

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7141/2010 & CM 14191/2010

NARENDER KUMAR AND ORS Petitioners

Through: Mr. T.A. Francis and
Mr. Mahesh Katayayen, Advocates

versus

DELHI STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.AND ANR

..... Respondents

Through: Ms. Anusuya Salwan with
Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-1/DSI IDC.
Ms. Megha Bharara for Ms. Ruchi
Sindhwani, Advocate for R-2/GNCTD.

W.P.(C) 7632/2010 & CM 19839/2010

VINOD KUMAR Petitioner

Through: Mr. Girish Aggarwal with
Ms. Mugdha Pandey, Advocate.

versus

THE COMMISSIONER OF INDUSTRIES & ORS..... Respondents

Through: Ms. Anusuya Salwan with
Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-2 & 3/DSI IDC.
None for R-1/.

W.P.(C) 7768/2010 & CM 20139/2010

BAWANA II, BHORGARH INDUSTRIAL RELOCATION
PLOT OWNER'S ASSOCIATION

THR ITS PRESIDENT KAPIL KUMAR Petitioner

Through: Mr. Prasoon Kumar with
Mr. Ravi Choudhary, Ms. Kanchan Bala and
Mr. Deepak Chander Pal, Advocates.

versus

GOVT OF NCT & ORS Respondents

Through: Mr. Nawal Kishore Jha, Advocate
for R-1/GNCTD.
Ms. Anusuya Salwan with

Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-2/DSI IDC.

W.P.(C) 8086/2010 & CM 20848/2010

PVC COMPOUND & FOOTWEAR MANUFACTURERS
ASSOCIATION (REGD) Petitioner
Through: Mr. Susheel Bhartiya and Mr. Pranav,
Advocates for Mr. Sunil Goel, Advocate

versus

DSI IDC LTD & ORS Respondents
Through: Ms. Anusuya Salwan with
Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-1/DSI IDC.
Mr. L.K. Garg, Advocate for R-2 & 3/GNCTD.

W.P.(C) 8097/2010 & CM 20864/2010

BHARDWAJ PACKAGING INDUSTRIES & ORS Petitioners
Through: Mr. Anupam Srivastava with
Mr. Ritesh Thusu, Advocate

versus

DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED & ANR
..... Respondents
Through: Ms. Anusuya Salwan with
Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-1/DSI IDC.
Mr. Amitabh Marwah, Advocate
for R-2/GNCTD.

W.P.(C) 8193/2010 & CM 21114/2010

BAWANA FACTORIES WELFARE ASSOCIATION
REGD & ANR Petitioners
Through: Mr. Rajan K. Chourasia with
Mr. Rakesh Kumar, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondent
Through: Mr. L.K. Garg, Advocate
for R-1 & 2/GNCTD.
Ms. Anusuya Salwan with

Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-3/DSI IDC.

and

W.P.(C) 8230/2010 & CM 21184/2010

RAJNI & ORS

..... Petitioners

Through: Mr. Varun Mehlawat, Advocate.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Megha Bharara for Ms. Ruchi
Sindhvani, Advocate for R-1/GNCTD.

Ms. Anusuya Salwan with
Ms. Renuka Arora and Ms. Neha
Mittal, Advocates for R-2/DSI IDC.

CORAM: JUSTICE S. MURALIDHAR

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

ORDER
14.12.2010

1. This is the second batch of writ petitions challenging the demand raised by the Delhi State Industrial & Infrastructure Development Corporation Ltd. ('DSI IDC') requiring the Petitioners to deposit the cost of the plots allotted to them ad-measuring 100 sq. m. in Sector K, Bawana-II at Bhorgarh @ Rs. 15,566/- per sq. m.

2. The earlier writ petitions were dismissed by this Court on 26th October 2010 [*W.P.(C) 7143 of 2010 – Mohd Jaan v. DSI IDC*]. However, counsel for the Petitioners in this batch have stated that some of the grounds that they wish to urge were not considered by this Court on the *W.P.(C) Nos. 7141 of 2010 batch*

earlier occasion.

3. It is first submitted that the cost of Rs. 15,566/- per sq. m. as indicated in the demand letter dated 17th September 2010 shows that a sum of Rs. 4,259.10 per sq. m. is on account of 50% of gross cost added as per the government policy for light industry, for cross-subsidy towards categories such as housing for economically weaker sections ('EWS'). It is submitted that the Petitioners are themselves displaced persons inasmuch as they were earlier running industrial units prior to 19th April 1996 in non-conforming areas and were being rehabilitated pursuant to a relocation scheme. They could not be expected to bear the cost of cross-subsidy towards categories such as the EWS.

