

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

% *Judgment Reserved on: November 23, 2009*
Judgment Delivered on: December 09, 2009

+ **L.P.A. No.82/2003**

JAIPUR GOLDEN CHARITABLE CLINICAL Appellant
Through: Mr.D.R.Thadani, Advocate.

Versus

DDA & ORS. Respondents
Through: Mr.M.K.Singh, 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. Through the present appeal, the appellant Jaipur Golden Charitable Clinical Laboratory Trust, seeks to challenge the judgment and order dated 19.12.2002 delivered by a Learned Single Judge of this court, dismissing W.P.(C) No.1570/1989. The said writ petition was directed against the demand dated 8/13 December, 1988 raised by the respondent DDA, requiring the appellant to deposit an additional sum of Rs.14,89,837.50 with DDA. The appellant also sought a refund in sum of Rs.74,115/-.

2. The factual backdrop for the claim in the writ petition, as per pleadings therein, was that the appellant applied to DDA for allotment of land at pre-determined rates for setting up a hundred bed hospital at Rohini. Vide letter of allotment dated 14.5.1985, DDA allotted a parcel of land ad-measuring 2.45 acres and indicated that 2.0825 acres was for purposes of constructing a building to be used as a hospital and the remaining 0.3675 acres was to be used for staff quarters. It was indicated that the premium charged for 2.0825 acres of land was @ Rs.10,000/- per acre and for the rest @ Rs.6,00,000/- per acre. Thus, total demand raised was in sum of Rs.2,41,325/- which was paid without demur by the appellant. Thereafter on 10.1.1986 DDA demanded further sum of Rs.74,115/- in respect of the allotment stating that premium was charged @ Rs.6,00,000/- per acre in respect of 0.3675 acres of land ignoring that the said rate was applicable only for the years 1.4.1983 to 31.3.1985, as notified by the Central Government and that effective for the period 1.4.1985 till 31.3.1987, on 3.12.1985 the Central Government had notified that the rate applicable for the period 1.4.1985 to 31.3.1987 would be Rs.8,00,000/- per acre. This money i.e. Rs.74,115/- was also paid by the appellant without demur. Since on actual measurement at site the land was found to be

in excess by 0.02 acres, additional premium in sum of Rs.1,908/- was paid by the appellant as demanded by DDA on 18.11.1985.

3. Before a perpetual lease deed could be executed in favour of the appellant, it made a request for further land to be allotted for purposes of a hospital building. On 11.11.1987 DDA allotted further 1.53 acres of land and intimated that the premium payable for the same was Rs.8,00,000/- per acre.

4. The appellant questioned the premium charged and while so doing questioned the premium charged even earlier on and paid without demur, stating that DDA could not charge any money in excess of Rs.10,000/- per acre. Notwithstanding the protest, on 11.1.1988, the appellant deposited the premium demanded @ Rs.8,00,000/- per acre for 1.53 acres of land. On 15.3.1988, DDA raised further demand for the 1.53 acres of land allotted informing that by mistake premium was demanded @ Rs.8,00,000/- per acre, whereas it ought to have been @ Rs.9,50,000/- per acre. Under protest, the appellant deposited further sum of Rs.2,29,500/-.

5. Possession of the additional land allotted i.e. 1.53 acres of land was thereafter handed over to the appellant.

6. On 28.12.1989 a perpetual lease deed was executed for the land additionally allotted plus the excess area, but not the additional land ad-measuring 1.53 acres.

7. On 4.10.1988 the Central Government notified the land rates with effect from 1.4.1987 to 31.3.1989, for the reason, on 3.12.1985 land rate notified was restricted for the period 1.4.1985 till 31.3.1987 and post 1.4.1987 no land rates were notified. As per the notification dated 4.10.1988, pertaining to North Delhi, rate notified was Rs.19,00,000/- per acre. Since the additional land ad-measuring 1.53 acres was allotted to the appellant on 11.11.1987, DDA demanded further premium calculating the same @ Rs.19,00,000/- per acre i.e. the rate notified by the Central Government vide its notification dated 4.10.1988 for the period 1.4.1987 till 31.3.1989. Thus, demand in sum of Rs.14,89,837.50 was raised with respect to the 1.53 acres of land.

8. At that stage the writ petition was filed praying as noted in para 1 above. In a nutshell, case of the appellant in the writ petition was that in respect of the allotment of 2.47 acres of land no premium in excess of Rs.10,000/- per acre could be charged for the reason the entire land was for a hospital. For the further 1.53 acres of land allotted to it on 11.11.1987, it was urged that even this land was for purposes

of a hospital and thus the premium could not exceed Rs.10,000/- per acre. Alternatively, in respect of 1.53 acres of land it was urged that the letter of offer dated 11.11.1987, charged premium @ Rs.8,00,000/- per acre which offer was accepted by the appellant and in turn DDA accepted premium @ Rs.8,00,000/- per acre and thus DDA was estopped from raising the demand firstly @ Rs.9,50,000/- per acre and thereafter @ Rs.19,00,000/- per acre.

