

+ **W.P.(C) 5885/2012 and CM No.12120/2012**

versus

% Date of Decision : March 07, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. The prayer in the present writ petition is for issuance of a writ of certiorari or any other appropriate writ to the Respondents to quash the impugned letter dated 06.08.2012 whereby the decision to withdraw plot No.R-536, Rajendra Nagar was communicated to the Petitioners and the issuance of a writ in the nature of mandamus to the Respondents directing the Respondents to allot the said plot, i.e., plot

No. R-536, Rajendra Nagar to the Petitioners in lieu of T-514, Upper Ridge Road, Jhandewalan, Karol Bagh, New Delhi.

2. The facts leading to the filing of the present writ petition may be delineated as follows. The father of the Petitioner No.1, namely, Shri Harbans Singh was a refugee, who after the partition of India in 1947, migrated from Pakistan and squatted upon property bearing No. T-514, measuring 239 sq. yards in Jhandewalan, Karol Bagh sometime in 1948. The Government of India formulated a policy for the rehabilitation of the refugees from Pakistan popularly known as the Gadgil Assurance Scheme. In pursuance of the said Scheme, the Respondent No.1, Delhi Development Authority, vide its resolution No.266 dated 16.10.1970 formed a Committee to scrutinize the claims of refugees/squatters, like the Petitioner No.1's father, covered under the Gadgil Assurance Scheme. In March, 1981, Shri Harbans Singh appeared before the Committee and submitted all requisite documents to establish his claim. After scrutiny of the claim of Shri Harbans Singh, the Committee of the Respondent/DDA was pleased to recommend the case of Shri Harbans Singh and he was declared eligible to allotment under category 'A' upto the extent of 200 sq. yards to be regularized in his favour subject to payment of damages with effect from 01.05.1952. The said recommendation was approved by the Vice-Chairman of the Respondent No.1/DDA. Shri Harbans Singh paid the damages and submitted the clearance certificate as required under the Scheme and requested for execution of Lease Deed in his favour. The case was accordingly taken up and

referred to the Planning Department of the Respondent/DDA for their clearance.

3. In the meantime, Shri Harbans Singh expired on 27.09.1989. S/Shri Gurbax Singh, Surjeet Singh and Satpal Singh, being the real sons of the deceased allottee, represented for mutation of the allotment of plot No. T-514, Jhandewalan Road in their favour. The mutation was carried out in their names and communicated to them vide letter dated 30th September, 1993, stating that:

*“The eligibility for allotment/regularization of plot against T-514, Upper Ridge Road, Jhandewalan, New Delhi under category ‘A’ has been transferred in your names.
Allotment-cum-demand letter in your names will follow.”*

4. Subsequently, one of the co-allottees, Shri Gurbax Singh also expired on 03.12.1993 and in his place mutation of his 1/3rd share was done in the name of his legal representatives. Shri Satpal Singh also passed away on 06.11.2010 and now the Petitioners are entitled to allotment in category ‘A’ in respect of plot No. T-514, Jhandewalan, Karol Bagh.

5. It is stated that since 1989, the Petitioners have been pursuing the case for alternative allotment with the Respondent Authority and have written numerous letters and made various representations in respect of the same. However, despite holding the father of Petitioner No.1 entitled to allotment of an alternative plot of 200 sq. yards in 1981 itself, no plot was allotted to the father of the Petitioner No.1 and thereafter to his legal representatives by the Respondent No.1.