4. Secondly, it is submitted that this element of the cost was never communicated to the Petitioners either when the applications were invited in 1996 or even when the allotments were made in 2006. The omnibus clause in the allotment letter stating that the cost was 'tentative' could not be open-ended. According to the Petitioners, this did not permit the DSIIDC to add an element of cost which was not originally envisaged while indicating the tentative cost to each of them. Reliance is placed on the decision of a Full Bench of this Court in *P.N. Verma v. Union of India AIR 1985 Delhi 417*, which was upheld by the Supreme Court, and the decision of the Supreme Court in *Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats AIR 2008 SC 1343*. It is

further submitted that the stand of the Respondent DSIIDC that they were merely abiding by the policy of the Government of National Capital Territory of Delhi ('GNCTD') and had no choice in the matter, was not a satisfactory explanation. It is pointed out that neither in the Bawana-I Scheme, nor in the Narela Scheme, was any element of cross-subsidy towards EWS housing sought to be added to the cost of the industrial plots. Referring to certain observations of a Division Bench of this Court in *DSIIDC v. Yashpal Madan 148 (2008) DLT 642 (DB)*, it is pointed out that even where the cost of the plots in Narela was determined at Rs. 24,000/- per sq. m., the EWS cross-subsidy was not sought to be recovered from those plot-holders.

5. Thirdly, it is submitted that there were around 23,000 persons who faced displacement on account of their running units in non-conforming areas prior to 19th April 1996. Nearly 19,000 were allotted alternative plots in different areas including Bawana-I and Narela. They were not charged any component of cross-subsidy towards EWS housing. It is, therefore, submitted that the Petitioners, belonging to the same class, cannot be discriminated against and be made to pay towards cross-subsidy for the EWS housing. It is submitted that while the Petitioners are prepared to pay the cost as indicated in the first demand raised in 2006, the present cost of Rs. 15,566/- per sq. m. was double the said cost and was clearly arbitrary and exorbitant. Even if they were extended assistance with loans from the Delhi Financial Corporation ('DFC') and

other financial institutions, the financial burden would be too heavy on them.

6. In another set of petitions, it was submitted that charging Rs. 1000/- per sq. m. towards O & M cost (Corpus Fund) was also arbitrary and unreasonable. In an earlier communication in response to an application filed under the Right to Information Act, 2005 ('RTI Act') the Respondent DSIIDC maintained that they were charging 2.5% of the land value towards annual maintenance apart from charging 2.5% towards the annual ground rent. This would amount to charging twice for maintenance. The Petitioners have also questioned the charging by the DSIIDC of interest from them at 18% per annum for the delayed payment while paying to them interest only at 10% per annum for the amounts already deposited by them with the DSIIDC. It is further pointed out that the interest was being paid only for the period 1st April 2009 to 31st March 2011 whereas the amounts were deposited from 1996 onwards. In this connection, reliance has been placed on the judgment of the Supreme Court in ***Videocon Properties Ltd. v. Dr. Bhalchandra Laboratories AIR 2004 SC 1787.***

7. In the reply filed by the DSIIDC in W.P.(C) 7768 of 2010 (which reply is common to all the writ petitions) the basis for charging the component for cross-subsidy towards category such as EWS has been explained in para 11 as under:

“That during the last 3-4 years, the answering respondent has

completed the development in Bhorgarh industrial area and after taking into account the enhanced land compensations and enhanced project costs, the costs per sq.mt of saleable area has been calculated as Rs.8158/- per sq.mt in Financial Year 2008-09. The matter was placed before the Government, and the government, after taking into consideration the cost determination method adopted by DDA and the future maintenance needs of the industrial area, approved the following cost:

a) Gross cost per sq.mt. in 2008-09	Rs. 8518.10
b) Cost of capital @ 10% p.a. for 2009-11	Rs. 1788.80
c) 50% of gross cost added as per Govt. Policy for Light industry (for cross subsidies towards categories such as EWS)	Rs. 4259.10
d) Future O & M cost (Corpus Fund)	Rs. 1000.00
e) Cost per sq. mt. (a+b+c+d)	Rs.15566.00”