9. Response of DDA was that when allotment of 2.45 acres of land was made on 14.5.1985, land rates notified by the Central Government required premium to be charged for such land on which the hospital building was constructed @ Rs.10,000/- per acre and for the land where staff quarters were to be constructed the premium to be charged was @ Rs.6,00,000/- per acre. Thus, DDA justified the initial demand with reference to the land rates notified by the Central Government when allotment of 2.45 acres of land was made. On this basis DDA justified charging additional premium when it was noted that 0.02 acres of land was in excess at the site on actual measurement. Pertaining to the allotment of 1.53 acres of land made on 11.11.1987, DDA pleaded that while charging premium @ Rs.8,00,000/- per acre it went unnoticed that the allotment was made on 11.11.1987 and that the land

rate notified by the Central Government in sum of Rs.8,00,000/- per acre was for the period 1.4.1985 till 31.3.1987 and that the Central Government was yet to take a decision on the premium to be charged post 1.4.1987. The demand in sum of Rs.9,50,000/- was explained as an erroneous demand. The demand @ Rs.19,00,000/- per acre was justified on the ground that the allotment being made on 11.11.1987, the rates notified by the Central Government on 4.10.1988 for the period 1.4.1987 till 31.3.1989 were to apply.

10. This then is the factual controversy between the parties.

11. From the impugned order it is apparent that the writ petitioner i.e. the appellant gave up the challenge pertaining to the premium to be charged as claimed by it pertaining to the first allotment. This is evident from the fact that the impugned order has not dealt with the said issue. The impugned decision shows that the battle was fought on the premium chargeable for the allotment of 1.53 acres of land on 11.11.1987.

12. The appellant pleaded estoppel. The appellant relied upon two decisions. The first being by a learned Single Judge of this Court and the second by a Division Bench of this

Court. The former is reported as AIR 1990 Delhi 75 Rose Educational Scientific & Cultural Society (Regd.) Vs. UOI and the later is reported as AIR 1991 Delhi 96 DDA Vs. Lala Amarnath Educational & Human Society & Anr.

13. It may noted that the decision reported as Rose Educational Society disposed of a large number of writ petitions and the decision of the Division Bench pertained to a challenge to the decision of the learned Single Judge.

14. In a nutshell, the learned Single Judge and the Division Bench concurrently held that the letters of allotment issued to the writ petitioners clearly indicated that the land was being allotted at 'no profit no loss' basis and that the letters of allotment contained no condition empowering DDA to revise the land rate. The premium demanded was paid and possession of the land was handed over by DDA. In some cases DDA even executed the perpetual lease deed. Thus, the contract stood concluded. Thereafter, neither party could unilaterally revise the price. With reference to the stand of DDA that the perpetual leased deed empowered it to enhance the price, it was held that the relevant clause empowered DDA to charge additional premium only in respect of compensation being enhanced under the Land Acquisition Act 1894 to the persons whose lands were acquired and that the same could

not be read as entitling DDA to enhance the premium de-hors the payment of compensation to the original land owners.

15. It may be noted at the outset that the Division Bench has noted a very important fact of the allotment and the premium charged being with the knowledge and consent of the Central Government when initial allotment was made. The same is evident from para 13 of the decision of the Division Bench wherein it is noted as under:-

“13. The DDA is the instrumentality of the State. Neither DDA nor the Central Government disowns the letter of allotment. It was no-where the case of DDA that the allotment letter was issued without the authority of the Central Government. It appears to us from the counter affidavit filed by the Central Government that the allotment letters were issued with the consent and knowledge of the Central Government and to which the Central will remain bound.”

16. It may be noted that neither before the learned Single Judge nor before the Division Bench the issue whether there can be an estoppel against a statute was raised. Further, as noted above, there was evidence in said writ petitions that the premium charged by DDA was with the consent and knowledge of the Central Government and that the Central Government never objected to the same.

17. In the instant case there is no pleading, much less any evidence, that when DDA issued the allotment letter dated 11.11.1987, it did so with the consent or the knowledge of the Central Government. Thus, the rate intimated to the appellant was neither with the consent nor to the knowledge of the Central Government.

18. Vide impugned decision dated 19.12.2002 the learned Single Judge has dismissed the writ petition holding that DDA was bound to charge land rates notified by the Central Government and that a learned Single Judge of this Court, in the decision reported as AIR 1997 Delhi 50 Dr.V.N.Gupta Charitable Trust & Anr. Vs. DDA & Ors. had upheld the levy of land rate as per the notification dated 4.10.1988 issued by the Central Government.

19. In appeal the issues raised by learned counsel for the appellant were restricted to the premium charged for the 1.53 acres of land. It was urged that having made the allotment @ Rs.8,00,000/- per acre which was accepted by the appellant and money was accordingly deposited with DDA, the contract stood concluded and there being no power vested in DDA under the allotment letter dated 11.11.1987 to enhance the premium, none could be enhanced.