6. After repeatedly visiting the offices of the Respondent No.1 for over two decades, the Petitioners in 1999 once again requested the Vice-Chairman of the Respondent No.1 for allotment of an alternative plot. It emerges from the record of the DDA that on 22nd March, 2001, after noting that the plot No. T-514, Jhandewalan Road could not be allotted to the Petitioners as the said plot falls in the road widening of Jhandewalan Road, the case of the Petitioners for allotment of an alternative plot measuring 200 sq. yards in the same zone at Shanker Road was put up for consideration. As it was found by the Planning Department of the Respondent Authority that the Petitioners could not be rehabilitated in the same area as the squatting site, the Vice-Chairman of the Respondent Authority approved the proposal for providing alternative allotment of 200 sq. yards to the Petitioners in the same vicinity or same zone on 25.05.2001. However, despite the aforesaid approval of the Vice-Chairman and several notings on the Respondent No.1's file regarding alternative allotment, the Respondent No.1 Authority failed/neglected to act upon its assurances. The Petitioners were constrained to move the Permanent Lok Adalat of the Respondent No.1, and on 04.11.2003, the Director (Lands), DDA made a statement before the Permanent Lok Adalat that if the Petitioners have knowledge of a vacant plot in the same area or zone, the same may be communicated to the DDA for consideration. The Petitioners accordingly intimated the DDA about the availability of plot bearing No. R-536, New Rajendra Nagar, New Delhi, but on one pretext or the other the Respondents did not allot the same. The Permanent Lok Adalat in its orders dated

08.11.2005, 05.12.2006 and 06.03.2007, *inter alia*, noted that the matter required the urgent attention of the Vice-Chairman of the Respondent No.1 and had been horribly delayed with the Respondent No.1 changing its stand every time.

7. It transpired that in the meanwhile a committee constituted by the Lieutenant Governor met on 16.01.2006 when it was decided to allot to the Petitioners an undeveloped plot measuring 128.80 sq. mtrs., by carving out the plot on the land available between plot No.T-2353 and T-2355. It is noteworthy that in the noting of the Deputy Director dated 16th February, 2006, the following pertinent facts have been recorded:-

“5. This case which is pending before the Lok Adalat came up for hearing on 14.2.05. The Hon’ble Lok Adalat has directed that as it is a long pending case where a decision is to be taken by DDA, the same may be finalized at the earliest. The complainant has also stated that if his case is not finalized at the earliest he would have no option but to approach the appropriate civil Court. The Learned P.O., Permanent Lok Adalat also preferred to call the Commr. (Plg.) on 14.2.06 to apprise the Lok Adalat about his proposed (sic. proposal) to allot 200 sq. yds. plot to Sh. Surjeet Singh but he could not be called being at Vikas Minar. The PO, Permanent Lok Adalat furious over the delay in this case directed that if the issue is not decided by DDA immediately he shall be constrained to refer the matter to the Hon’ble High Court.”

8. In a subsequent meeting held on 30.03.2006, it was proposed that half portion of a vacant plot adjoining plot No.T-2286 be given to the Petitioners by sub-dividing the said plot, which was measuring

330.60 sq. mtrs. This finds mention in the noting of the Deputy Director/OSB dated 04.04.2006 and a communication to this effect was sent to the Petitioners by the Respondent/DDA by letter dated 24.04.2006. This plot sought to be allotted was an undivided plot, with no sewerage and other civic amenities, carved out of half portion of plot No.T-2286, Ashok Nagar. Significantly, this fact is reflected in the DDA records and in particular in the noting dated 21.06.2006 (Page-95/N), wherein it is noted that *“the sewer line and the water line has been laid as per local enquiry but not functional.”* This despite the fact that the clear mandate of Resolution No.266 dated 16.10.1970 was that the displaced person will be allotted a plot **in a developed area.**

9. Both the aforesaid options were discussed at the meeting held on 16.01.2007. As regards the request for allotment of plot No. R-536, New Rajendra Nagar, it was observed *“that for the rehabilitation of the affected persons the prime concern should be to relocate in the nearby area. Also the request for allotment did not find favour due to the reason that the applicant would be put to undue hardship as the New Rajendra Nagar is relatively far from the area of stay i.e. Jhandewalan.”*

10. By a communication dated 09.04.2007, the Deputy Director (OSB) communicated to the Petitioners that it had been decided to give him an option to choose one of the aforesaid plots in lieu of plot No.T-514, Upper Ridge Road, Jhandewalan, New Delhi. The Petitioners were further informed that so far as their request for allotment of plot No.536, New Rajendra Nagar was concerned, the

same had not found favour due to the reason that *“that the applicant would be put to undue hardship as the New Rajindra Nagar is relatively far from the area of stay, i.e., Jhandewalan.”*