8. A copy of the government Circular dated 17th August 2010 notifying the rate for the Industrial Estate – Bhorgarh at Bawana-II has been enclosed. It is pointed out that a Committee was constituted comprising the Additional Commissioner of Industries (GNCTD) as Chairman, the Deputy Commissioner of Industries (GNCTD), Chief Manager (Relocation), DSIIDC, Deputy Financial Advisor (Works), DSIIDC and Executive Engineer (Bhorgarh), DSIIDC. The Committee determined the cost based on the expenditure incurred and projected by the DSIIDC. The Committee noted that the cost of the plots had increased from the initial estimate of Rs. 5,150/- per sq. m. to about Rs. 8,520/- per sq. m. due to various factors such as improvement of street lighting, inclusion of 60 m. wide MP Road for better connectivity, construction of an underground

reservoir and effluents pumping station, increase in the cost index, increase in the Delhi Jal Board charges and in increase in electrification costs etc. This Committee also took note of the problems of maintenance faced by industrial estates set up earlier and suggested the setting up of a corpus for a long-term maintenance fund. Accordingly, it was suggested that Rs. 1,000/- per sq. m. should be charged from each allottee for creation of the fund so that it may generate a corpus of Rs. 75 crores. A copy of the minutes of the Committee has been enclosed with the affidavit.

9. It appears that the rationale for including a component towards cross-subsidy for EWS housing was based on the prevalent practice of the DDA. In paras 15 and 16 of the affidavit, it has been explained as under:

“15. That the multiplier of 1.5 applied for Bhorgarh is the same as that applied by the DDA for plots under ‘Light Industry’ category in the size range of 50 sq. meter to 400 sq. meter. The multiplier of 1.5 has been applied as per the directions and approval of the Government. The amount so generated is to be used towards non-targeted cross subsidy for development of Economically Weaker Sections (EWS) housing, JJ & squatters, settlement, etc.

16. That the DDA has been applying the multiplier at least from 1992 onward. In this regard, the documents obtained from DDA toward costing of Dwarka Project in 1992 and Tikri Kalan Plastic Bazaar in 1999; and some notifications of Predetermined Land Rates issued by the Ministry of Urban Development and Poverty Alleviation, Government of India in 2009 and 2010 are enclosed as Annexures-C (Colly) respectively.

The perusal of DDA land costing methodology (Annexure C1) would clearly reveal that in Dwarka Project in 1992, against the break-even rate of Rs. 1100.46 per sq.mt., a higher rate of Rs. 1375.54 has been charged for industrial land, whereas lower rate of Rs.550.22 per sq.mt. has been charged for EWS and JJ & Squatters settlement. Lower rates have also been charged from some other categories like LIG, charitable institutions, and utilities.

Similarly, DDA Resolution of 1999 (Annexure C2) notifies the rate of industrial plots of 300 sq. meters and 495 sq. meters as Rs. 2305 per sq. meter and Rs. 2689 per sq. meter against the Break Even Rate of Rs. 1536 per sq. meter; whereas much lower/nominal costs have been fixed for lands for police station, fire station, health services, utilities, etc.

The Government of India, Ministry of Urban Development notifications {Annexures C3 (Colly)} of pre-determined rates for Plastic Bazaar, Tikri Kalan for year 2008-09 and 2009-10 also apply multiplier of 1.5 for 'Light Industry' plots of 300 sq. meters in size.

From the above it would be kindly seen that the policy of applying multiplier is reasonable and is in use for a long time.”

10. It is explained that the DSIIDC did not apply the above multiplier of 1.5 for Bawana-I plots since it had a low market price in the initial years of development. A number of eligible applicants had opted out of those allotments and sought refund of the earnest money deposited. However, the experience as regards the Bhorgarh plots has been different. It is pointed out that the market rate for the sale disposal of the land and for charging unearned increase at Bawana (Bhorgarh) has continuously

increased as under:

“Year	Rate of Industrial land at Bawana (Rupees per square meter)
2004-05	6,720
2005-06	8,400
2006-07	10,080
2007-08	27,400
2008-09	30,140
2009-10	33,154
2010-11	36,469”

11. It is further stated as under:

“It is pertinent to mention that the market rate for industrial land notified by the government for 2010-11 for Bawana Industrial Area is Rs. 36,469/- per square meter. Therefore the market rate for Bhorgarh may be taken as Rs. 36,469/- per sq. meter at par with the rate of nearby estates. Compared to the market rates, the allotment made by the respondent @ Rs.15,566/- per sq. meter is still much on the lower side and is reasonable. Even the circle rate determined by the Government of NCT of Delhi is approximately Rs.27,400/-.”

12. The Petitioners have, however, disputed the above figures. This Court has no means, in a petition under Article 226 of the Constitution, to determine the above disputed question of fact. There is no basis for the Court to doubt the correctness of the details set out by the DSIIDC in its affidavit as regards prevalent market rate and circle rates for plots in Bawana Industrial Area (Bhorgarh).

