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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 1st March, 2018

Date of decision : 23rd May, 2018

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RFA 597/2013

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr. Dhanesh Relan, Standing
Counsel with Ms. Akshita Manocha,
Advocate. (M:9910247777)

versus

SH. RAM GOPAL SAHNI & ORS.

..... Respondents

Through: Mr. Rajesh Yadav (M-9811006760),
Ms. Ruchira Arora, Mr. Dhananjay
Mehlawat and Mr. Rohan Yadav,
Advocate for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.

1. The history of this case aptly exemplifies the fate of a common citizen who has to deal with public authorities. Most of the facts are admitted, and despite this being the position, the Plaintiff has not been allotted a shop in lieu of the shop in the Cycle market on Esplanade Road which was demolished during the Emergency. Even 40 years after demolition of the shop, the struggle continues.

2. The various technical objections and so-called internal policies of the DDA have led to a situation wherein the Plaintiff has passed away. His wife who is more than 75 years of age is still waiting for allotment of the shop. Innumerable Court orders, in a suit filed in 1982, have had no effect on the DDA, which continues to take an unreasonable stand and not empathise with

the Plaintiff's situation. The DDA resiled from almost every statement it made before the Courts over the years. In fact officers of the DDA have made palpably false statements before the Court.

Background

3. Several shops in the cycle market on Esplanade Road, Delhi were demolished during the Emergency period. One such Shop No.57, Esplanade Road, Delhi is the subject matter of the present appeal. The shop was allotted to Late Shri Suraj Balram Sahni who was a member of the Displaced Merchants Cooperative House Building Society (*hereinafter*, '*Society*'), and was allotted Shop No.57, Esplanade Road, Delhi. During the emergency in 1975-1977, all the shops in the Cycle market at Esplanade Road were demolished and alternative shops were offered by Appellant/Defendant – Delhi Development Authority (*hereinafter*, '*DDA*') to the owners of the said shops.

4. After the death of Shri Suraj Balram Sahni, disputes had arisen in the Sahni family, which had finally led to an Award dated 22th May, 1978. Under the said Award, the suit property fell in the share of one of the brothers Shri Ram Gopal Sahni who is the Plaintiff in the present case (*hereinafter*, '*Plaintiff*'). The Award was made rule of court by the Delhi High Court vide order dated 14th March, 1980 and hence there is no dispute that the shop at Esplanade Road fell in the share of the Plaintiff.

5. Correspondence seeking an alternate shop had ensued between the Plaintiff and the DDA. On 4th January, 1977, the DDA allotted Shop No.43 at Janakpuri, Block 'B', New Delhi (EX. PW-1/2) (*hereinafter*, '*Janakpuri Shop*') to the Defendant no.2 – brother of the Plaintiff, who was then in correspondence with the DDA, in lieu of the suit property. The DDA

demanding premium of Rs.30,100/- for the shop and called upon the Defendant No.2, to pay 20% of the said amount, i.e., Rs.6,020/-. There is no dispute that this amount was duly paid. Various other shop owners in the cycle market were allotted alternate shops in Jhandewalan area itself. Various letters of allotment (PW-1/2 (Colly.)) have been placed on record. The Janakpuri Shop which was allotted, got cancelled at that time, due to the various *inter se* disputes that were pending between the parties.

6. The DDA had, on 8th November, 1973, decided to allot a shop cum godown in favour of Defendant No.2, Plaintiff's brother in the Jhandewalan area (*hereinafter*, '*Jhandewalan Shop*'). As per the said letter, the Plaintiff's brother was entitled for allotment of shop of 239.7 square feet along with a basement of the same size in the new cycle market at Jhandewalan (EX.PW-1/12). The amount which was demanded for the said allotment was paid by Mr. Ram Gopal Sahni, Defendant No.2 i.e., the Plaintiff's brother. After the Award settled the disputes between the Plaintiff and his brother, between 1980 and 1981, the Plaintiff wrote several representations to the DDA seeking allotment of an alternative shop. Even a no objection was obtained from his brother for allotment of a shop in favour of the Plaintiff as recorded in the order dated 1st October, 1981. The Plaintiff repeatedly requested for allotment of a shop in Cycle Market, Phase-I, Jhandewalan. The repeated letters of the Plaintiff went unreplied. When the DDA did not take any steps for allotting the shop, a suit came to be filed in the Delhi High Court. Orders passed in the said suit being Suit No.1372/1982, are extremely relevant and show the callous manner in which the DDA has conducted itself. The same shall be elaborated hereinbelow. In the suit filed by the Plaintiff, on 28th February, 1986, the following issues were framed in the

