

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

+ **RSA No.3/2017**

% **2nd August, 2017**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Dhanesh Relan, Advocate
with Ms. Akshita Manocha,
Advocate and Ms. Gauri
Chaturvedi, Advocate.

versus

SH. AMAR NATH SAWHNEY (THROUGH LRs) Respondents

Through: Mr. Ruchit Dugar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the concurrent judgments of the courts below; of the Trial Court dated 29.7.2011 and the First Appellate Court dated 8.3.2016; whereby the suit of the respondents/plaintiffs was decreed and the appellant/defendant was directed to allot an additional area of 41.66 sq. yds. to the respondents/plaintiffs.

2. The issue in this case pertains to whether the respondents/plaintiffs were entitled to allotment not of a plot of 41.66 sq. yds. which was allotted and given possession to the respondents/plaintiffs, but that the respondents/plaintiffs should have been given a bigger plot of 91.66 sq. yds.

3. The admitted facts are that the alternative allotment was made on the basis of the policy of the appellant/defendant as published in the Hindustan Times on 5.8.1975 and which is exhibited before the trial court as Ex.PW1/3. The case of the appellant/defendant is that as per the policy, alternative allotment was dependent upon the trade which was carried out by the allottee in the earlier area from where the allottee was to be displaced from, whereas the case of the respondents/plaintiffs was that allotment as regards the size of the plot had nothing to do with type of trade being carried on by the allottee in the premises which were to be vacated for being given alternative allotment.

4. This aspect of size of plot to be given on alternative allotment is dealt with by the trial court in paras 6 and 7 of its judgment and these paras read as under:-

“6. My issue-wise findings are as follows:

Issue No.1 and 5

1. Whether the plaintiff is dealing in the business of iron merchant at Motia Khan in the year 1975? OPP

5. Whether the plaintiff is entitled for the relief of declaration as well as for the relief of mandatory injunction? OPP

The onus to prove these issues was upon the plaintiff. The plaintiff vide his testimony Ex.PW1/X has categorically proved that he was allotted a land by the DDA as an alternative allotment under the scheme of allotment to iron merchants on the basis of assessment orders in respect of damages under the Public Premises Act. The said allotment letter dated 29.11.1975 is proved as Ex.PW1/1. The possession of land ad-measuring 45 to 50 sq. yards was handed over to the plaintiff on 05.12.1975 and the possession letter is proved as Ex.PW1/2. It is the admitted case of the defendant that the plaintiff has been allotted the said land.

The moot point of controversy however was revolved around the actual area of land which was allotted to the plaintiff. As per the contentions of the plaintiff he should have been allotted 91.66 sq. yards of land whereas as per the contention of the defendants, the plaintiff has been allotted his due share. The plaintiff has placed on record the copy of the public notice issued by the DDA which is proved as Ex.PW1/3. I have carefully gone through the said notice issued by the DDA under the chairmanship of one Sh. Jagmohan. It gives a formula of allotment of alternative plots to the Iron Merchants of Motia Khan as follows:

Sq. yards	Area allotted (Sq. yards)
<u>Below 50</u>	<u>91.66</u>
51-100	125.00
101-150	172.22
151-200	200.00
201-250	230.00
251-300	300.00
301-400	400.00
401 and above	430.00

7. On the very perusal of the said notice it is revealed that the persons occupying less than 50 sq. yards were entitled for allotment of 91.66 sq. yards of land. The plaintiff has also relied upon the judgment passed by the **Hon'ble High Court in case titled as M/s Neki Ram Vs. DDA reported as 46 (1992) Delhi Law Times 74.** The facts of the said case were similar to the case in hand wherein the issue of alternative allotment of the occupant dealing in metal and scrap in Motia Khan was raised. The Hon'ble High Court relied upon the criteria formulated by the DDA itself in the said locality of Motia Khan and had observed that persons occupying 50 sq. yards of land were to be allotted land around 91.66 sq. yards. The Hon'ble High Court was pleased to issue a writ *mandamus* directing the authority to allot a plot of land to the petitioner on the basis of said circular.

