

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

Date of decision: 12th July, 2011.

+ **W.P.(C) No.4884/2010 & CM No.9655/2010 (for stay)**

% KAPTAN SINGH Petitioner

Through: Ms. Suman Choudhary with Mr. S.K. Sharma, Advocates.

Versus

DDA & ANR. Respondents

Through: Mr. Pawan Mathur, Adv. for R-1
DDA.
Mr. Sanjay Poddar, Adv. for R-2
GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The challenge in this writ petition is to the demand by the respondent no.1 DDA of the premium for the alternative plot of land in lieu of acquired land offered to the petitioner on 23rd June, 2010, at the rates of the year

2010-2011. The contention of the petitioner is that the petitioner is liable to pay at the rates as prevalent in the year 1993.

2. Notice of the writ petition was issued and vide order dated 23rd July, 2010 which continues to be in force, the respondent no.1 DDA directed to maintain *status quo* in respect of the plot of land offered to the petitioner vide letter dated 23rd June, 2010.

3. Sh. Sultan Singh and Sh. Bhim Singh, both sons of Sh. Roshan Lal had vide separate applications dated 27th October, 1987 applied for allotment of alternative plots in lieu of their land acquired vide Notification dated 27th January, 1984 under Section 4 of the Land Acquisition Act and with respect to which land separate awards, both dated 19th September, 1986 had been made.

4. The respondent no.2 i.e. Land & Building Department of the Govt. of NCT of Delhi (GNCTD) vide its letter dated 31st December, 1990 made a recommendation for allotment of a single plot measuring 250 sq. yds. in the names of Sh. Sultan Singh and Sh. Bhim Singh.

5. In pursuance to the aforesaid recommendation, the respondent no.1 DDA vide letter dated 22nd June, 1993 addressed to both Sh. Sultan Singh and Sh. Bhim Singh allotted plot measuring 209 sq. yds. bearing no.47, Sector-11, Dwarka, Delhi in the joint names of Sh. Sultan Singh and Sh. Bhim Singh and on the terms and conditions contained therein.

6. The aforesaid plot was however not accepted by Sh. Sultan Singh and Sh. Bhim Singh contending that they were entitled to separate plots and not a joint plot. A civil suit for mandatory injunction is also stated to have been filed by Sh. Sultan Singh and Sh. Bhim Singh seeking allotment of two separate plots. Though neither party has filed any documents regarding the said suit but it is the admitted position that the respondent no.2 GNCTD vide letter dated 13th May, 1997 withdrew the recommendation dated 31st December, 1990 and consequently the respondent no.1 DDA also on 5th November, 1998 cancelled the allotment aforesaid in the joint names of Sh. Sultan Singh and Sh. Bhim Singh.

7. The case was thereafter considered afresh by the respondent no.2 GNCTD and separate letters both dated 31st December, 2003 recommending allotment of separate plots in lieu of acquired land of Sh. Sultan Singh and Sh. Bhim Singh were issued. Since Sh. Bhim Singh had died in the interregnum, the recommendation for allotment of his entitlement was in the name of his son i.e. the petitioner herein.

8. It is in pursuance to the said fresh recommendation dated 31st December, 2003 that the allotment letter dated 23rd June, 2010 (supra) has been issued by the respondent No.1 DDA in favour of the petitioner.

9. The contention of the petitioner is that since the allotment earlier in 1993 in the joint names of Sh. Sultan Singh and Sh. Bhim Singh was wrong and has been admitted to be wrong by issuance of separate letters for

allotment, he is liable to pay the premium at the rates prevalent in 1993 and not the price as prevalent now. Another reason given is that his father Sh. Bhim Singh had pursuant to the allotment in 1993, deposited certain monies with the respondent no.1 DDA and which remain with the respondent no.1 DDA. It is contended that the respondent No.1 DDA having collected and retained the price in the year 1993, cannot charge the enhanced rates as prevalent now.

10. Though detailed counter affidavits and rejoinders have been filed but the controversy is in the narrow compass aforesaid.

11. At this stage, it may be noticed that simultaneously with the allotment to the petitioner, allotment was also made to Sh. Sultan Singh. Sh. Sultan Singh also filed a similar writ petition as the present writ petition which was registered as W.P.(C) No.5217/2010. It was the plea of Sh. Sultan Singh also that he could not be charged at the rate of the year 2010 but was liable at rates of the year 1993. The said writ petition came up for admission on 4th August, 2010 when the same counsel who has preferred this writ petition, after some arguments withdrew the petition and the same was dismissed as withdrawn. Perhaps that writ petition was withdrawn to save at least the present writ petition, notice whereof had been issued on 23rd July, 2010.

12. As far as the plea of the petitioner of deposit of monies by Sh. Bhim Singh with respondent no.1 DDA is concerned, respondent no.1 DDA in its counter affidavit has stated that the file of earlier allotment is not traceable.

It is however stated that Sh. Sultan Singh in his petition being W.P.(C) No.5217/2010 had also pleaded and sought to take benefit of the same monies. It was also pleaded that the petitioner along with petition has not filed any documents of the deposits claimed. The petitioner has along with its rejoinder as well as under an additional affidavit filed under instructions of this Court given further particulars/documents of the deposit claimed. However the respondent no.1 DDA has not had the benefit of responding thereto. I have however considered the claim of the petitioner believing that separate deposits had been made by Sh. Sultan Singh and Sh. Bhim Singh after the earlier allotment in 1993.