11. Thus, the attempt of the Respondent Authority to scuttle the legitimate claim of the Petitioners continued. The malafides of the DDA and its attempt to suggest absolutely uninhabitable plot in Ashok Nagar caused its own Vice-Chairman to note on 10.12.2011 as follows (page-145/N):-

*“Appropos my response at 138N. The file has come back to me with the same recommendation as at 138N. **I am sure that is no will to solve the issue both in Planning and Land Department.** I don’t know how the planner are recommending carving out a plot of 200 sq meters on a 10 ft road? What is the conscious decision to be taken by the VC, when no alternatives are suggested in the note. The allotment of 200 sq. meter plot on a 10 ft road is inappropriate from the Planning point of view. A plot of 200 mtrs in the same zone, as per eligibility of the applicant be considered out of the available plots.”*

12. After the aforesaid scathing remarks made on record by its own Vice-Chairman, on 25.01.2012 the Respondent No.2, in her capacity as Commissioner (LD) of Respondent No.1, submitted for approval of the Competent Authority allotment of plot No. R-536, Rajendra Nagar measuring 196.75 sq. yards, after noting that the said plot was vacant and had not been allotted to anybody. The Respondent No.2 at page 153/N of the records made the following apposite observations:-

“It was decided that a plot measuring 200 sq. yds. in the same zone as per eligibility of the applicant can be allotted. It is unfortunate that despite clear orders of the Competent Authority, the matter was again referred by the Branch to Planning Wing and they have suggested some other plot in Ashok Nagar and informed that the plot can be carved out after obtaining consent of the applicant and ratification of Screening Committee.

The present case is pending since last more than 10 years and shuttling between Planning and Land Disposal Wing. It has already been decided that the applicant may be allotted a plot out of available vacant plots. Thus, to resolve this long pending issue, it would be appropriate to allot a plot out of available plots instead of repeating the same exercise again for carving out another plot and obtaining consent for the same.

Details of available plots are at page 130/N. Only one plot measuring 196.75 sq. yds. is available. Other plots are either smaller or bigger in size and cannot be allotted as his eligibility is only for allotting a plot measuring 200 sq. yds. The applicant has already given his consent for allotment of this plot.

The file is submitted for approval of Competent Authority for allotment of plot No.R-536, Rajendra Nagar measuring 196.75 sq. yds. As per office report available at page 152/N, this plot is vacant and has not been allotted to anybody. D.L. will be send as per policy.

Submitted for orders.”

13. The aforesaid decision to allot the approved plot to the Petitioners was approved by the Vice-Chairman on 03.02.2012 and the same was communicated by the Respondent Authority to the Petitioners vide letter dated 09.02.2012, which reads as under:-

“It is to inform you that Competent Authority has approved the allotment of alternative plot bearing No.R-536, area measuring 196.75 sq. yds. situated at Rajendra Nagar, New Delhi in lieu of premises No.T-514, Upper Ridge Road, Jhandewallan, Karol Bagh, New Delhi-55. The demand letter will be issued shortly in due course as per Policy/Rules admissible.”

14. After the receipt of the aforesaid letter, when once again nothing was heard from the Respondent Authority, the Petitioners wrote letters dated 04.04.2012, 01.06.2012 and 16.06.2012 requesting the Respondent Authority to issue the demand letter *qua* the Rajendra Nagar plot and also got legal notice dated 07.06.2012 served upon the Respondent Authority. However, the Petitioners to their shock and dismay, on their visit to the Respondent No.1's office on 26.07.2012, were informed that the Respondent Authority had recalled its allotment of the Rajendra Nagar plot and was now seeking to carve out a completely undeveloped plot in Ashok Nagar, Faiz Road, behind Hyundai Showroom and allot the same to the Petitioners. On inspection of the DDA file on 25.01.2012, the Petitioners learnt that the Respondent No.2 had *malafide* noted as under on page-156/N:-

“May kindly see approval of VC at page 153/N for allotment of plot No. R-536, Rajindra Nagar, measuring 196.75 sq. yds. under the Gadgil Assurance Scheme.