suit: -

- “1. Whether defendant No.1 is not liable to transfer the right, title and interest of property No.57, Esplanade Road or any other property or compensation being offered in lieu thereof to the plaintiff? OPP
2. Whether the defendant No.2 is in possession of 5 shares of defendant No.3 society if so to what effect? OPP
3. Whether defendant No.3 is not liable to transfer the shares in the name of defendant No.2 to the plaintiff? OPP
4. Relief.”

7. On 6th November, 1987, both the Defendant No.2 and Defendant No.3 i.e., the Society, gave their no objection for allotment of a shop in favour of the Plaintiff. The statement of Shri Kesar Dass Juneja on behalf of the Society was also recorded by the Court on the said date. However, since no response was forthcoming by the DDA, on 25th August, 1988, the Court recorded as under: -

“Counsel for the defendant states that without prejudice to her contentions one shop-cum-godown will not be put up for auction. This is acceptable to the counsel for the plaintiff. Ordered accordingly. The defendants are free to auction the other shops-cum-godowns. I.A. stands disposed of.”

8. On 11th August, 1989, the Court records that the Plaintiff has made a payment of Rs.6,020/- to his brother, and hence there is no impediment in allotment of the shop in favour of the Plaintiff. On 6th December, 1989, the counsel for DDA categorically admitted that out of the total amount payable of Rs.30,100/-, Rs. 6,020/- stood paid, and hence a balance of Rs.24,980/-, with interest, was payable if the Plaintiff wished to get the allotment of the shop in his favour. On 16th January, 1990, the following order was passed by

the Court: -

“Learned counsel for the D.D.A. states that after giving credit of Rs.6020/- paid by defendant No.2 on 13.1.77 the balance of Rs.24080/- remained due towards the principal amount. As per the agreement, the DDA was to charge interest @ 16% if the installments are paid on time. However, the payments have not been paid in time, D.D.A. is entitled to charge interest @ 18%. Thus the total amount of interest on Rs.24080/- comes to Rs.54180/-. Learned counsel for the DDA states that even restoration charges are payable, i.e. at the rate of 25% of Rs.30100/- which comes to Rs. 7525/-. The plaintiff will have to pay maintenance charges also w.e.f. 13.1.77 upto date at the rate of Rs.142.50 per annum and the ground rent. Learned counsel for the plaintiff states that the plaintiff will be making this payment. D.D.A may indicate the amount of ground rent before the next date. List again on 30.1.90.”

9. On, 30th January, 1990, the Court further records that the Plaintiff is willing to make the payment of the ground rent as also the balance amounts. The Court directed that upon the payment being made, the allotment of the alternate site which was reserved on 25th August, 1988, shall be given to the Plaintiff. It is relevant to point out that what was reserved for the Plaintiff was a *shop-cum-godown* at the cycle market in Jhandewalan. Thus, possession was to be handed over within 3 weeks after the payment was made. The Court had recorded that once possession has been handed over, nothing else would survive in the suit.

10. Thereafter, the Court expresses dissatisfaction over the way DDA failed to hand over the possession of the Jhandewalan Shop to the Plaintiff. DDA continued to repeatedly delay the matter and senior officers of the DDA gave repeated assurances to the Court that the matter would be sorted

out. On 31st August, 1990, DDA suddenly informed the Court that a sum of Rs.4 Lakhs is payable by the Plaintiff for allotment of a shop in his favour, and on 7th November, 1990, the DDA expressed that it is only willing to allot the alternative accommodation at Janakpuri and not Jhandewalan.

