

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: October 05, 2009*
Judgment Delivered on: October 22, 2009

+ **L.P.A. 221/2003**

SHRI RAVINDER SINGH Appellant
Through: Mr.Sumit Bansal, Mr.M.G.Vachar,
Mr.Ateek Mathur & Mr.Manish
Paliwal, Advocates.

Versus

DDA & ORS. Respondents
Through: Ms.Sangeeta Chandra, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. The appellant is aggrieved by the judgment and order dated 20.3.2003 dismissing the writ petition filed by the appellant.

2. The prayer made in the writ petition was to quash the allotment of the site forming subject matter of the claim by the petitioner in the writ petition to respondents No.4 and 5

with a writ of prohibition to be issued against Delhi Development Authority (DDA) restraining it from dispossessing the petitioner from the site between Shop No.33 and Stall No.53 Wadhwa Market, Hudson Line, Kingsway Camp, Delhi.

3. An alternative prayer was made that in case the main reliefs asked for were not granted, DDA be directed to allot the site in question to the petitioner.

4. The writ petition filed by the petitioner was tagged along with WP(C) No.776/1997 on account of the fact that the learned Single Judge had expressly stated that the writ filed by the petitioner raises issues which were raised in WP(C) No.776/1997.

5. The two writ petitions were disposed of vide two separate orders dated 22.9.2002.

6. WP(C) No.776/1997 was disposed of on a consent by learned counsel for the parties that the petitioners therein would be allotted alternative sites in terms of the scheme of rehabilitation set out in the further second additional affidavit filed by the DDA on 4.9.2001 and further that DDA would reconsider the rates at which the alternative sites were to be allotted.

7. The writ petition filed by the petitioner was disposed of holding that though the petitioner had not consented to the consent directions, he could not lay a claim to the site in question and thus even he would be entitled to an alternative allotment on the same terms on which alternative allotment was made by DDA to the writ petitioners of WP(C) No.776/1997.

8. The appellant challenged the order dated 22.9.2002 by and under LPA No.822/2002 which was allowed with a direction that the writ petition filed by the appellant be re-decided on merits.

9. At the remanded stage, the writ petition filed by the appellant has been dismissed vide order dated 20.3.2003.

10. Briefly stated, claim of the appellant in the writ petition was that at the time of partition his father as also many other persons who had migrated to India settled in Kingsway Camp on Hudson Lines, Outram Lines, Reid Lines and Edward Lines. The area was developed by the Government and the Municipal Corporation of Delhi (MCD) allotted, on tehbazari, a site measuring 10' x 10' between Shop No.33 and Stall No.53 in Wadhwa Market to the father of

the appellant. That the father of the petitioner was asked to vacate the site and he filed a suit for permanent injunction against the Municipal Corporation of Delhi. The matter was litigated right up to the Supreme Court and the relief which was granted to the father of the appellant was that he would not be dispossessed without an opportunity of hearing being granted to him by the Municipal Corporation of Delhi.

11. That from time to time Re-development Scheme were framed for the re-development of Kingsway Camp area and under one such scheme the occupants of Wadhwa Market, Kingsway Camp were sought to be evicted and they filed a writ petition numbered as WP(C) No.776/1997 challenging their displacement.

12. We may note at this stage that in para 10 of the writ petition filed by the appellant, he averred as under:-

“10. That when number of shopkeepers adjoining the shop of the petitioner’s father was sought to be forcibly removed by the Delhi Development Authority, they filed a Civil Writ No.776 of 1997 in this Hon’ble Court challenging the action of the Delhi Development Authority. A copy of the writ petition is attached herewith and is marked Annexure-C and copies of orders are annexed herewith as Annexure-C-1 and C-2 respectively.”

13. The appellant alleged that his father died in the year 1989 and on the death of his father he paid the tehbazari

to the Municipal Corporation of Delhi and that he repeatedly represented to the MCD to mutate the tehbazari site in his name.

14. As per the appellant the Re-Development Scheme of Kingsway Camp does not cover the land on which 53 shops including the site allotted to the father of the appellant in Wadhwa Market is situate. The appellant further alleged that fearing dispossession he filed a suit for injunction to restrain DDA from dispossessing the appellant or demolishing his shop. He was granted an ex-parte stay which was vacated on 3.6.2000. The appellant filed an appeal in which stay against dispossession was granted by the learned Additional District Judge on 9.6.2000. Stating that he continued to apprehend dispossession and that the claim of the appellant was at par with those of the writ petitioners in WP(C) No.776/1997, the appellant was constrained to file the writ petition.