Before sending the file to Finance Department for the purpose of costing, the undersigned went through the whole case again. It is submitted that as per Resolution No.266 dated 16.10.1970 of the Authority (99/Cor.), as far as possible steps to be taken to rehabilitate the persons in the same area where they were squatting. The undersigned inadvertently, may be

in rush to settle the long pending case, recommended for allotment of plot No.R-536 at Rajendra Nagar. Since the plot No.R-536 at Rajendra Nagar is a developed plot in residential scheme, having huge market value; it can be allotted only through auction/tender mode as per Nazul Rules. Further, its allotment under Gadgil Assurance Scheme may not be covered within the Resolution No.266 dated 16.10.1970 of the Authority especially when there is a possibility of carving out a plot in the nearby area of Ashok Nagar where other persons of Gadgil Assurance Scheme were squatting. In the past, such a developed plot in residential scheme have been never allotted under Gadgil Assurance Scheme and it may set a bad precedent.

In the present case, though there was a better option suggested by the Planning Department at page 149/N to carve out a plot in nearby area at Ashok Nagar in accordance with the report of AE (Survey) at page 137/N. It is pertinent to mention here that Ashok Nagar is the nearby area where the applicant is squatting. Also other persons covered under Gadgil Assurance Scheme were residing at Ashok Nagar as specifically mentioned in the Authority Resolution No.27/2001 dated 30.03.2001 (474/cor.).

In view of above, it is suggested that the decision to allot the Plot No.R-536 at Rajendra Nagar may kindly be reviewed and Planning Department may be asked to carve out the proposed plot at Ashok Nagar for this purpose.”

15. Interestingly, the Vice-Chairman of the Respondent No.1 Authority, despite the aforesaid endorsement, on review upheld the allotment of the Rajendra Nagar plot, stating that there was no occasion for the officials of the Respondents to carve out an undeveloped plot in Ashok Nagar and allot the same to the

Petitioners. The aforesaid note of the Vice-Chairman, being crucial for the decision of the case, is being reproduced in its entirety:-

“Perused the Resolution No.266 dated 16.10.1970 regarding rehabilitation of displaced persons under ‘Gadgil Assurance’ and the notes above. Guiding principles regarding allotment of alternate plots to evictees (who were displaced persons also) from public land for their rehabilitation have been laid down in this paper.

2. *Para-6 of the Agenda note detailing the extract from the 7th Report of Parliamentary Committee on Government Assurances relevant to the issue, needs to be looked at, which says:-*

“.....In this connection, the Committee should like to impress upon Government that they should keep the human element involved in uprooting from the existing sites all those displaced persons who had once been uprooted at the time of partition of the country and it is with this end in view, the Committee suggest that if with slight modification the displaced persons could be accommodated in their existing places without any plan, there should be no hesitation on the part of Government for making such modifications in the Master Plan. Only in very extreme and unavoidable situations, the question of shifting the displaced persons from their existing places should be thought of by Government.”

3. *Further in Para-9 Sub Clause (iv), the Parliamentary Committee on Government Assurances had recommended that “.....Subject to this provision, alternative accommodation is to be provided on developed land, and as far as practicable, near the place of the business or employment of the displaced person. Government will have to be requested to allow the Delhi Development Authority to sell Nazul Land at*

1952 rates rather than at market price as per Nazul Agreement.”

4. Based on the above principles, it was resolved by the Authority that “As far as possible steps be taken to rehabilitate the persons in the same area where they were squatting. The cost of land which would be charged from such squatters may be worked out by the Finance Member.”

