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

% *Judgment reserved on :16.02.2017*

Judgment delivered on :20.02.2017

+ W.P.(C) 717/2010

JASPAL KAUR

..... Petitioner

Through Mr. R.K. Saini, Mr. Varun Nagram
and Ms. Minal Sehgal, Advs.

Versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Ms Puja Kalra, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner before this Court is Jaspal Kaur. She is the widow of Hardev Singh. Hardev Singh was running transport business under a proprietorship in the name of New Delhi Madhya Pradesh Transport Service. Pursuant to a proposal circulated by the respondent to develop a transport nagar (Sanjay Gandhi Transport Nagar), the husband of the deceased in his capacity as proprietor of M/s New Delhi Madhya Pradesh Transport Service along with similarly situated persons had made applications for allotment of a plot. On 31.11.1987 pursuant to the demand notice, total payment of Rs.1,18,800/- was made by him. This was at the rate of Rs.425/- per square meter.

2 Hardev Singh passed away on 06.05.1986. The proprietorship concern continued to be run by his wife namely Jaspal Kaur. On 27.12.1986, similarly situated persons who had made applications for allotment were granted plots but the case of the petitioner was not considered. On 28.12.1988, the petitioner received a demand from the respondent Corporation demanding Rs.4,42,200/- as the balance payment for allotment of the plot.

3 Aggrieved by this illegal and exorbitant demand, the petitioner was constrained to file W.P. (C) No.2328/1989, he had sought quashing of this illegal demand. During the pendency of this petition, on 04.08.1999 under the directions of this Court, the respondent had been directed to reserve a plot for the petitioner. This interim order was alive till the disposal of this petition. This writ petition was disposed of on 23.10.2002. A bunch of petitions has also been disposed of and since all of them involved the same issue, the case of the petitioner was also tagged along with this bunch. The Single Judge of this Court had held that those persons who had made payment at the rate of Rs.425/- per square meter plus Rs.55/- per square meter shall be handed over the plots within 4 weeks; those who had made only payment at the rate of Rs.425/- per square meter on the payment of

balance amount at the rate of Rs.55/- per square meter will be handed over their plots within 8 weeks. In case payment had not been made at the rate of Rs.425/- per square meter, it would be open to the respondent to charge the newly determined rate of Rs.4,500/- per square meter.

4 The vehement contention of the learned counsel for the petitioner is that after the disposal of this petition and a clear direction having been given to the respondent to allot the plot to the petitioner (as admittedly the petitioner had made payment of Rs. 1,18,800/- (at the rate of Rs.425/- per square meter) and he was willing to pay the balance sum at Rs.55/- per square meter but his representation continued to remain unanswered. The order of 23.10.2002 having become final, it was the obligation on the part of the respondent to have complied with the said direction. His representations to the Department however remained un-considered which had constrained him to file this second petition.

5 Counter affidavit of the respondent has been perused. The stand of the respondent is that the husband of the petitioner namely Hardev Singh had made two applications. One was in his capacity as the sole proprietor of New Delhi Madhya Pradesh Transport Service. His second application was in his capacity as partner of New Delhi Madhya Pradesh Road Lines. Since

both these applications related to allotment in lieu of one plot, these applications were tagged together. The file number of these applications were 440/12 & 440/13; they were made against the said plot i.e. plot bearing No. 5008, Rui Mandi, Sadar Bazar, Delhi. Both these applications having been clubbed together, they were considered as one application and the petitioner could have at best be entitled to one plot.

6 There is no dispute that New Delhi Madhya Pradesh Road Lines (partnership firm) has been allotted a plot and the possession of this plot i.e. AG-48 was handed over to Mohinder Singh, the other partner of this firm (second partner being Hardev Singh) vide letter dated 30.09.1988. This position is not in dispute.

7 Further contention in the counter affidavit is that two Resolutions i.e. No. 1137 dated 12.01.1987 and Resolution No. 705 dated 23.11.1987 were passed by the Corporation. As per these Resolutions, those applicants who had plots over and above 500 square meters were entitled to additional plots of applicable size. However for the second additional plot commercial price (three times the reserve price) would be payable by the party. These Resolutions have been annexed along with the petition.

