the Division Bench of this court in case of Khazan Singh Vs. Union of India, in C. W. P. No. 1958/1996 disposed of on 28.10.1998. In the said decision similar pleas as raised by the petitioners were dismissed. The Full Bench decision of this court has also held that Delhi Development Authority may allot nazul land to an individual who is eligible to be considered for allotment of an alternative plot for residential purpose in conformity with the plans and subject to other provisions of the Nazul rules. As the plots which are meant for auction were not available to the

petitioners in accordance with the plants and also in accordance with the provisions of Nazul Rules, for those pleas are governed by the provisions of rule 24 of the Nazul rules in respect of which the provisions could not have claimed any priority, the contentions of the learned counsel appearing for the petitioners are found to be misplaced.

16. In my considering opinion, there is no discrimination. The decision relief upon by the learned counsel appearing for the petitioners was rendered prior to the decision rendered by the Full Bench of this Court and the said decision did not take notice of the various provisions of the Nazul rules and that in that view of the matter the same cannot be said to be applicable to the facts and circumstances of the present case.

17. In the result, I do not find any merit in these writ petitions. The same accordingly, stand dismissed but without costs.