5. On perusal of the above principles and the Resolution of the Authority, it can be concluded that the main intent of the entire exercise was to provide much needed relief to those displaced persons who had once been uprooted at the time of partition of the country and had faced further evictions from the public land they were squatting on. The Resolution was made way back in 1970 and this case has been lingering on for the one reason or the other without any alternative allotment even though the claimant was eligible. **Though efforts were made to allot plot nearer to his place of squatting but the same could not be finalized either due to the encroachment on the identified plot or the identified land being located on a narrow 10 feet wide road, not fit for planned habitation.**

On receiving a number of representations from the claimant, approval for allotment of a Plot No.R-536, Rajendra Nagar, New Delhi was given which was acceptable to the claimant, but the same is now being objected to on the ground that it is a developed plot in a residential scheme and not located in the area where the claimant was squatting. **But Clause (iv) of Para-9 of the Resolution does not restrict the allotment to the localities in which the displaced persons were squatting; it says that as far as possible steps be taken to allot land to rehabilitate persons in the same area; meaning thereby that in the event of special circumstances where the plot is not available in the same area, the claimant can be given residential plot of size of his entitlement in other areas also. Since,**

the claimant in this case is entitled to a residential plot of maximum 200 sqm and no such habitable plot could be located in the area of his squatting during the last several years, I see no reason in cancelling the allotment which has been made to him in another locality after much wrangling.”

16. Notwithstanding the repeated decisions of the Vice-Chairman to the contrary and the allotment of the plot bearing No.R-536, Rajendra Nagar by the Vice-Chairman, the Respondent/DDA by letter dated 6th August, 2012 informed the Petitioners that the competent authority had decided to withdraw the earlier allotments of plot bearing No.R-536 measuring 196.75 sq. yards situated at Rajindra Nagar, New Delhi as communicated vide letter dated 09.02.2012 and has approved the allotment of an alternative plot measuring 200 sq. yards behind Hyundai Showroom at D.B. Gupta Road, Ashok Nagar along Faiz Road. The justification for the aforesaid action of the DDA, which according to the Petitioners was tainted by malafides, was given as follows:-

“The above decision is taken in view of that the re-allotted plot is in the neighbourhood & the site where the applicant was squatting. Further other persons covered under Gadgil Assurance Scheme are also residing in the same area at Ashok Nagar.

Whereas the earlier Plot No. R-536, at Rajendra Nagar is a developed plot in Residential Scheme having huge market value. It can be allotted through auction/tender mode as per Rules. Further Plot No. R-536, Rajendra Nagar is far away from the area where the applicant was squatting and its allotment may set an unfair precedent under Gadgil Assurance Scheme.

The demand letter will be issued in due course as per policy and rules.

This issues with prior approval of Vice-Chairman, DDA.”

17. The Petitioners allege that the withdrawal of the earlier allotment of plot bearing No. R-536, Rajendra Nagar, New Delhi and subsequent allotment of the aforesaid plot is bad in law, illegal and arbitrary, malafide, unwarranted and wholly without jurisdiction and as such liable to be set aside.

18. In the Counter-Affidavit filed by it, the Respondent/DDA has not disputed the aforesaid facts but has sought to justify its aforesaid action by submitting that since plot No. R-536, at Rajendra Nagar is a developed plot in a residential scheme, having huge market value, it can be allotted only through auction/tender mode as per Delhi Development Authority (Disposal of Developed Nazul Land), Rules 1981. It is further submitted that its allotment under Gadgil Assurance Scheme “*may not*” be covered within Resolution No.266 dated 16.01.1970 of the Authority especially when there is a possibility of carving out a plot in the nearby area of Ashok Nagar where other persons of Gadgil Assurance Scheme were squatting. Finally, it is stated that in the past such a developed land in residential scheme has never been allotted under Gadgil Assurance Scheme and it may set bad precedent. Hence, the Petition is not maintainable and liable to be dismissed.

19. In the course of hearing, Mr. Anil Sapra, learned senior counsel for the Petitioners contended that the action of the Respondent

Authority in not proceeding with the allotment of the Rajendra Nagar plot and instead allotting a plot at Ashok Nagar along Faiz Road is wholly malafide. It was contended that even otherwise, the said cancellation was arbitrary as a valuable right which had crystallized in favour of the Petitioners was sought to be taken away without giving the Petitioners an opportunity of being heard. Even the scathing criticism of the Vice-Chairman on more than one occasion had not deterred the Respondent Nos.1 and 2, and the Vice-Chairman's note dated 16.03.2012 wherein he stated that the Resolution No.266 does not restrict the allotment of alternative plots to localities in which the displaced persons were squatting had been brushed aside by the Respondents.