11. On 7th January, 1991, the Plaintiff stated before the Court that he would like to have allotment of the Jhandewalan Shop at the original price and not the Janakpuri shop. On 9th August, 1994, the DDA assured the Court that a formal decision is to be taken by the Vice Chairman, and finally on 2nd September, 1994, the Court records as under:-

“S.NO.1372/82 & IA.5138/92

Mr. Sethi states that he has got the instructions to convey that Shop No.116-A, Cycle Market, Jhandewalan Extension, New Delhi will be allotted in favour of the plaintiff. Let the DDA issue allotment letter within three weeks from today. At this stage, counsel for the plaintiff states that similarly situated people had been allotted shop-cum-godown in Jhandewalan. There are certain godowns which are lying vacant. The request of the plaintiff for godown may also be considered by DDA and if permissible he be allotted the same. Let Mr. Sethi seek instructions in this regard. Plaintiff will furnish the particulars of the godown which are lying vacant.

Defendant will return the cheques of the plaintiff which have not been encashed and in lieu thereof the plaintiff will issue fresh cheques.

To come up on 20th October, 1994.”

12. Thus, on 2nd September, 1994, the DDA's stand was that they would allot Shop No.116-A, Cycle Market, Jhandewalan Extension i.e., the Jhandewalan Shop, Delhi to the Plaintiff. Thereafter, however, the DDA took a complete u-turn. Whereas on 2nd September, 1994 only fresh cheques were to be issued by the Plaintiff in lieu of the old cheques, on 24th October,

1994, the DDA demanded that new prices as claimed by them would have to be paid by the Plaintiff to get allotment of the shop. The Court passed the following order: -

“The Director, Commercial Land and Deputy Director C & D are present. Mr. Sethi appearing for them states that the prices which has now been claimed by the DDA has to be paid by the plaintiff. Whereas according to the plaintiff the price of the shop in question has been paid as had been paid by other persons and as has been demanded by the DDA. Since these assertions are denied by the DDA let a detailed affidavit be filed indicating how much price was taken for a similar situated shop from other persons and to whom allotments made and also whether the basements were also allotted to other similarly situated persons. In the meanwhile, the shop allotted to the plaintiff i.e. 116-A, Cycle Market, Jhandewalan, New Delhi be not cancelled and if there is basement available may also be kept reserved.”

13. Thus, the Court directed that the Shop No.116A, Cycle Market, Jhandewalan, Delhi shall not be cancelled, and the basement, if any, shall also be reserved for the Plaintiff. On 2nd May 1996, since the affidavit filed by the DDA was not in terms of the Court order dated 24th October, 1994, an officer of the DDA was directed to be present. The matter continued to remain pending before the High Court. The matter was then transferred to the District Court, due to the enhancement in the pecuniary jurisdiction on 17th January, 2005. The Trial Court expressed enormous frustration and directed the Director/Commissioner Land disposal DDA to be personally present. The Court also recorded that the statement of the Deputy Director, DDA was also palpably false. On 29th October, 2005, the Court was told that the amount of Rs.87,677.50/-, which was paid was towards the Janakpuri

Shop and not the Jhandewalan Shop. Finally, the matter was put up for evidence.

14. Mrs. Kamal Sahni was appointed as the guardian of the Plaintiff, as the Plaintiff was suffering from various diseases, including Parkinson's. Finally, evidence was led in the matter. Vide the impugned order, the Trial Court decreed the suit of the Plaintiff and directed as under: -

*13. **Relief:-** In view of the above observations, instant suit is decreed with cost in favour of the plaintiff and against the defendants. Defendant no. 1 is directed to transfer the right, title and interest of shop cum godown in Cycle Market, Jhandewalan New Delhi to the plaintiff in lieu of shop no. 57, Esplanade Road, Delhi. The plaintiff has already deposited on 4.2.90, in terms of order dated 30.1.90 of Hon'ble High Court Rs.87,667.50/-, as noted in the order dated 29.3.90 by a pay order. In addition, plaintiff is entitled to benefit of Rs.6020/- deposited by defendant no. 2 with the DDA. The defendant no. 1 by Ex. PW-1/14 dated 8.4.93 had demanded Rs.4,77,751/- for shop cum godown from the plaintiff. This is a indication of the then prevalent price shop cum godown in Cycle Market, Jhandewalan, Delhi, The plaintiff is directed to deposit the balance amount of Rs.3,84,063.50/- within two weeks from the date of this judgment and on deposit of the said amount, the DDA shall hand over vacant peaceful possession of the shop cum godown at cycle Market, Jhandewalan, New Delhi or shop and a godown in Cycle Market, Jhandewalan, New Delhi to the plaintiff within one month from the date of deposit of the amount by the plaintiff. As the shop cum godown has already been reserved as per order on file, the same may be given to the plaintiff in compliance of the decree. Decree sheet be prepared. File be consigned to record room."*

