

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

Reserved on: 27.11.2013
Pronounced on: 15.01.2014

+ **LPA No.2673/2005**

DDA Appellant
Through: Sh. Rajiv Bansal, Advocate.

Versus

SH. RAM KUMAR GUPTA & ANR. Respondents

Through: Mr. G.Tushar Rao, Advocate for
Respondent No.1
Mr. Sanjay Kr. Pathak, Ms. Kaomudi Kiran Pathak,
Mr. Praneet Singh, Advocates for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. The present Letters Patent Appeal challenges a judgment and order of a learned Single Judge dated 04.03.2005 in WP(C) No. 237/1999.

2. The brief facts are that the petitioner was the owner of 9 bighas of land. That land was notified for acquisition on 10.11.1960, and the award was finalised on 29.11.1962, with the compensation paid subsequently. The petitioner applied for allotment of an alternative industrial plot under a scheme which enabled owners (whose land were subject of acquisition) on 21.07.1971. He was called upon to submit documentary material in support of his willingness to establish an industry. These particulars were furnished on 30.11.1972. The Land and Building Department of the erstwhile Delhi Administration (hereafter called GNCT) on 05.09.1973 by its letter written to the Delhi Development Authority (hereinafter referred to as "*the DDA*") stated

that the writ petitioner/present respondent was eligible for allotment of an industrial plot measuring 7654 square yards and that his case ought to be considered by the Land Allotment Advisory Committee (hereinafter referred to as “LAAC”). The LAAC, in May 1974, decided that the GNCT, Department of Industry should re-assess the land required by the petitioner and wrote to the latter on 20.09.1974. The writ petitioner addressed a communication on 22.01.1975 which was followed up by a letter dated 28.09.1975 from the DDA stating that his case was under consideration. The GNCT, on 20.11.1976, required documentary evidence to consider the petitioner’s financial position which he duly furnished. Accordingly, on 22.02.1978, the GNCT wrote to DDA stating that the petitioner had the capacity to establish an industry in case plot of 7654 square yards were allotted. The question was to be placed before the LAAC for allotment. In these circumstances, the DDA made an allotment on 19.07.1978 in respect of plot measuring 2000 square yards in Okhla Industrial Area.

3. The writ petitioner relied upon a copy of the letter, which the DDA disputed initially. Upon being asked to furnish the relevant files, the DDA sought repeated adjournments and ultimately stated that its record could not be located. In these circumstances on 25.05.2004, the learned Single Judge in the order recorded that an adverse inference would be drawn in case the records were not produced. Finally on 10.12.2005 the DDA stated before the Court that record was unavailable and the matter could be proceeded with. To continue the narrative, on 13.08.1980 the DDA reiterated that allotment of 2000 square yards had been made. The petitioner however insisted that he was entitled to a larger area.

4. On 06.10.1988, the writ petitioner’s application was rejected on the ground that the use of the acquired land as per the Zonal Plan was found to be recreational and therefore, the determination by the DDA was made that he was

ineligible for such an alternative plot. The petitioner represented against the rejection by way of a letter on 01.11.1988 underlining that the land was acquired in 1960 and thus there was no Master Plan at that stage for Delhi. The petitioner's position was that the subsequent Master Plan could not be relied upon to reject his determined assessment and evaluation for an industrial plot measuring 7654 square yards. The DDA eventually examined the matter on 22.01.1990 and stated that the land was reserved for Railways and Railway yards. This led to further correspondence between the petitioner and the DDA and eventually on 18.03.1997, the Land and Building Department of DDA stated that "*detail of the acquired land has not been verified in this department and this may be not be treated as a recommendation.*" The issue took a new turn on 25.06.1997 when the DDA stated that there was no policy to allot industrial plots against acquired lands. It was in these circumstances the writ petition was filed on 12.01.1999 seeking a direction for allotment of plot measuring 7654 square yards in lieu of the acquired land.

5. The position of the DDA in the course of the writ proceedings was that with the advent of the Delhi Development Authority (Disposal of Development Nazul Land) Rules , 1981 and in view of the Full Bench Judgment in *Ramanand v. Union of India & Ors.*, AIR 1994 Del 29, no land owner whose properties were acquired for planned development of Delhi could claim vested right to be allotted alternative land, and that the DDA could allot Nazul Land in terms of the Rules.