13. On a consideration of the submissions of the learned counsel for the parties, one of the first questions that this Court is called upon to consider is whether the recovery of 50% of the gross cost for light industries for cross-subsidy towards EWS housing, amounting to Rs. 4259.10 per sq. m., in terms of the policy of the GNCTD, is arbitrary or unreasonable in the context of Article 14 of the Constitution? This Court finds that the decision to charge Rs. 4259.10 as cross-subsidy towards categories such as EWS housing is based on a government policy. The allotment letters were issued to about 4615 units in Bhorgarh in 2005 and 2006. It was clearly indicated at that time that the cost per plot was Rs. 5,150/- per sq. m. but also that it was a tentative one. The precise clause in the allotment letter in this regard read as under:

“The tentative cost of the plot is Rs. 5150/- per square meter, which is subject to change depending upon the actual cost of development of the industrial plot and directions issued by the Government of Delhi in this regard.

.....

This is to inform you that the cost indicated above is tentative. The allottee will be liable to pay any increase in the cost of the plot due to any reason(s) whatsoever.”

14. There were two distinct caveats in the above clause. The first was that the cost was itself tentative. It depended on the actual cost of development of the industrial plot. The second was that it also depended on the directions issued by the GNCTD. The adding of 50% of the gross cost of cross-subsidy for EWS housing to the cost of the plots is relateable to the

directions issued by the GNCTD. In view of the above clause in the allotment letter, the Petitioners cannot claim to have been taken by surprise on account of the increase in the cost on the above score.

15. In this connection, this Court would like to observe that there is a clear distinction between the facts in the case of *P.N. Verma v. Union of India* and the present case. Para 4 of the judgment in *P.N. Verma* sets out the relevant clause in those cases as regards cost of the SFS flats. The said clause reads as under:-

“The estimated cost of flats on each floor would be announced whenever specified schemes have been prepared taking into consideration the location of each scheme, specifications and design of flats, cost of construction prevailing at the time of the execution of the scheme, fluctuations in other cost factors.”

16. It is plain that in the above clause in *P.N. Verma*, no caveat was entered that the cost would increase on account of the directions issued by government from time to time. Secondly, those were SFS flats and no parallel can be drawn with a scheme like the present one involving allotment of industrial plots. For the same reason, the judgment of the Supreme Court in *DDA v. Joint Action Committee* is also distinguishable.

17. The decision of the DSIIDC, not to recover from the allottees of plots at Bawana-I or Narela, any element of cross-subsidy towards EWS housing, is really a matter of policy. The DSIIDC would have had to

account for several factors including the way in which the market behaved on the earlier occasion. The view of the DSIIDC that, given the response of the allottees of plots in Bawana-I, it would not be advisable to increase further the cost of the plots by adding any element of EWS cross-subsidy, cannot be said to be unreasonable or arbitrary. The situation now is obviously different. The figures set out in the counter-affidavit of the DSIIDC show that there has been a marked increase in the market rates of plots in Bawana-II. The rate which was Rs. 10,080/- per sq. m. in 2006-07 increased to Rs. 27,400 per sq. m. in 2007-08. The submission that the Respondents by not adding an element of EWS cross-subsidy to the cost of the plots at Narela, where the market price was determined at Rs.24,000/- per sq. m., acted arbitrarily is again to no avail. It is really for the Respondents to decide whether or not they would charge the cross-subsidy element from different set of allottees at a given point in time. It is difficult to hold such decision to be either arbitrary or discriminatory in terms of Article 14. In matters of allotment of land at subsidised rates, the passage of time and the behaviour of the market are relevant factors which cannot be ignored by the Respondents.

18. It is urged that the Respondents should not be simply seen to be making profit and were expected to operate on a no-profit-no-loss basis. If one went by the figures given by the Respondents in their counter affidavit, then a plot of land for which the circle rate determined by the GNCTD is Rs. 27,400/- per sq. m., and for which the market rate is Rs.

36,460/- per sq. m., is being allotted at a rate of Rs. 15,566/- per sq. m. Surely, it cannot be said that the DSIIDC is profiteering from the sale of plots at Bawana-II (Bhorgarh). It can well be said that the Petitioners are getting the plots at subsidised rates.