15. Thus, the Trial Court directed the Plaintiff to deposit a sum of Rs.3,84,063.50/- and further directed the DDA to handover vacant and

peaceful possession of the shop at Jhandewalan Extension to the Plaintiff.

Analysis and Findings

16. The present appeal filed on 20th December, 2013 was delayed by more than 142 days. By then the Plaintiff had in fact deposited the amounts as directed by the Trial Court. When notice was issued in the appeal on 20th December, 2013, this Court had directed that the execution of the decree shall remain stayed, but the Plaintiff can seek refund of the amounts deposited. On 11th August, 2014, the Court records as under: -

“A perusal of letter of allotment dated 27th September, 1994 indicates that shop-cum-godown in question, that is, 116-A, Cycle Market, Jhande Walan, Phase-I, New Delhi was proposed to be allotted to respondent no. 1 for Rs.7,47,820/-. Learned counsel for the respondents submits that he has got instructions from respondent no. 1 to state that respondent no. 1 will be willing to pay the aforesaid amount, without interest, after adjustment of the amounts already paid. He further submits that this statement is being made without prejudice to the rights and contentions of respondents in the appeal. Counsel for the appellant seeks time to take instructions.”

17. Thus, the Plaintiff even agreed to deposit Rs. 7,47,820/-. Unfortunately, however, on the next date i.e. 5th September, 2014, the DDA demanded 28 Lakhs from the Plaintiff for the allotment of the Jhandewalan Shop. The counsel for the Plaintiff submits that the Plaintiff has not sought the refund from the DDA of the amounts which have already been deposited. Thus, the amount as per the impugned decree, stands deposited with the DDA. After arguments were heard on 1st March, 2018, counsel for the DDA reverted by stating that the DDA is willing to give the shop to the

Plaintiff for a sum of Rs.7,47,820/- along with interest which would constitute almost 30 Lakhs. This is obviously not acceptable to the Plaintiff. Thus, the matter is being decided on merits.

18. The admitted position is that the shop of the Plaintiff was destroyed during the Emergency, and he was entitled to an alternate shop. Initially the Plaintiff (including his brother) was allotted the Janakpuri Shop for a total consideration of Rs.30,100/-. As per the demand of the DDA, 20% of the said price i.e. Rs.6,020/- had to be deposited with the DDA. Thereafter, the DDA on 30th November, 1992 (Ex.PW1/4) informed the Plaintiff as under: -

“F.4(75)72/IMPL

D.S.Nijjer

Deputy Director (CE)

New Delhi-23 30-11-92

*Shri Ram Gopal Sahni,
D-381, New Friends Colony,
New Delhi.*

Sub : Allotment of shop at Cycle Market Jhandewalan

Sir,

I am directed to inform you that shop no.110 (Intermediate shop) in Cycle Market Jhandewalan who has been allotted to you in draw held on 30.11.92. The possession of the shop will be handed over on payment of premium of the allotted shop and on completion of condal formalities for which a letter is being issued separately.

Yours faithfully,

Sd/-

(D.S. Nijjer)

Deputy Director”

19. The calculation slip of the consideration for the said shop showed that the total consideration was Rs.4,77,751/-. Repeated orders of this Court

showed that the initial confusion between the Janakpuri Shop and the Jhandewalan Shop was created by the DDA itself as recorded in order dated 30th January, 1990. In the said order, the Court clearly records that the amount liable to be paid for the alternate shop in lieu of the shop that was demolished comes to Rs.87,667.50. This was as a result of a submission made by the DDA on 16th January, 1990. On 30th January, 1990, the Court directed that the possession of the Jhandewalan Shop, already reserved for the Plaintiff vide order dated 25th August, 1988, be handed over to the Plaintiff. When one refers to the order dated 25th August, 1988, it is clear that one *shop-cum-godown* was not to be put for auction and was reserved for the Plaintiff. It is not in dispute that a *shop-cum-godown*, only exists at Jhandewalan and not at Janakpuri.