8 Additional submission being that the occupied area of plot No. 5008, Rui Mandi, Sadar Bazar was 687.8 square meters (over the above 500 square meter), the case of the petitioner for allotment of the second plot was thus considered. A demand notice was sent to him in terms of the aforementioned Resolutions. The demand notice dated 28.12.1988 making a demand of Rs.4,42,200/- upon the petitioner is a part of the record. This was in lieu of the second (additional) plot which was to be allotted to the petitioner pursuant to the re-survey wherein his entitlement for a second plot was considered. This was in view of the fact that his plot size (bearing NO.5008, Rui Mandi, Sadar Bazar, Delhi) was 687.8 square meter. Submission is that this demand notice clearly stipulated that in case the allottee did not pay the demanded amount within 180 days, his allotment would stand cancelled. The action of the Corporation in restricting the allotment of the plot by raising the price of the plots to three times the reserve price was a reasonable amount payable by him. The petitioner having failed to make this payment in time, his case for a second allotment was rightly not considered.

9 Rejoinder has been filed denying these contentions. In rejoinder, learned counsel for the petitioner has pointed out that the order passed on 23.10.2002 in the earlier round of litigation (W.P. (C) No.2328/1989) is

binding upon the Corporation. The respondent cannot go back upon it. There was no question in that petition about the increase of the price of the second plot three times over.

10 Learned counsel for the petitioner has also drawn attention of this Court to an order dated 08.04.2013 passed by the predecessor Bench of this Court. Submission is that the respondent has failed to comply with the spirit of the order dated 23.10.2002; the Court had noted that the additional affidavit filed by the Corporation was dis-satisfactory; the respondent is only buying time. The prayer made in the petition accordingly be allowed and a plot be allotted in favour of the petitioner at the rates which have been stipulated in the order dated 23.10.2002 which is a binding order upon the respondent.

11 Arguments have been heard. Record has been perused.

12 It is an admitted fact that the petitioner had made two applications for allotment of plot. This was in lieu of one plot i.e. 5008, Rui Mandi, Sadar Bazar, size of that plot is 687.8 square meter. This size was revealed in the re-survey which was carried out by the Department. The two applications in lieu of this plot were made by Hardev Singh; one in his capacity as proprietor of New Delhi Madhya Pradesh Transport Service and his second

application was in his capacity as partner of New Delhi Madhya Pradesh Road Lines. The case of the partnership firm was considered and plot No. AG-48 was handed over to Mohinder Singh (second partner of New Delhi Madhya Pradesh Road Lines) on 30.09.1988. There is no quarrel on this.

13 In the re-survey, the case of the petitioner was re-considered and since the policy/Resolutions No. 1137 and 705 dated 12.01.1987 and 23.11.1987 presupposed the allotment of second plot, the case of the petitioner had accordingly been considered. Demand was raised of Rs.4,42,200/-; this was vide demand notice dated 28.12.1988.

14 Resolution No. 1137 dated 12.01.1987 is relevant. Para 7 (c) reads as under:-

“7 The allotment will be made to those applicants who were registered in 1976. Subject to their eligibility being established as per following policy:

a xxxxxx

b xxxxxx

c Applicants, qualified by criteria (a) and (b) above will all be given one plot each in lieu of their premises / area of usage measuring upto 500 sq. metres. For every 500 sq. metres additional area of fraction thereof under their usage, applicants will be entitled to an additional plot of applicable size. For the next one commercial price (which will be three time the reserve price) and for the remaining additional plots market price (which will be five

times the reserve price).”

15 This part of the Resolution enunciates that those applicants who were entitled to an additional plot, would have to pay three times the reserved price for this additional plot; for the remaining additional plots market price at five times the reserve price would be charged. This Resolution is not in challenge. The demand raised by the respondent in terms of their letter dated 28.12.1988 was fully in conformity with this Resolution. It was binding upon the petitioner. The petitioner had to pay Rs.4,42,200/-, if he wanted the second plot allotted to him.

16 The submission of the petitioner that the respondent is bound by the judgment dated 23.10.2002 delivered in W.P. (C) No.2328/1989 is a misconceived submission. This Court notes that on 23.10.2002, the Single Bench of this Court had decided 15 petitions by a common order. Learned counsel for the petitioner on this count has submitted that there is no order as to how and when the present petition i.e. W.P. (C) No.2328/1989 came to be clubbed along with the remaining petitions as the issue in W.P. (C) No.2328/1989 was clearly distinct from the issue involved in the other writ petitions.

17 The record of W.P. (C) No.2328/1989 has been summoned. This was under the orders of the earlier Bench of this Court. A perusal of the petition (in WPC 2328/1989) shows that the petitioner was aggrieved by the illegal, arbitrary, un-reasonable and unjustified demand of three times the reserved price for the allotment of the plot which according to him was in violation of the policy of the respondent and an infringement of his fundamental right. This is clear from the heading of the writ petition itself which reads herein as under:-

“An illegal, arbitrary, unreasonable and unjustified demand at the rate of three times the reserve price for allotment of a plot to the Petitioner in violation of the Policy, doctrine of promissory estoppels and in infringement of fundamental rights of the petitioner guaranteed under Article 14,19 and 21 of the Constitution of India”

18 A perusal of the averments contained in that petition also show that the entire petition is bordered upon the alleged illegal demand which had been raised upon the petitioner wherein he had been asked to pay three times the reserve price for his second allotment. His contention in that petition was that he has paid Rs.1,18,800/-. The demand letter dated 28.12.1988 demanding a sum of Rs.4,42,200/- was illegal. This had clearly been

mentioned in that writ petition; the prayer was that this demand notice dated 28.12.1988 be quashed.