19. It was not practical to expect the Respondents to offer the alternative plots to all the 23,000 plot-holders running industrial units in non-conforming area as on 19th April 1996 at one go. Alternative land had to be located and then developed to make it suitable for industrial purposes. The relocation had to obviously be done in phases and over a period of time. It is inevitable in the process that the allotment of plots had to be sequential. This would inevitably result in the later allotments being made at a cost higher than the earlier allotments. The market value of the land has gone up in the meanwhile and that too dramatically. The later allottees cannot be said to be prejudiced on this score. Moreover, admittedly the allottees have been extended the facility of availing of loans from financial institutions for the entire cost of the plot.

20. In its order dated 27th October 2010 in *Mohd. Jaan v. DSIIDC*, this Court had, while dismissing the writ petitions, observed as under:

“2. This Court finds that the scope of interference by this Court in exercise of its powers under Article 226 of the Constitution in matters involving fixation of price by the authorities for land is narrow. In *Kavita Ahuja v. Delhi State Industrial & Infrastructure Development Corporation Ltd.* (decision dated 16th February 2010 in Civil Appeal No. 2192/2010 etc.) the Supreme Court was considering

the challenge to the action of the DSIIDC in charging Rs. 4,200/- per sq. m. for plots in Bawana Industrial area, Rs. 5,400/- per sq. m. for plots in the Industrial estate at Narela, Jhilmil and Badli and Rs. 7,560/- per sq. m. for plots in Patparganj Industrial area. A Single Judge of this Court had set aside the demand for the increased cost on the ground that the DSIIDC failed to show that it had undertaken any development activity or incurred any expenditure loss for the plots. This was reversed by the Division Bench of this Court by a judgment dated 22nd February 2008. The Division Bench upheld the action of the DSIIDC of charging Rs. 7,776/- per sq. m. for the plots at Narela. This judgment was challenged in the Supreme Court and the order of the Division Bench of this Court was upheld. In para 13, it was observed by the Supreme Court as under:

“13. The price of Rs. 5400/- per sqm fixed in 2001 is not disputed by the allottees. Having regard to the interest on the investment by way of financing cost, overheads and other factors, if the policy of the NCT of Delhi is to increase the price every year by 20%, it cannot be stated that the said increase is unreasonable or arbitrary. Having regard to the fact that the lands are being continuously acquired and developed and allotted, it will be very difficult to calculate the actual costs at any giving point of time. So long as the Corporation has shown that it had adopted a reasonable method of fixation of allotment prices and has asserted that price fixation is on a ‘no profit no loss’ basis, the price is not open for dealt with the issue appropriately and has rightly upheld the price of Rs. 7776/- per sq.m.”

3. This Court finds that, in principle, the Supreme Court declined to interfere with the enhanced cost demanded by the DSIIDC in the Narela cases on account of several factors.”

21. Thereafter, in para 6 it was observed as under:

“6. There are no judicially manageable standards to enable this Court to determine whether the charging of Rs. 15,566/- per sq. m. for a plot at Bhorgah is arbitrary or unreasonable. Learned counsel

for the Respondents informs this Court that the cost revision was based on several factors and that the figure was arrived at after an elaborate exercise, records for which are available with the Respondents. Be that as it may, given the judgment of the Supreme Court in *Kavita Ahuja*, it is not possible for this Court to interfere in the matter of enhancement of the costs for the industrial plots at Bhorgah in Bawana Industrial Area.”

22. As regards the charging of interest by the DSIIDC from the allottees at 18% per annum on the delayed payments, while paying them interest at 10% per annum on the amounts deposited by them, this Court finds that this again is dictated by the way the money market behaves. It is not peculiar to the present cases. This appears to be the standard practice of financial institutions and banks.

23. As regards the creation of the corpus fund for maintenance, this Court finds the explanation offered in the counter-affidavit based on the recommendations of the Committee to be reasonable and plausible. It is not possible for this Court to sit in appeal over such determination and to hold it to be arbitrary or unreasonable. Nevertheless, it has been clarified by Ms. Salwan, the learned counsel appearing for DSIIDC that with the Petitioners being made to pay Rs. 1,000/- per sq. m. towards creation of the corpus fund for maintenance, the sum of 2.5% of land value towards annual maintenance would not be charged. It was further clarified that if, at a later point in time, the maintenance fund was found to be inadequate for the purpose, a further lump sum might be charged from each of the

allottees.

24. In the above circumstances, this Court is unable to be persuaded to hold that the charging of Rs. 15,566/- per sq. m. for the plots at Bawana-II (Bhorgarh) by the DSIIDC is arbitrary or unreasonable.

25. The writ petitions are dismissed but in the circumstances with no orders as to costs. Applications also stand dismissed.

S. MURALIDHAR, J.

DECEMBER 14, 2010

akg