20. Even going by the allotment made on 30th November, 1992, the amount liable to be paid is Rs.4,77,751/- for which the pay order of Rs.87,667.50 was given to the DDA. EX.PW-1/15 shows that the demand for the shop at Jhandewalan was Rs.4,77,751/-. Even as on 1993, the Plaintiff had made two payments i.e. Rs.6,020/- and Rs.87,667/- upon the demands of the DDA. The entire record does not show any justification whatsoever for non-allotment of the shop.

21. Counsel for the DDA, Mr. Dhanesh Relan, has sought to justify the non-allotment of the shop by relying on a Resolution dated 4th December, 1975 (*hereinafter*, 'Resolution') which reads as under: -

“Attention of the Authority is invited to its Resolution No.155, dated 26.7.71 vide which disposal of shops in Cycle Market at Jhandewalan was decided. The clearance operation from Esplanade Road has since been carried out. During the clearance operation, it was noticed that there

were 6 members of the Displaced Persons Co-operative Society who had stopped doing cycle business but were doing other business etc. Obviously, it will not be proper to give these persons cycle shops and basements. It is, therefore, proposed that instead of cycle shops and basements, these persons may be allotted office flats in Cycle Market at Jhandewala at reserve rate as a resettlement case. Those who do not avail of this offer can be considered for allotment of DDA shops at reserve rate in D.D.A's colonies. Three persons have already applied for allotment of office flats in Jhandewala and it is suggested that they may be allotted office flats, instead of the cycle shop and basements, at reserve rate."

22. His submission on the basis of the Resolution is that the Plaintiff was not running a cycle shop from the cycle market on Esplanade Road, and therefore, he could only be allotted the Janakpuri Shop and not the Jhandewalan Shop. This Resolution, firstly, has not been put to the Plaintiff at any point. The Plaintiff made repeated representations to the DDA, however, it was never told to the Plaintiff that he is not entitled to a shop at Jhandewalan Extension. In fact the Plaintiff being a member of the Society was entitled to an alternate shop just like all other allottees of the said Society. This was confirmed even by the officer of the Society, who appeared before the Court on 6th November, 1987. The statement of Shri Kesar Dass Juneja, President of the Society reads as under: -

*"Statement of Mr. Kesar Dass Juneja,
President of deft. No. 3 Society on SA*

I am president of defendant No.3. Late Sh. Suraj Balram Sawhney is recorded as a member of the defendant society. The shares in his name have been transferred, on his death, to the name of defendant No.2, Sh. Krishan Gopal Sawhney. (Sh. Krishan Gopal Sawhney has died and the legal

representatives have been brought on record.) There are five shops in the Jhandewalan Complex which have not yet been allotted to anyone because of family disputes. The shop which is allottable to the legal representatives of defendant No. 2 is one such shop. Defendant-society has no objection if directions are issued for the transfer of shares standing in the name of Lt. Sh. Krishan Gopal Sawhney to the name of the plaintiff in accordance with the bye laws of the Society.

*R.O. & A.C.
6.11.87*

JUDGE.”

23. Thus, it is not for the DDA to decide as to what use the Plaintiff has to put his shop to. The DDA was merely allotting an alternate shop due to the demolition carried out during the Emergency. The DDA is not entitled to question the Plaintiff's right to use the shop. Moreover, this so-called Resolution surfaced for the first time in the evidence of DW-1, Shri Fateh Singh, Assistant Director, (Commercial Estate Branch) who tried to set up a completely new case than what was pleaded in the written statement.

24. The demolition during the emergency was termed by DW-1 as a clearance operation. He relied on the Resolution dated 4th December, 1975. Thereafter, the DDA has argued that the brother of the Plaintiff i.e. DW-2 had given his consent to take the Janakpuri Shop. After the initial amount was paid, due to family disputes, the deposit of Rs.12,060/- constituting the 2nd and 3rd instalment was not made. The entire evidence is premised on the Resolution and a completely new case has been set up at the evidence stage. The witness concedes that before the High Court, the DDA made a statement as under: -

“16. That is appears that there appears to be some confusion and the plaintiff contended before this Hon'ble High Court of Delhi that an amount of Rs.87,667.50 was in

respect of shop at Jhandewalan whereas in fact the truth is that the said price was of the shop at Janakpuri and not at Jhandewalan.”