19 The orders passed by the Bench of this Court in 15 petitions on 23.10.2002 were on a distinct matrix. This is also clear from the order. Submissions and counter submissions of the parties had been noted. The order dated 23.10.2002 was premised on the allotment of a plot in Sanjay Gandhi Transport Nagar; it was the case of those allottees who had paid the initial amount and inspite of draw of lots having taken place, they had not been allotted their plots. These were the averments in those petitions. In the counter affidavit, the stand of the respondent Corporation (as is evident from that judgment dated 23.10.2002) was that various allotments had been made but because of certain interim orders passed by the Apex Court, 215 plots could not be allotted. The Court in those circumstance had held that those persons who had already paid their amount at the rate of Rs. 425 per sq. metre + Rs. 55 per sq.metre would be given an allotment of the plot within four weeks; those who had paid at the rate of Rs.425/- per square meter, on payment of the balance sum at the rate of Rs.55/- per square meter would be allotted a plot in 8 weeks; those who have not paid would not be considered

and in those cases it would be open to the respondent to charge the new determined rates of Rs.4,500/- per square meter.

20 Learned counsel for the respondent has thus rightly pointed out that the petitioner cannot avail of the judgment passed on 23.10.2002.

21 On a specific query put to the learned counsel for the petitioner as to how and when W.P. (C) No.2328/1989 came to be tagged along with other petitions (main W.P. (C) No.833/1991), there is no answer. A perusal of the file of W.P. (C) No.2328/1989 also shows that there is no such order of tagging W.P. (C) No.2328/1989 with the other bunch of petitions. On 17.01.2000, a request had been made that a similar matter was listed for 24.01.2000. In fact on 15.05.2001 (in W.P. (C) No.2328/1989), the petitioner had filed an application seeking a direction from the Court for handing over of possession of the second plot upon the payment of Rs.4,42,200/-; the same could not be considered in the absence of the respondent not having instructions in that regard. On 07.01.2002, this petition was thereafter directed to be listed along with W.P. (C) No.833/1991.

22 This Court is constrained to hold that the order dated 23.10.2002 which had been passed in the bunch of 15 petition (lead matter W.P. (C)

No.833/1991) related to the allotment of the plot in Sanjay Gandhi Transport Nagar qua those allottees who had made certain payments but inspite of those payments, they had not been allotted their plots. The decision in that case did not in any manner relate to the allotment of a second plot and the alleged exorbitant demand raised by the Department (in terms of resolution No. 137) wherein three times the reserve price was being charged. The prayer in W.P. (C) No.2328/1989 is clear. It seeks a quashing of the demand notice dated 28.12.1988 by virtue of which the respondent had raised a demand of Rs.4,42,200/- (which was three times the reserve price) for the allotment of a second plot. This was not the subject matter of consideration before the Court on 23.10.2002. It appears that due an error/mistake, W.P. (C) No.2328/1989 came to be tagged along with the other bunch of writ petitions when the issue in that case was distinct and separate from the issue involved in the other petitions which had been disposed of on 23.10.2002. A mistake of such a nature cannot work to the advantage of the petitioner who in the view of this Court is trying to build up a confusion and is not coming clear upon the facts of the case. It was in these circumstances that the Court had been constrained to requisition record of W.P. (C) No.2328/1989.

23 This Court also notes that on an earlier date i.e. 15.05.2001, the petitioner had made an application before the Court seeking a direction to make payment of the amount of Rs.4,42,200/- for the allotment of the second plot which could not be considered, for reasons mentioned above. This fact had been concealed and it was only when this Court had gone through the order-sheets of W.P. (C) No.2328/1989 that this was revealed. This was never told to the Court.

24 This Court is thus of the view that there has been a dis-honest concealment of facts before this Court. This Court is not inclined to grant any relief in favour of such a petitioner; had he come clear and honest to the Court, his case could have been considered as the policy of the Department did envisage the allotment of second plot, if the payment was made within the stipulated time period. Even otherwise, no such payment was made within the stipulated period.

25 The petitioner is not entitled to any relief. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 20th, 2017/A