15. We have noted herein above in para 12 the averments made by the appellant in para 10 of the writ petition filed by him. We note further averments made by the appellant in paras 14 to 18 of the writ petition. The same read as under:-

“14. That the total number of shops in the same line in Wadhwa Market opposite the public road on which the Petitioner’s shop is situated and which has been given on tehbazari basis by the Municipal Corporation of Delhi, is 53 besides the petitioner’s shop.

15. That the perusal of the scheme of Kingsway Camp will also show that it was not meant to cover the aforesaid shopkeepers to whom the sites have been allotted by the Municipal Corporation of Delhi on Tehbazari basis. They constitute a class apart and have absolutely nothing to do with the redevelopment scheme of Kingsway Camp or who would be affected by the implementation of the said scheme. In fact, the broad outlines of the scheme were to re-settle the individuals who had got their residential accommodation in the Kingsway Camp and who might have to be shifted as the result of the implementation of the redevelopment scheme.

16. That so far as the aforesaid 53 shops and the shop of the petitioner were concerned, they were wholly outside the purview of the scheme of redevelopment.

17. That it is in these circumstances that the Delhi Development Authority filed the aforesaid affidavit in which it admitted that Wadhwa Market had not been transferred by the Municipal Corporation of Delhi to the Delhi Development Authority.

18. That some officials of the Delhi Development Authority taking advantage of the scheme, found it convenient to extort money from the shopkeepers including the petitioner on threat of demolishing their shops in the name of resettlement scheme.”

16. From the pleadings in WP(C) No.776/1997, it is apparent that 114 shops were constructed on Edward Lines to

accommodate the displaced refugees and to satisfy the claim of 233 displaced refugees said number of shops were additionally constructed and allotted, but in spite thereof, claim of 53 persons could not be satisfied. With the intervention of late Shri B.D.Wadhwa, a veteran freedom fighter and a member of the Municipal Corporation of Delhi, a market called Wadhwa Market, having 53 shops was constructed and allotted to 53 persons. A redevelopment plan of Kingsway Camp was drawn up and as per DDA, in the process of re-alignment of roads, Wadhwa Market was to be demolished. The allottees of 53 shops in Wadhwa Market took a stand that Wadhwa Market was not to be affected by the scheme of redevelopment of Kingsway Camp. Some of the shopkeepers filed the writ petition seeking a declaration that Wadhwa Market was not affected by the redevelopment scheme of Kingsway Camp. They sought a prohibition against DDA to demolish the market.

17. Now, the appellant himself had claimed that the site allotted to his father is between Shop No.33 and Stall No.53 in Wadhwa Market. On inquiry from learned counsel for the parties, we were informed that to accommodate some left

out allottees, tharas called stalls i.e. cement platforms were constructed by MCD and allotted on tehbazari to some persons. Thus, it is apparent that the site allotted to the father of the appellant is in the precincts or abuts where Wadhwa Market once stood.

18. Wadhwa Market has since been demolished to give effect to the redevelopment scheme. Evidenced by the consent order dated 27.9.2002 disposing of WP(C) No.776/1997, the shopkeepers in the said market have agreed for allotment of alternative sites at rates determined by DDA.

19. As far as the appellant is concerned, in the absence of any protective umbrella i.e. an interim order in his favour, even the appellant has been removed from the site allotted to him on tehbazari.

20. A half-hearted attempt was made by learned counsel for the appellant to urge that the site allotted on tehbazari by the MCD to the father of the appellant is not in Wadhwa Market. But in the teeth of the averments made in the writ petition by the appellant, contents whereof have been noted by us in para 12 and 15 above, learned counsel conceded that it is too late in the day for the appellant to urge

that the site allotted on tehbazari by the MCD to the father of the appellant is not within Wadhwa Market.

21. The second feeble attempt to urge that the site allotted on tehbazari by the MCD to the father of the appellant is not affected by the scheme of redevelopment of Kingsway Camp is negated by us for the reason the redevelopment plan filed by DDA in WP(C) No.776/1997; available at page 88 of the record of the said writ petition clearly shows that the entire land where the shops in Wadhwa Market were constructed and abutting land has got affected by the redevelopment scheme.

22. Realizing that the feeble pleas afore-noted were without much substance, learned counsel for the appellant vehemently urged that the claim of the appellant for alternative land has to be considered and directions have to be issued to DDA to allot a parcel of land ad-measuring 10' x 10' i.e. the same size as was allotted by MCD to the father of the appellant on tehbazari.