6. The learned Single Judge in the course of the impugned judgment was of the opinion that the communication of 05.09.1973, the subsequent letter of 19.07.1978 and the further letter of 13.08.1980 had in fact concluded the question of the writ petitioner's representation for allotment of an alternative land in lieu of the acquired land in terms of the then existing policy. The Court also recorded that the absence of records of the DDA added further difficulties

but at the same time noticed that the Land and Building Department of the DDA's position, rejecting the writ petitioner's application on 06.10.1988 on the ground of the user of the acquired plot being recreational, and the further position on 08.03.1997, precluded any argument that allotment of alternative plots could not be made. In other words, this shifting stand of the DDA – first endorsing the allotment but at the same time reducing the size to 2000 square yards, then next on 06.10.1988 holding that the use of the acquired land was recreational as opposed to industrial thus rendering the writ petitioner ineligible and the further twist given by the final rejection on 18.03.1997 that the petitioner was not eligible for alternative allotment – in fact foreclosed any argument that 1981 Nazul Land Rules had acquired primacy. The relevant discussion, in the impugned judgment in this regard, is reproduced below:

“27. It has to be noticed that the Land & Building Department after lapse of considerable number of years suddenly issued the letter dated 06.10.1988 rejecting the application of the petitioner on the ground that the land as per the Zonal Plan was to be recreational. Even on this aspect, there is dispute in view of the subsequent communications where it was found that the land was meant for Railways and Railway Yards. No clear picture has emerged on this account, but there is a rejection letter dated 06.10.1988, which was protested too by the petitioner vide letter dated 01.11.1988. In between, there has been gaps of time, which has been unexplained by the petitioner. However, due weightage has to be given to the submission of learned senior counsel for the petitioner that the matter was admittedly in process and there was no reason for the petitioner to approach the Court till such time as representation of the petitioner against the rejection was duly considered. In fact on 18.03.1997, the Land & Building Department issued a letter to DDA in respect of the allotment of land albeit with the endorsement mentioned above. However, this endorsement does seem to be superfluous on account of the fact that it was the duty of the Land & Building Department to have verified the eligibility of the petitioner, which in fact had been done long time ago when the Land & Building Department

had repeatedly reiterated its recommendation for allotment of land to the petitioner.

28. *It is also relevant to note that the land of the petitioner was acquired in the year 1960 and the scheme came into being in the year 1961.*

29. *A reading of the para of the scheme relied upon by both the parties shows that there was a policy of allotment of industrial plots. It appears that subsequently there was modification in the policy whereby the allotment could be made only to those persons who already had established industries. However, this would not make difference to the case of the petitioner. There would have been no occasion for the case of the petitioner to be considered, called upon to produce certain documents to show that he propose to documents to show that he propose to set up an industry and the steps taken in this behalf, if the petitioner was not eligible for allotment of industrial plot. Thus, in view of the aforesaid facts and more so in the absence of the records, the only conclusion to be arrived at is that the petitioner would be eligible for allotment of an industrial plot.”*

7. The learned Single Judge rejected the writ petitioner’s claim for allotment of 7654 square yards holding that the demand was based on an offer made to him, which was subsequently discontinued and that another interpretation would mean that the claim area would be hit by latches. The learned Single Judge further held that the allotment of the plot ought to be on pre-determined rates under the Rules as on the date of the allotment. It was lastly directed that a 2000 square yard plot ought to be given in the Okhla Industrial Area or failing which the nearest industrial area where plots could be available at pre-determined rates under the Rules prevalent on the date of allotment.

8. The DDA in its appeal stated that the Court ought to have rejected the writ petition at the threshold since the petitioner’s claim was turned down far back on 06.10.1988. The mere successive representations by a litigant and internal correspondence *inter se* the government or executive authorities cannot

derogate from principles of laches which the Court is bound to respect while exercising discretion under Article 226 of the Constitution.

9. DDA's Counsel relied upon the grounds of the appeal that

“it is very pertinent to note that policy of Large Scale Acquisition of 1961 and under which the respondent was claiming allotment itself specified that if an industrial plot was to be allotted, the same should be in accordance with the Master Plan”.