20. Learned senior counsel also contended that the plot now sought to be allotted as per the impugned letter dated 06.08.2012 has been hurriedly carved out, so much so that it does not have any allotted number and is totally uninhabitable. A big-peepal tree is standing on the proposed plot which cannot be removed, there is absolutely no proper approach road, the site in question is abutting a running school; there is absolutely no development and no services are available and the entire area/cluster is meant for commercial/industrial use.

21. Ms. Shobhana Takiar on behalf of the DDA, on the other hand, sought to raise a four-fold contention:-

- (i) Plot No. R-536 at Rajendra Nagar which is a developed plot in residential scheme cannot be allotted to the Petitioners. Its allotment under the Gadgil Assurance

Scheme “*may not*” be covered within Resolution No.266 dated 16.01.1970 of the Authority. In the past, such a developed land in residential scheme has never been allotted under the Gadgil Assurance Scheme and it may set bad precedent.

- (ii) The said plot has huge market value, and as such it can be allotted only through auction/tender mode as per the Delhi Development Authority (Disposal of Developed Nazul Land), Rules 1981.
- (iii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned. Reliance in this context was placed by her upon the judgment rendered by the Supreme Court in the case of *Karnataka State Industrial Investment & Development Corpn. Ltd. vs. Cavalet India Ltd. and Others, (2005) 4 SCC 456*.
- (iv) Notings and/or decisions recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same are sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, and is communicated to the affected persons. The notings and/or decisions recorded in the file also do not confer any right or adversely affect the right of any person, and the same can neither be challenged in a Court

of law nor made basis for seeking relief. A noting in a file is a noting simplicitor and nothing more.

22. Adverting to the first contention of Ms. Takiar that plot No. R-536, Rajendra Nagar is a developed plot and, therefore, cannot be allotted to the Petitioners and its allotment under the Gadgil Assurance Scheme “**may not**” be covered within Resolution No.266 dated 16.01.1970 of the Authority, the said contention, in my view, has to be noted to be rejected for the reason that in Resolution No.266, para 9(iv), it is specifically stated:-

*“.....displaced person should be given option to purchase the site occupied by him. Subject to this provision, **alternative accommodation is to be provided on developed land**, and as far as practicable near the place of the business or employment of the displaced person. Government will have to be requested to allow the Delhi Development Authority to sell Nazul land at 1952 rates rather than at market price as per Nazul Agreement.”*

23. Undeniably, Harbans Singh, predecessor-in-interest of the Petitioners, was refused allotment of the site occupied by him at Jhandewalan as the said site was required by the Government for the purpose of road widening. In lieu thereof, Harbans Singh was, therefore, entitled to the allotment of developed land and it is wholly understandable as to how the DDA can contend to the contrary. Be it noted that in the aforesaid Resolution, while considering the 4,589 applications received by the DDA, reference was made to the 7th report on Government Assurance [(iv) – Lok Sabha], which, being relevant, is reproduced hereunder:-

“.....in this connection, the committee should like to impress upon government that they should keep the human element involved in uprooting from the existing sites all those displaced persons who had once been uprooted at the time of partition of the country and it is with this end in view, the committee suggest that if with slight modification the displaced persons could be accommodated in their existing places without any way impinging on the general scheme of the Master Plan, these should be no hesitation on the part of Government for making such modification in the Master Plan. Only in very extreme and unavoidable situations, the question of shifting the displaced persons from their existing places should be thought of by government.”

24. In the instant case, late Harbans Singh was not uprooted once but twice, i.e., first at the time of partition of the country and then from the existing site at Jhandewalan which was occupied by him on account of the Jhandewalan Road Widening Scheme. In these circumstances, the allotment of an uninhabitable alternative plot to him in the face of the clear mandate contained in Resolution No.266 that ***“alternative accommodation is to be provided on developed land”*** appears to be wholly unjustified.