25. Thus, he admits that the DDA had submitted before the High Court that the cost of Rs. 87,667.50 was for the Jhandewalan shop, albeit wrongly. What is, however, surprising is the scant regard shown by the DDA to the orders passed by this Court. DW-1 in his evidence states that *“that no shop was reserved in favour of the Plaintiff by the DDA at Jhandewalan.”*

26. This is in the teeth of the order dated 25th August, 1988 which clearly required the DDA to reserve a *shop-cum-godown* at Jhandewalan for the Plaintiff. Thus, the conduct of the DDA by not reserving the Jhandewalan Shop for the Plaintiff, as directed by this Court, is contemptuous to say the least. The witness has thereafter stated that physical verification was done, and the shop at Jhandewalan was offered on 8th April, 1993, as is clear from DW-1/7, which is also PW-1/14.

27. In his cross-examination, DW-1 further admits that the shops at Esplanade Road were not designated only for the purpose of the cycle market. He also admits that there is nothing to show that the majority of the shops are only dealing with cycle parts at Esplanade Road. The witness, DW-1 was not able to point out any document to show the reserve price at any shop/godowns at Jhandewalan. The witness admitted that no document exists to show the cancellation of the allotment of the Janakpuri Shop and no intimation of such cancellation was ever sent. He also admits that there is no document available on record to show that the Plaintiff was not entitled to the alternate shop. In his cross-examination, he categorically admits as under: -

“Q. Is it correct that subsequently the plaintiff has been allotted a shop-cum-godown by DDA at cycle Market, Jhandewalan, Delhi in lieu of shop No. 57, Esplanade Road, Delhi?”

Ans. It is correct that later on the plaintiff has been allotted a shop-cum-godown by DDA at cycle Market, Jhandewalan, Delhi in lieu of shop No. 57, Esplanade Road, Delhi. The allotment letter is on record of the case file and is Ex. DW1/7 in respect of property No. 110 and there is another one in respect of property No. 116-A which is Ex. DW1/9.

Q. Was there any order passed by the Delhi High Court in the present suit requiring the DDA to calculate "the balance premium payable in respect of Janak Puri allotment" to Sh. Krishna Gopal Sahni ? If yes, point out the order?

Ans. I have gone through Para 15 of my affidavit wherein I have stated that in compliance to the Hon'ble High Court order, the balance amount payable in respect to the Janak Puri Shop was intimated in the Hon'ble High Court. However, there is no such order of the Hon'ble High Court in the present suit vide which the High Court had ordered the DDA to calculate the balance amount payable in respect to the Janak Puri shop.

I cannot give the date of cancellation of the shop bearing No. B-43, Janak Puri, Delhi which was allotted to Kirshna Gopal Sahni.”

28. DW-1 also admits that the amount of Rs.87,667/- demanded by the DDA was deposited by the Plaintiff, but was neither encashed nor returned. One important admission by this witness is that even there are several persons who were not engaged in the cycle trade, who have been allotted shops in the Jhandewalan cycle market. The witness also admitted that one shop cum godown is vacant.

“Q: Is there any vacant shop and/or shop cum godown at Cycle Market Jhandewalan, with the DDA, which is available for being offered to the plaintiff?”

Ans. Yes. One shop cum godown bearing no. 116-A is lying vacant.

Q: When was the shop cum godown lastly allotted by DDA in Cycle Market, Jhandewalan. What was the price demanded by DDA?

Ans. It was in the year 1994 for Rs.7,47,820/- as total cost.

Q: When was the shop cum godown lastly allotted by DDA, to any person other than the plaintiff, in Cycle Market, Jhandewalan. What was the price demanded by DDA?

Ans. I do not know. It is a matter of record.

Q: Please see Ex. DW-1/9. Does the amount of Rs.7,47,820/- include any claims towards penalty, interest etc. for the said property?