10. It was argued that the learned Single Judge failed to appreciate that the land use of the plot in question under the Master Plan was not industrial but not recreational.

11. It was emphasised that when the writ petitioner applied for an alternative plot, the Master Plan 1962 was in force. Since the petitioner's land was acquired for recreational and not industrial purpose, there was no question of alternative allotment. Consequently, the rejection of 06.10.1988 was justified. It was submitted that no fault could be found with the rejection and that the subsequent reasoning given in 1997 in the final letter turning down the writ petitioner's request for reconsideration only stated that allotment could be made on the basis of the Nazul Rules and not otherwise.

12. Counsel for the writ petitioner argued that DDA is precluded from stating that the petitioner was ineligible on account of its own letters dated 13.09.1978 and 13.08.1980.

13. Learned counsel relied upon the policy of the DDA pursuant to its decisions of 26.03.1964, 04.04.1964 and 21.04.1964. It was argued that under specific terms of the policy, it was clearly spelt out that developed industrial lands at pre-determined rate could be allotted having regard to the needs of the unit which the industrialist wishes to set up and it would not exceed two third's of the area acquired from him. The relevant extracts of the policy is as below:

“Allotment of Industrial Plots to Individuals Whose Land has been Acquired

The categories which are eligible under Govt. orders for allotment of developed industrial land as mentioned in the note prepared for the committee meeting, were first considered. The first category comprises individuals whose land has been acquired under an industrial scheme. The committee is of the view that there would not be many cases where agriculturists whose land is acquired, will come forward to apply for land for setting up industrial units. Before any such application is considered, the aptitude of the ex-owner of land and his capacity to set up an industry will have to be carefully scrutinised. Each case will have to be examined very carefully on merits. The committee considers that those whose land has been acquired in connection with the planned development of Delhi may be allotted developed industrial land at pre-determined rates, the plot size to be allotted should have careful relation with the needs of the unit which the industrialists wishes to set up and also should not exceed two third of the area acquired from him. If the assessed demand of the industrialists is more than this, then the market rate should be charged for the excess area.

2. It was made clear that allotment of industrial land may be made even in those cases where the use prescribed in the Master Plan or the Interim General Plan for the land acquired is not industrial, provided that the land acquired was purchased before the interim General Plan or the Master Plan, as the case may be, came into force and the ex-owner can furnish satisfactory evidence (a provision in the sale deed or correspondence with the Government of India) indicating a firm intention to start an industry on the land in question.

3. Applications for allotment under this category may be processed in the office of the Housing Commissioner, Delhi Administration, where relevant data in regard to acquired land is available, Each case would then be put for consideration before the Committee.”

14. It was argued next that there was no delay on the part of the petitioner. The letters issued by the DDA in 1978 and 1980 clearly establish that he was eligible and was in fact recommended for allotment. Since the DDA unilaterally reduced the size of the industrial plot offered to him, the petitioner naturally kept representing his case. Instead of responding on this aspect, the DDA on 06.10.1988 rejected the application itself stating for the first time that he was ineligible on account of a different land use of the acquired land. Thereafter, the writ petitioner continued to represent on different occasions beyond 1988 and 1997. However, the DDA kept shifting its position. It first stated that the land belonged to the Railways and later in the final rejection for the first time stated on 25.06.1997 that the writ petitioner has no right to the plot. Yet, and finally, learned counsel submits that the DDA has for the first time stated that the decision in *Ramanand case* (supra) and 1981 Nazul Rules preclude allotment.

15. It was lastly contended that the DDA's submission that allotment in this case cannot not relate back to the date of acquisition is without basis. In fact the date of entitlement for allotment arose as back as on date of acquisition and not the subsequent policy formulation. The writ petitioner applied for the plot once the compensation was paid. In the present case the compensation was paid much after the award and consequently the application itself could be made on 21.07.1971. He was able to satisfy the GNCT of Delhi about his competence and financial position to establish an industry. In these circumstances, the DDA could not have by its lapses relied upon passage of time and subsequent development of framing of 1981 Rules which were interpreted in the *Ramanand* (supra), defeat the writ petitioner's right for allotment of an industrial plot.