25. The next contention of Ms. Takiar that the said plot has huge market value, and as such it can be allotted only through auction/tender mode as per the Delhi Development Authority (Disposal of Developed Nazul Land), Rules 1981 is also untenable. In this regard, learned senior counsel for the Petitioners has drawn my attention to applications filed by the Petitioner under the Right to Information Act, 2005 dated 28.09.2012 and 30.11.2012 and replies

thereto, placed on record on the Affidavit of the Petitioner. In its reply dated 05.12.2012 by way of information under the RTI Act, 2005, it is clearly stated that **market rate is not considered at the time of allotment/rehabilitation of squatter under Gadgil Assurance Scheme.** This is also borne out by the fact that in DDA Resolution No.266 it is clearly stated that Government will have to be requested “to allow Delhi Development Authority to sell Nazul land at 1952 rates rather than at market price as per Nazul Agreement”.

26. The ancillary argument that in the past such a developed land in residential scheme has never been allotted under Gadgil Assurance Scheme and it may set bad precedent is also found by this Court to be without merit in the light of the information received by the Petitioners from the Delhi Development Authority on 05.12.2012, clearly stating that:-

- (a) the Rajendra Nagar plot is on Ministry of Rehabilitation land which has been handed over by L&DO to DDA (and is not on Nazul land covered under the Nazul Rules), and*
- (b) there are 30 plots allotted in Dwarka to persons in lieu of their premises at Jhandewalan Extension under the Gadgil Assurance Scheme.*

27. The next contention of Ms. Takiar that “*in commercial matters*” the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned is, in my view, undeniable. However, the present case being under an Assurance Scheme extended by the Government of India to the migrants from

West Pakistan cannot be called a “*commercial matter*”. The object and the idea behind this Scheme was to rehabilitate the refugees from West Pakistan and the earning of profit as in a commercial transaction was not the purpose.

28. At this juncture, it is deemed expedient to refer to the judgment in the case of ***Karnataka State Industrial Investment & Development Corpn. Ltd. (supra)*** relied upon by the Respondent/DDA. The ratio of the said judgment is that judicial review of action of a Financial Corporation under Article 226 is not called for even if a wrong decision is taken by the Corporation ***unless the same is malafide***. In the present case, the Petitioners have clearly and categorically alleged that the action of the Respondent/DDA smacks of malafides and have been at considerable pains to demonstrate the same. There is not a whisper of denial in the Counter-Affidavit with regard to the allegations of malafides. In such a situation, it cannot be said either that the present case relates to a commercial matter or that the decision taken by the Respondent/DDA is not open to challenge by judicial review.

29. In the aforesaid case reference is made to an earlier judgment rendered by the Hon’ble Supreme Court in the case of ***U.P. Financial Corpn. vs. Naini Oxygen & Acetylene Gas Ltd., (1995) 2 SCC 754***, wherein the following apposite observations were made:- (SCC, page-761, para 21)

“21. However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body Unless its action is mala fide, even a wrong decision taken by it is not open to

challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom [or the lack of it] of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.”

30. It is clear from the aforesaid that *malafides* on the part of even an independent autonomous statutory body engaged in commercial transactions alone would vitiate the decision taken by it even in a commercial matter. The present is not a commercial matter and the facts noted above leave no manner of doubt that malafides are writ large in the decision of the Respondent Authority in arbitrarily cancelling the allotment already made to the Petitioners with the approval of the Vice-Chairman and to allot to them instead an uninhabitable plot with no approach road and other facilities, and that too after the issuance of the letter of allotment in their favour.