Even in the present suit it is an admitted case of defendant/DDA that the plaintiff has been allotted a plot as alternative plot in lieu of premises occupied by him in Motia Khan on the basis of assessment of damages. It is further admitted by DW1 in his cross examination that Sh. Jagmohan was once the Vice Chairman of defendant/DDA under whom the said public notice was issued. Even DW2 has categorically admitted in his cross examination that the father of the plaintiff was assessed to damages and that a plot of ad-measuring only 50 sq. yards was allotted to the plaintiff by the defendant. He further admitted that Sh. Jagmohan was Vice Chairman of the DDA and also admitted public notice Ex PW1/3. Thus the said public notice enlisting criteria formulated by the defendant/DDA of alternative allotment of land is not disputed. From the bare perusal of the said criteria, it is clear that plaintiff who according to DDA was in occupation of around 45 to 50 sq. yards of land falls in the very first category and therefore is entitled for 91.66 sq. yards of land.

The line of defence taken by the defendant/DDA is that as per policy the real position is that the evictees of Motia Khan were given alternative plots in accordance with the nature of the trade which they were carrying in Motia Khan before eviction. Accordingly persons carrying the trade of sheet cutting were provided with a plot of 45 sq. yards irrespective of the fact that area they occupied in Motia Khan. Accordingly, the plaintiff was also allotted a plot. It is pertinent to mention that the nature of trade was nowhere the criteria mentioned in the said public notice. Even in the document exhibited as DW1/1 which is the copy of orders of the allotment committee dated 02.08.1975 with respect to the allotment of alternative plot to the plaintiff heavily relied upon by the defendant himself, it is clearly mentioned that plaintiff is in occupation of around 32 sq. yards which is commercial in nature and as per policy he has been allotted a plot of 20" x 20". Firstly, the said document is a mere photocopy. Second, it is merely an order of the allotment committee and is not the policy of defendant/DDA specifying the terms and conditions. The main line of arguments taken by the defence counsel revolves around the fact that plaintiff was not iron merchant but merely was involved in the business of cutting iron sheets and therefore not entitled for 91.66 Sq. yards of land. No such policy with respect to the nature of business has been placed on record by defendant/DDA. Moreover the possibility of a person who is involved in the business of cutting iron sheets and selling the same for profit can not be carried out. Thus if the person is involved in the sale and purchase of iron then in the common parlance he can be safely assumed to be a iron merchant more so in the absence of any cogent documentary proof furnished on behalf of the defendant/DDA that since the plaintiff is merely involved in the business of cutting iron sheets and therefore he can not be termed as iron merchant.

Thus from the documents Ex PW1/3 which is a public notice and in the light of judgment of Hon'ble High Court of Delhi in the case of *M/s Neki Ram*

Vs. DDA reported as 46 (1992) Delhi Law Times 74, the case of the plaintiff squarely falls in the first category and I am of the considered opinion that he is entitled for alternative land ad-measuring 91.66 sq. yards.”
(underlining added)

5. The first appellate court has upheld the findings and conclusions of the trial court by its impugned judgment dated 8.3.2016.

6. Learned counsel for the appellant/defendnat could not show to this Court that in the policy Ex.PW1/3 alternative allotment is talked of on the basis of the different types of trades of a person in the Motia Khan area and from where the allottees were to be evicted and alternative plots given. Once therefore the policy in question Ex.PW1/3 itself does not discriminate for granting of the size of the alternative plots on the basis of the nature of the trade of the allottee being carried out in the earlier area in Motia Khan but alternative allotment is only dependent upon the size of the plot of the allottee in the earlier premises situated in Motia Khan, hence I do not find any illegality and perversity in the judgments of the courts below holding that respondents/plaintiffs were entitled to allotment not of a plot of 41.66 sq yds but 91.66 sq yds.

7. No substantial question of law arises. Dismissed.

AUGUST 02, 2017
Ne

VALMIKI J. MEHTA, J