23. The plea of learned counsel for the appellant for allotment of alternative land to the appellant needs to be considered with reference to the fact that under the MCD, the father of the appellant was granted the site ad-measuring 10'

x 10' on tehbazari i.e. on license on yearly basis. The only right of the father of the appellant was to have the license renewed as per the tehbazari policy. It has to be noted that as per the tehbazari policy of the MCD, the allottee of a site on tehbazari cannot erect even a temporary structure on the site because tehbazari is a license to squat on the site during the day time and sell wares. Nothing can be stored or stacked at the site. The appellant has admittedly violated the terms of allotment and not only did he construct a pucca shop on the site but even constructed a residential room at the first floor level. If this be so, which it is so, the appellant has violated the terms of allotment of the tehbazari site and thus has disentitled himself to the grant of any discretionary relief.

24. As has been noted herein above, the other similarly situated persons agreed to be rehabilitated at an alternative site to be developed by DDA. In spite of the fact that the appellant himself pleaded in the writ petition that the site allotted to his father was between Shop No.33 and Stall No.53 in Wadhwa Market, the appellant chose not to concede as did the writ petitioners of WP(C) No.776/1997 to accept alternative allotment. Whereas said writ petitioners conceded that the re-

development plan affects Wadhwa Market and since the re-development plan was subservient a public purpose, their private interest was a subordinate interest and hence requiring them to be shifted out, but the appellant made no such concession. Of course, the appellant was entitled to chose his path. But, having taken his chance, the appellant cannot turn back and claim to be put at par with the other affected persons. We note that in spite of the obstinate stand taken by the appellant, the learned Single Judge granted same relief i.e. to be allotted an alternative site, to the appellant who got the said order set-aside in the appeal.

25. By its very nature, a rehabilitation scheme targets those who accept rehabilitation under the scheme. Thus, the authority designs the scheme in a manner that the persons desirous of seeking rehabilitation are accommodated. Tinkering with schemes and especially under judicial orders creates immense problem for the executive. It has to be noted that the rehabilitation scheme proposed by the DDA to rehabilitate the affected shopkeepers is a purely beneficial scheme framed by DDA as a policy goodwill gesture. Otherwise, there is no statute which mandates DDA to give

alternative allotments to squatters affected by re-development schemes. To issue a direction to DDA to accommodate the appellant by allotting an alternative site would create immense problem for DDA as was urged by learned counsel for DDA because DDA would have to identify a single site for the appellant. Had appellant chosen to see logic and reason and stood by the other similarly situated persons his claim could have been satisfied in the scheme for rehabilitation.

26. At best, the claim of the appellant can be for allotment of a site on tehbazari under the MCD for the reason it was the MCD which had allotted, on tehbazari, the site in question to the father of the appellant. At best, the appellant can claim that before MCD transferred the site to DDA, the claim of the appellant as per the policy of street vending i.e. tehbazari had to be considered and satisfied.

27. Learned counsel for the DDA conceded that the Municipal Corporation of Delhi has a street vending policy as per which claim of prior squatters is considered if the site in question has to be re-possessioned by the Municipal Corporation of Delhi and such squatters, subject to availability, have to be given, on tehbazari basis, alternative sites.

28. Since the issue relates to the livelihood of the appellant, we feel that the ends of justice would be met if the Municipal Corporation of Delhi, which we note has been impleaded as respondent No.3, is directed to consider the claim of the appellant for allotment of an alternative site on tehbazari as per the policy framed by the Municipal Corporation of Delhi. While so considering the claim of the appellant, the MCD would take note of the fact that the father of the appellant was allotted the site in respect whereof the appellant has been litigating since the year 1967 and after the death of the father of the appellant, MCD accepted the license fee from the appellant and did not reject the application submitted by the appellant to be substituted as the allottee on the death of his father.

29. The appeal accordingly stands disposed of issuing a direction to the Municipal Corporation of Delhi to consider the claim of the appellant for allotment of an alternative site on tehbazari as per the policy framed by the Municipal Corporation of Delhi. While so considering the claim of the appellant, the MCD would take note of the fact that the father of the appellant was allotted the site in respect whereof the

appellant has been litigating since the year 1967 and after the death of the father of the appellant, MCD accepted the license fee from the appellant and did not reject the application submitted by the appellant to be substituted as the allottee on the death of his father. MCD would do so on receipt of a written representation from the appellant with all supporting documents; the decision would be taken within six weeks of receipt of the representation from the appellant and the decision would be communicated to the appellant. If the MCD allots an alternative site on tehbazari to the appellant, on the appellant completing the requisite formalities and paying the necessary fee, possession thereof would be handed over to the appellant within three weeks of all formalities being completed. Needless to state, if the MCD rejects the representation of the appellant, he shall be entitled to take resort to such action as is permissible under law.

30. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

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