20. To decide the controversy between the parties a brief purview of the legislative provisions governing the powers of DDA need to be noted.

21. The Delhi Development Act 1957 was promulgated and an authority called the Delhi Development Authority (DDA) was constituted. The said authority was charged with the duty of planned development of Delhi. Vide Section 22 of the DDA Act 1957, by and under a notification, the Central Government was to place acquired lands, known as Nazul lands, under the control and supervision of DDA. Under Sub-Section 3 of Section 22 it is mandated that: *after 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.* In the year 1981 the DDA (Disposal of Developed Nazul Land) Rules 1981 were promulgated in exercise of power vested under Section 56 (j) read with Section 22 (3) of the Delhi Development Act 1957. Rule 5 and Rule 6 thereof stipulated that Delhi Development Authority shall allot Nazul lands at pre-determined rates notified by the Central Government from time to time. Rule 2 (L) of the Rules defines pre-determined rate as the rate notified by the Central Government.

22. A full Bench of this Court, in the decision reported as 1993 (26) DRJ 594 Ramanand Vs. UOI & Ors. held that the DDA (Disposal of Developed Nazul Land) Rules 1981 are the mandate of the Central Government to DDA under Section 22 (3) of the DDA Act 1957 and thus law requires DDA to charge such premium for Nazul lands allotted in terms of Rule 5 and Rule 6 of the Nazul Land Rules 1981, as is notified by the Central Government. It may be noted that persons entitled to land at pre-determined rates stipulated under Rule 5 and Rule 6 are different and that the full Bench was concerned with a category under Rule 6. But, the ratio of law would be applicable to allotments under Rule 5 as well.

23. From the facts noted hereinabove it is apparent that on 11.11.1987 when the 1.53 acre of land was allotted to the appellant no premium was fixed by the Central Government and that the premium @ Rs.8,00,000/- per acre which was notified on 3.12.1985 was applicable for the period 1.4.1985 till 31.3.1987. Thus, unless the plea of estoppel is held good in favour of the appellant, no case is made out to grant relief to the appellant for the reason DDA had to await and charge the premium which was to be notified by the Central Government post 1.4.1987. For the reason, the statute requires DDA to charge premium in respect of Nazul

lands disposed of under Rule 5 of the Nazul Land Rules 1981 at the rate notified by the Central Government.

24. It is settled law that there can be no estoppel against a statute. It has been so held in the decisions reported as AIR 1962 SC 745 Mathra Prashad & Sons Vs. State of Punjab & Ors., 2003 (12) SCC 91 Ganga Retreat and Towers Ltd. & Anr. Vs. State of Rajasthan & Ors., 2006 (2) SCC 545 State of Bihar & Ors. Vs. Project Uchcha Vidya Shikshak Sangh & Ors., 2007 (2) SCC 404 Hardev Singh Vs. Gurmail Singh (since deceased through LRs), 2009 (6) SCC 194 Sneh Gupta Vs. Devi Swaroop & Ors. and 2009 (11) SCALE 525 Vijay Narayan Thatte & Ors. Vs. State of Maharashtra & Ors.

25. Being subordinate legislation, is the status of Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1985 the same as that of a statute? In the decisions reported as 1961 Cri LJ 773 State of U.P. Vs. Babu Ram Upadhyaya, (1981) SCR 742 State of Tamil Nadu Vs. Hind Stones and (2007) 6 SCC 143 Promoters and Builders Association of Pune Vs. Pune Municipal Corporation & Ors., it was held that the Rules would have the force of a statute.

26. Thus, looked at from any angle, the plea of estoppel is not available to the appellant. Being a creature of a statute,

DDA is bound by the charter under which it is constituted and its powers are circumscribed by the statute. Any representation made by DDA beyond the statute can never give rise to a plea of estoppel for the reason there can be no estoppel against the statute.

27. The matter can be looked at from another angle. As held in the decision reported as AIR 2001 SC 1121 Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh & Ors. to bind the principal, the agent has to be acting within the scope of the authority given to him. Though not strictly acting as the agent of the Central Government, loosely said, DDA can be called akin to an agent vis-à-vis the Nazul lands placed at its disposal. Thus, DDA cannot bind Central Government with respect to the Nazul Land Rules i.e. the rates notified.

28. We note that the notifications issued by the Central Government from time to time fixing the pre-determined rates has not been questioned. No challenge has been raised qua said notification.

29. There is no merit in the appeal which is dismissed.

30. Vide interim orders passed in the appeal the amount due and payable by the appellant to DDA has been

deposited in this Court. The same has been invested in a fixed deposit.

31. We direct the Registry to endorse the Fixed Deposit Receipt in favour of DDA and hand over the same under proper receipt to counsel for the DDA who has filed a vakalatnama on behalf of DDA in the instant appeal.

32. Since the appellant claims to be a charitable body we refrain from imposing any cost.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 09, 2009
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