31. As regards the fourth contention of Ms. Takiar that the Petitioners cannot be allowed to rely upon the notings and/or decisions recorded in the official files and the same do not confer any right on the Petitioners, a perusal of the law laid down in this regard by the Hon’ble Supreme Court in *Shanti Sports Club & Anr. vs. Union of India & Ors., AIR 2010 SC 433*, relied upon by Ms. Takiar, would show that in the very same case it has been clarified that the said principle applies only to notings in the file **and not to orders passed on the basis thereof**. Indubitably, a noting or even a decision recorded in the file can always be reviewed/reversed/overturned and

the Court cannot take cognizance of the earlier noting or decision for the exercise of judicial review, but there is a caveat which is of great significance. The caveat is that where the notings have fructified into an order and the said order has been communicated to the concerned party, it is no longer open to the concerned statutory body to review/overtake its decision. It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. In the instant case, the order of allotment has been communicated to the Petitioners and the Petitioners informed of the same, thereby affecting the rights of the Petitioners which have crystallized as a result of the said order. It was, therefore, no longer open to the Respondent/DDA to review its earlier decision and that too arbitrarily and illegally. The decision in *Shanti Sports Club & Anr. (supra)* is, therefore, of no assistance to the Respondent/DDA.

32. Before parting with the case, it may be noted that it does not *behave* the Respondent, which is an instrumentality of the State, to act in the aforesaid arbitrary and malafide manner. The Respondent itself had held the Petitioner No.1's father eligible for allotment of an alternative plot of 200 sq. yards way back in 1981. Yet, the Petitioner No.1's father and after his death the Petitioners have been made to run from pillar to post on account of the inaction and apathy of the Respondent. In fact, the Respondents' failure to allot a plot has seen three generations struggle to get what they have been held entitled to in 1981 itself, *viz.*, the Petitioner No.1's father (Shri Harbans Singh), then his sons (Petitioner No.1 and his brothers Shri Gurbax Singh and

Shri Satpal Singh) and after the death of the Petitioner No.1's brothers, it is their legal heirs who are fighting to get the plot allotted. This, despite the fact that the plot in Rajendra Nagar was found to be available all through for allotment. The Gadgil Assurance Scheme and the Resolution dated 16.10.1970, which ought to have been honoured by the Respondent in letter and spirit, have been given a complete go-bye and for 30 long years the persons entitled to the allotment have been kept hanging for their legitimate rights, so much so that the entire intent and objective of the aforesaid Scheme and Resolution stand altogether frustrated. The Scheme was indubitably meant to secure the rights of the displaced person by allotting to him an alternative plot in a developed area, but in the instant case the displaced person died without receiving the advantage which ought to have enured to him under the Scheme. Another aspect of the matter which needs to be mentioned is that despite several recommendations made by the Vice-Chairman of the Respondent Authority and the allotment order passed by him, allotting plot No.R-536, Rajendra Nagar to the legal representatives of the Petitioner No.1's father, the entire process was inexplicably reversed by the Commissioner (LD), DDA, an official who was admittedly lower in the hierarchy of officers to the Vice-Chairman. If at all, the Lieutenant Governor was the only authority who could have reversed the orders of the Vice-Chairman, DDA, but in this case the impropriety of the Vice-Chairman's orders being reversed by the Commissioner is glaringly evident from the records. The Vice-Chairman has in fact been reduced to a mere signing authority, and even his scathing criticism of

the actions and inactions of those subordinate to him have been brazenly brushed aside. The fury of the Presiding Officer of the Lok Adalat at the unconscionable delay caused by the Respondent also finds mention in the Respondent's records, but that too went unheeded, and eventually the Lok Adalat was left with no option except to disassociate itself from the case.

33. In view of the aforesaid discussion, the petition succeeds and the Petitioners are held entitled to the relief prayed for by them. A writ of certiorari is issued quashing the impugned letter dated 06.08.2012 with a direction to the DDA to hand over to the Petitioners the possession of plot No.R-536, Rajendra Nagar originally allotted to the Petitioners in lieu of T-514, Upper Ridge Road, Jhandewalan, Karol Bagh, New Delhi on completion of the necessary formalities, latest within 3 months from today.

34. W.P.(C) 5885/2012 and CM No.12120/2012 stand disposed of in the aforesaid terms.

**REVA KHETRAPAL
(JUDGE)**

March 07, 2013
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