16. The above discussion would show that the petitioner had applied for an alternative plot in 1972, after the compensation was paid for the land acquired from him. It is not in dispute that in 1973, an assessment took place and he was

deemed to be eligible. The DDA concurred with this assessment, as is evident from its letters issued in 1978 and 1980. In these circumstances, there was no question of the petitioner's ineligibility which had been determined before the 1981 Nazul Rules were framed. However, the 1980 letter issued by the DDA reduced the size of the plot, and the petitioner kept representing to the authority in these circumstances. Such conduct is neither unnatural, nor does it amount to laches. The first rejection letter of DDA of 6.10.1988 stated that the petitioner's land acquired in 1960 was not for recreational purposes in terms of the existing Master Plan. This reason, in the opinion of the Court, was incoherent and arbitrary. The Master Plan was brought into force in 1962. No doubt, an interim plan was made effective. However, the DDA could not after twenty five years of the acquisition have made this the basis for rejection of the petitioner's application, after it had received consideration repeatedly at several levels of decision making. Likewise, each time the DDA rejected the petitioner's application, it cited a new reason: in 1990, it stated that the lands were needed for Railways – a reason soon found to be incorrect, as it turned out that land user had not been verified when such letter was written. The final rejection of 1997 stated that the petitioner was ineligible for alternative allotment. It was against this final rejection that the petitioner approached the Court. The Court is of the opinion that the DDA cannot have a grievance because the Single Judge entertained the writ petition. Its own conduct precluded it from setting up such a technical plea. Each time it turned down the petitioner's application, different reasons were cited. It did not at any of these stages state that the matter was closed or that no correspondence would be entertained to bring a ring of finality to the matter, against which the petitioner could approach the Court for the purposes of review. Having kept the matter open and prevaricated as to the reasons for rejection, the DDA cannot now state that the petition was barred by delay and laches.

17. As far as merits go, the DDA concededly issued letters confirming that the petitioner was eligible, even before the 1981 Rules were brought into force. The only dispute at that stage was the extent of the area. The petitioner insisted that the plot size should be over 7600 square yards in tune with the first determination, but the DDA stated that it had verified the eligibility to be 2000 square yards. Since the determination of the right took place in respect of incidents which arose before the Rules were framed, the DDA was bound to proceed to allot the plot in terms of the petitioner's entitlement. However, it did not do so and dragged its feet. In these circumstances, the DDA was estopped from contending that the petitioner was ineligible.

18. Independent of the principle of estoppel, the Court holds that the policies of 1964 which were given effect to in respect of several other landowners whose properties were acquired entitled the petitioner to similar treatment. That the DDA and other authorities dragged their feet in making allotments cannot preclude the petitioner from being extended the benefit like in the case of the others. For these reasons, the *ratio* of *Ramanand* would not apply in the present case. Furthermore, this Court notices that *Ramanand* cannot be applied stereotypically to oust the claim of those who had been entitled to allotment of alternative plots, like the petitioner and who were awaiting allotment (see, *Jai Singh Kanwar v. Union Of India & Ors*, 149 (2008) DLT 354).

19. As regards the DDA's plea that the land user of the acquired property was recreational in terms of the Zonal plan, disentitling the petitioner to allotment of an alternative plot, the plea has to fail on two counts. The acquisition was for "*the planned development of Delhi*" – a broad enough purpose to embrace all kinds of users. Furthermore, the Zonal Plans in this case were issued after the acquisition. They could not be decisive and in fact the committee in its articulated guidelines, framed in 1964, spelt out eligibility of displaced landowners, in the following terms:

“The committee considers that those whose land has been acquired in connection with the planned development of Delhi may be allotted developed industrial land at pre-determined rates, the plot size to be allotted should have careful relation with the needs of the unit which the industrialist wishes to set up and also should not exceed two third of the area acquired from him.”

For these reasons, the argument that the petitioner’s application could not be accepted is unsound and accordingly rejected.

20. In view of the above discussion, the Court is of the opinion that there is no infirmity with the reasoning and findings of the learned single judge. The appeal is accordingly dismissed as unmerited.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

JANUARY 15, 2014