Ans. The said amount includes only the cost, as calculated by the Finance Department of DDA. Over and above the said amount, DDA is entitled to documentation charges, ground rent and maintenance charges.

Q: What is the basis for DDA to demand maintenance charges of the said property from the plaintiff, as set out in Ex. DW-1/9?

Ans. The maintenance charges are payable to DDA till the time the service of the colony is handed over by DDA to MCD.

Q: Is it correct that DDA has not invited offers from public for allotment of Shop cum godown 116-A, Cycle Market, Jhandewalan?

Ans. It is correct. It is in the lavatory block."

29. In cross-examination, he also admits that the DDA will not allot a shop-cum-godown to the Plaintiff even at the cost i.e. Rs.7,47,820/-. DW-1 further states that the current cost is Rs.55,21,013/-, however there is no document to support this statement.

30. The DDA has placed reliance on ***Amolak Raj v. Union of India JT 2002***

(10) SC 86 and *Dewan Singh v. Government of NCT of Delhi* AIR 2011 Del 76 in support of their argument that a person whose land has been acquired has no absolute vested right to claim allotment of a plot as a matter of right, and certainly not in a particular area of his choice. Allotment is to be done on the basis of the availability with the DDA. All these cases relate to land acquisition proceedings and alternative plots in lieu of the land acquired. They have no application in the facts of the present case. Here, since the DDA had admitted that the Jhandewalan Shop-cum-godown was allotted to the Plaintiff, as also vide order dated 25th August, 1988, the Court had directed the DDA to keep the same reserved for the Plaintiff, these judgments have no application.

31. From an appreciation of the entire evidence on record, the undisputed facts are that initially the Plaintiff was allotted a shop at Janakpuri. A Learned Single Judge of this Court had directed the Jhandewalan *Shop-cum-godown* to be kept reserved for the Plaintiff. Cost of this shop was Rs.4,77,751/-. The Plaintiff made payments on two occasions i.e. initially when the Janakpuri shop was allotted, and thereafter under orders of Court, the sum of Rs.87,667.50 was paid. The Plaintiff has been directed to deposit the sum as directed by the Trial Court for allotment of the Jhandewalan Shop. Admittedly, a shop cum godown at Jhandewalan is vacant. The Plaintiff is a member of the Society whose shop was demolished during the Emergency. The Resolution dated 4th December, 1978 was never pleaded in defense. It was put forward for the first time in the Defendant's evidence. Admittedly, this Resolution had not been given effect to inasmuch as several allottees who have been allotted the shop are not carrying on cycle business. Thus, the Resolution has in reality never been implemented by the

DDA. Reliance on the said Resolution, is thus completely misplaced.

32. All the members of the Society who had shops at the cycle market at Esplanade Road have been allotted alternate shops. The DDA has in fact committed contempt of orders of this Court, and also has deliberately misled the Court in the suit proceedings. The orders of the various Ld. Single Judges who were hearing the present suit since 1987, till the matter was put to trial, clearly demonstrates the completely unreasonable stand of the DDA which kept resiling from the repeated statements made by it before the Court.

33. The Plaintiff is entitled, as a matter of right, to an alternate allotment. It was for no fault of the Plaintiff that the shop was demolished. The allotment of the alternative plot/shop has been delayed for more than four decades. The conduct of the DDA of not replying to any of the representations of the Plaintiff is unacceptable to say the least. The evidence on record completely supports the case of the Plaintiff and there is no reason whatsoever why the Plaintiff should not be allotted the shop at Jhandewalan Cycle Market. The amount as directed by the Trial Court has also been deposited by the Plaintiff with the DDA. The DDA is directed to allot Shop No.116A, Cycle Market, Jhandewalan, Delhi to Mrs. Kamal Sahni, the wife of the Plaintiff, within 4 weeks from today.

34. Keeping in view enormous mental agony and harassment that has been caused to the Plaintiff in the present case, costs of Rs.50,000/- (Rupees Fifty Thousand) shall be paid to the Plaintiff by the DDA within four weeks. The appeal is, accordingly, dismissed.

PRATHIBA M. SINGH
JUDGE

MAY 23, 2018

Rekha