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

+ **W.P.(C) 6054/2013**

JAI KANWAR

..... Petitioner

Through: Mr. C. Mohan Rao, Adv. with
Mr. Lokesh Kumar Sharma, Adv. &
Mr. Trivendra Chauhan, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arun Birbal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

ORDER
24.09.2013

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1. By virtue of this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks allotment of 400 sq. yards of a residential plot in a developed sector of Rohini, Delhi on the cost equivalent to the cost of acquisition of the plot plus development charges. The case of the Petitioner is that the land measuring 44 Bighas and 19 Biswas forming part of Khasra No.21/2, 22/2, 1/2, 11, 20, 2, 9, 12, 16/1, 17/2, 18/2, 7, 5/1, 5/1/2, village Pooth Kalan was acquired vide Notification dated 11.12.1981. The Petitioner had one-third share in this land and he was paid a compensation of ₹2,96,696/- on 24.12.1985.
2. It is averred that at the time of acquisition of land, the persons whose land was acquired were assured that in lieu of the acquisition of the land, they would be entitled to allotment of a plot under the residential scheme

known as '*Allotment of Alternative Plot under the Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961*'. It is stated that in terms of this scheme, the Petitioner became entitled for allotment of a 400 sq. yards plot. A letter of recommendation dated 12.10.2012 was addressed by the Land & Building Department, Govt. of NCT of Delhi to the DDA.

3. The Petitioner's grievance is that the Respondent (DDA) is making allotment of alternative plots arbitrarily and for extraneous reasons without following the seniority. Further, the Petitioner relies on the judgment of the Hon'ble Supreme Court in *Hansraj H. Jain v. State of Maharashtra & Ors.*, (1993) 3 SCC 634 to contend that he should be allotted the land at the cost of acquisition plus the development charges. The prayers made by the Petitioner are extracted hereunder:-

“(a) issue a writ of mandamus or any other writ, order or direction, directing the respondent to allot a 400 sq. Yards residential plot in a developed sector of Rohini to the petitioner;

(b) issue a writ of mandamus or any other writ, order or direction, directing the respondent to charge for alternative plot as per the decision of the Hon'ble Supreme Court in Hansraj Case (supra) i.e. taking into consideration only the cost of acquisition plus development charges; and

(c) pass any other order or direction this Hon'ble Court deem fit and proper under the facts and circumstances of the case.”

4. It may be mentioned that the present Petition is completely bereft of any specific allegation that any person junior to the Petitioner was allotted a plot in terms of the scheme. The Petitioner has vaguely stated that he came to know that the Respondent is making allotment of the plots arbitrarily. Para 5 of the Petition is extracted hereunder:-

“5. The petitioner however came to know that the respondent is making allotment of alternative plots arbitrarily and for extraneous reasons without following the seniority. The respondent is allotting best plots selectively to certain recommendees and in respect of others is allotting plots in undeveloped sectors citing its own executive decisions. The petitioner also came to know that the respondent almost always never makes an allotment on its own unless compelled by the orders of this Hon’ble Court.”

5. It is evident that there is not even a whisper as to how the alternative plots are being allotted by the Respondent arbitrarily. Not even a single instance has been quoted by the Petitioner. Thus, the plea of arbitrariness or favouritism on the basis of the averments made in the Petition cannot be accepted.
6. The other plea raised by the Petitioner is that by a letter dated 12.10.2012, he has been informed that his request for allotment of a plot measuring 400 sq. yards has been acceded to by the Govt. of NCT of Delhi and conveyed to the Commissioner, Land, DDA as well as to him. The price which the respondent is charging is ₹11,600/- per sq. meter, that is, ₹9699/- per sq. yards, though he was offered a total compensation of only ₹2,96,696/- for acquisition of 15 Bighas of land which valued more than ₹ 15,000/- per sq. yards. Relying on *Hansraj H. Jain*, the learned counsel for the Petitioner submits that the Petitioner ought to have been allotted the alternative plot on the basis of cost of the land plus development charges. Learned counsel for the Petitioner particularly refers to Paras 35 and 36 of the report in *Hansraj H. Jain* where it was held as under:-

“35. It is not difficult to imagine in the facts and circumstances of the case that many of the persons from whom lands have been acquired are persons without houses and if they are thrown out of their lands, they would be exposed to serious prejudice. This Court

has considered such problem in the case of Pista Devi (Smt) [(1986) 4 SCC 251] and it was indicated in the said decision that although Section 21(2) of the Delhi Development Act was not applicable to the acquisition proceedings involved in that case, the provision having contained a wholesome principle, should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas.

36. We, therefore, direct the concerned authorities to offer the alternative site as per the scheme framed in 1976 referred to hereinbefore to the affected land owners on the basis of the actual cost of development by charging the cost of the acquisition and the development charges and no more. Such direction, we feel, is required to be made particularly in view of the fact that acquisition proceedings had been pending for a number of years, as a result of which the amount of compensation for the acquisition being referable to the period when notices under Section 4 of the Land Acquisition Act were issued, became insignificant and it is reasonably apprehended that unless the land by way of alternative site as per the scheme is offered to the affected land owners at a subsidised rate as indicated hereinbefore, it will not be possible for the land owners to take such allotment by paying usual prices intended to be charged from them and the offer of alternative site will for all practical purposes be illusory.”

7. *Hansraj H. Jain* was considered by the Hon'ble Supreme Court in its latest judgment of *Brij Mohan & Ors. v. HUDA & Anr. (2011) 2 SCC 29* where the Hon'ble Supreme Court observed that ideally there should be a scheme to create better settlement and rehabilitation policy with regard to the land acquisition. The Supreme Court observed that the Land Acquisition Act, 1894 contemplates benefits like solatium, additional amount and higher rate of interest to landlosers and not allotment of plots at cost price. Referring to the facts of that case, the Supreme Court further observed that the State Government or HUDA does not have any

scheme providing for allotment of a plot at actual cost to landlosers. The Supreme Court, therefore, held that in the absence thereof, the scheme under which the allotment of plots is made to the landlosers has to be in accordance with the scheme under which the allotment is made. Paras 16 and 17 of the report in *Brij Mohan* are extracted hereunder:-

“16. No doubt, the contention that allotment of plots to landlosers should be at actual cost (acquisition cost of land plus development cost), appears to be reasonable and attractive. That should be the ultimate goal in a changing scenario favouring acquisitions which are landloser-friendly. The arguments of the appellants do certainly make out a case for such a scheme to create a better settlement and rehabilitation policy in regard to land acquisitions. If there was any statutory provision in the Land Acquisition Act, 1894 (“the Act”, for short) or other scheme, providing for allotment at cost price, a landloser could certainly claim allotment in terms of the scheme. But the statute contemplates only benefits like solatium, additional amount and higher rate of interest to the landlosers and not allotment of plots at cost price. Nor does the State Government or HUDA have any scheme providing for allotment of plots at actual cost to landlosers. We are informed that the State of Haryana is now proposing to introduce a more attractive and landloser-friendly rehabilitation and resettlement policy, which contemplates allotment of bigger residential/commercial/industrial plots to landlosers and oustees. But that is for the future.

17. Where there is a scheme but it does not regulate the allotment price, it may be possible for the court to direct the State Government/Development Authority to allot plots to landlosers at a reasonable cost, and in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment, its terms cannot be ignored. If any landloser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot ask the court to ignore the terms of an existing or prevailing scheme and demand allotment at cost price.”

8. In view of this, neither of the prayers made by the Petitioner is tenable.
The Writ Petition is accordingly dismissed.

(G.P. MITTAL)
JUDGE

SEPTEMBER 24, 2013
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