13. The Full Bench of this Court in ***Ramanand Vs. Union of India*** AIR 1994 Delhi 29 after exhaustively examining the scheme of allotment of alternative land in lieu of acquired land held that an individual whose land has been acquired has no absolute right of allotment but he is eligible to be considered for allotment of an alternative plot for residential purpose and that DDA may allot Nazul land to such an individual, in conformity with the plans and subject to other provisions of the Nazul Rules. It was further held that the rates of premium chargeable from an individual whose land has been acquired shall be predetermined rates in force at the time when the offer is made to the concerned person for allotment of a specific plot of land in a particular area or zone, under Rule 6 of the Nazul Rules.

14. The only question for consideration thus is whether owing to the respondents having earlier allotted single plot in the joint names of Sh. Sultan Singh and Sh. Bhim Singh when they were ultimately held to be entitled to separate plots, it can be said that the petitioner is not liable to pay the rates in terms of the judgment supra of the Full Bench.

15. The respondent no.2 GNCTD in its counter affidavit in para 4(ii) has stated that recommendation earlier for allotment in the joint names of Sh. Sultan Singh and Sh. Bhim Singh was made for the reason of their names existing in the same Ration Card. The petitioner in his rejoinder has not denied the said fact.

16. I am unable to find any merit in the claim of the petitioner for the following reasons:-

(A) Though Sh. Sultan Singh and Sh. Bhim Singh had made separate applications for alternative plot of land but respondent no.2 GNCTD nevertheless on 31st December, 1990 recommended allotment of a single plot in their joint names. Neither Sh. Sultan Singh nor Sh. Bhim Singh challenged the said recommendation. They waited till the allotment on 22nd June, 1993 in pursuance thereto. It is only then that they refused such allotment and claim to have filed a suit seeking separate allotment. Sh. Sultan Singh and Sh. Bhim Singh could not have in pursuance to the recommendation dated 31st December, 1990 for joint allotment, expected separate allotment in

their names. Respondent no.1 DDA in such matters merely acts on the recommendation of GNCTD. The grievance if any of Sh. Sultan Singh and Sh. Bhim Singh was against the recommendation dated 31st December, 1990 for joint allotment and which remained unchallenged. No fault can thus be found in the action of respondent no.1 DDA and the respondent no.1 DDA in 1993 could not be expected to in pursuance to the said recommendation make separate allotment. If respondent no.1 DDA is not to blame, it cannot be asked to, in the year 2010, charge rates of the year 1993.

(B) Sh. Sultan Singh and Sh. Bhim Singh admittedly filed a civil suit against respondent no.2 GNCTD seeking recommendation for separate allotment. The mistake if any of respondent no.2 GNCTD in making a wrong recommendation ought to have been agitated in that suit only and consequent relief claimed. Sh. Sultan Singh and Sh. Bhim Singh having not done so, the petitioner as successor of Sh. Bhim Singh is not found entitled to any relief in that regard against the respondent no.2 GNCTD also.

(C) The recommendation for separate allotment came to be made only on 31st December, 2003. The petitioner prior thereto cannot be said to be having any right whatsoever to the allotment of separate plot in his name and thus cannot claim that he should be charged the price of the year 1993. As aforesaid, the petitioner had no absolute

right of allotment of a separate plot in his name and the right of such allotment accrued only in pursuance to the recommendation of 31st December, 2003. The claim of being liable to pay rates of prior thereto is misconceived.

(D) The allotment of 23rd June, 2010 being in pursuance to the recommendation of 31st December, 2003, no error can be found with the demand of the respondent no.1 DDA at the rates prevalent at the time of allotment of a specific plot.

17. Thus the petition has to fail. As aforesaid, the petitioner has been enjoying interim order. As per the terms of the letter dated 23rd June, 2010, the petitioner was required to make the payment within the time prescribed therein. The petitioner has not made the said payment. He has thus forfeited the right to the alternative plot. However since this Court had granted interim order, it is deemed appropriate to grant another opportunity to pay the premium demanded from him on or before 27th August, 2011, together with interest at the rate of 12% per annum from the due date of payment and till the date of payment.

18. Coming back to the amount claimed to have been deposited by the petitioner with the respondent no.1 DDA, liberty is granted to the petitioner to, if able to satisfy respondent no.1 DDA of the said deposit, seek adjustment thereof from the amount now payable by the petitioner under this order. I have considered whether the petitioner is entitled to any interest on

such amount. I am of the opinion that if at all the petitioner had deposited the amount and has allowed the same to remain with the respondent no.1 DDA inspite of cancellation of the earlier joint allotment on 5th November, 1998 supra, the petitioner is himself to blame for the same. However to balance the equities, it is directed that the petitioner shall be entitled to interest only at the rate of 6% per annum on the said amount if any from the date of deposit and till the date of adjustment as aforesaid. I am unable to grant any higher rate of interest to the petitioner since the respondent no.1 DDA could not be expected to beneficially use the said monies which the petitioner could have withdrawn at any time and also taking into consideration the low prevailing rates of interest in the intervening period.

19. The petition is dismissed save for the aforesaid directions/clarifications. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 12, 2011

Bs (corrected and released on 28th July, 2011)