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

Reserved on: 11th April, 2019
Pronounced on: 29th April, 2019

+ W.P.(C) 4902/2018 & CM APPLs.4903/2019, 4904/2019

RAM KUMAR Petitioner

Through: Mr. C. Mohan Rao, Adv. with
Mr. Lokesh Kumar Sharma,
Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ANR.

..... Respondents

Through: Mr. Ajay Verma, SSC for DDA
with Mr. Dhanesh Relan, SC,
Mr. Sumit Mishra, Ms. Komal
Sorout and Mr. Rajiv Jha, Adv.
Mr. P.S. Singh, Sr. Panel
counsel with Mr. Rajpal Singh,
Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. The petitioner, whose land was compulsorily acquired, in 1992, under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as “the Land Acquisition Act”), is, as per the information stated to be available on the website of the Delhi Development Authority (DDA), being allotted an alternative plot in Narela. Prior thereto, however, the petitioner had, in 1992 itself, been paid

compensation, in *lieu* of the said acquisition of his land, as per the statutory mandate of the Land Acquisition Act. By this writ petition, the petitioner prays that the DDA be directed to allot him an alternative plot, measuring 250 square yards, at Dwarka, instead of Narela, “at the rate commensurate with the rate at which the petitioners land was acquired”. In other words, the petitioner’s grievance is directed against (i) the rate at which the alternative plot is being allotted to him, and (ii) the situs/location of the alternative plot, with the petitioner asserting that he is entitled to an alternative plot at Dwarka, rather than at Narela.

2. The two questions which arise for consideration, before this Court, in this writ petition are, therefore, clearly, capable of delineation thus:

- (i) Is the petitioner entitled to claim that the rate, charged from him for the alternative plot, must be “commensurate with the rate at which the petitioners land was acquired”?
- (ii) Is the petitioner entitled to an alternative plot at Dwarka, instead of Narela?

3. With the above prefatory background, I proceed to allude, in some more detail, to the relevant facts.

The Facts and Rival Submissions

4. Possession of the petitioner’s land was taken over, by the DDA, on 26th August, 1992, and Award No 1/93-94 was passed, acquiring

the said land, on 2nd April, 1993. Against such acquisition, the petitioner was paid compensation of ₹ 59 lakhs, i.e. at the rate of ₹ 225 per square yard. There is no dispute about the fact that the said compensation was as per the law, and the provisions of the Land Acquisition Act.

5. In terms of the “Allotment of Alternative Plot under the Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961” (hereinafter referred to as “the 1961 Scheme”) of the DDA, which was existing at the said time, the petitioner was entitled to be considered, consequent to the aforementioned acquisition, of his land, for allotment of an alternative plot. A recommendation letter, dated 31st January, 2006, was issued by the Land and Building Department, Delhi Administration, to the said effect, which reads as under:

**“DELHI ADMINISTRATION, DELHI
LAND & BUILDING DEPARTMENT
VIKAS BHAWAN: NEW DELHI**

No. F. 31 (50)/201/94-L & B/Alt.

Dated:

To

The Commissioner (Land)
Delhi Development Authority,
Vikas Sadan, I. N. A., New Delhi.

Subject: Allotment of alternative plot under the
scheme of Large Scale Acquisition,
Development and Disposal of Land in Delhi,
1961

Sir,

I am directed to request you to allot a plot measuring 250 square yards (Two Hundred Fifty Sq. Yd) to Sh. Ram Kumar, s/o Shri Ram Kishan of Village Kakrola Delhi in lieu of his/her/their acquired land bearing kh. Nos 83/24 (4-16), 25 (4-16), 90/4 (4-16), 5 (4-16), 6/1 (4-10), 6/2 (0-6), 7 (4-16), 8 (4-16), 13/2 min (1-0), 14/1 (2-8), 15 (4-16), 16 (4-16), 17/1 (2-8), 18/1 (2-1), 102/17/1 min (0-10) total measuring 51-18 Bigha in which applicants share is ½ i.e. 25-19 Bigha which is acquired vide Award No 1/93-94 Dated 2-4-93 of village Kakrola, Delhi in West Zone, as he/she/they has/have been found entitled for the same. The date of Possession 26-8-92.

Yours faithfully,

Dy Director (L & B)

No. F. 31 (50)/201/94-L & B/Alt./13122
Dated:31/01/2006

Copy to Sh. Ram Kumar, S/o Ram Kishan R/o Vill. & P.O. Kakrola, New Delhi. Further correspondence in the matter may please be made with the above mentioned office. The allotment of alternative plot is subject to the availability of plot with DDA. However, it may clearly be noted that this letter does not carry with the legal commitment for the allotment of alternative plot.

In case, by virtue of allotment of this plot, the allottee comes to hold land in excess of the ceiling limit laid down under the provision of Urban Land (Ceiling & Regulation) Act, 1976, the allottee will apply to the Competent Authority U/S 15 of the Act.

Dy Director (L & B)”

6. I may note, at this juncture, that the case of the petitioner, as ventilated in, *inter alia*, para 4 of the writ petition, is that he “is

entitled for allotment of a 250 square yard plot *in Dwarka* in terms of the scheme”. The writ petition does not, however, advert to any provision, of the 1961 Scheme, which would entitle the petitioner to an alternative plot in Dwarka, as opposed to any other area.

7. Be that as it may, *vide* demand-cum-allotment Letter of 15th June-25th June, 2010, the petitioner was, in fact, allotted Plot No. 52, Pocket-4, Block-B, Sector 23, Dwarka Residential Scheme Phase-II. Against the said demand-cum-allotment letter, the petitioner claims to have paid ₹ 39,93,129/-, which was more than the demanded amount, *vide* Challans dated 3rd August, 2010, 15th November, 2010, 18th May, 2011 and 9th September, 2011.

8. The writ petition further avers that the petitioner was informed (though it does not say when) that the allotment, of the aforementioned plot at Dwarka, to him, had been cancelled and that he would be allotted an alternative plot in the next draw, to be held in 2012, but that, in fact, no such alternative plot was allotted to him.

9. On 24th April, 2017, the DDA released a public notice, in the newspaper, intimating that persons who had been earlier allotted plots in Dwarka, Rohini and Narela would be allotted plots in Narela, for which the draw would be held on the same day, i.e. 24th April, 2017. In the said draw, the petitioner was allotted Plot No. 28, Pocket-3, Sector A-5, Narela. Further, regarding the demand based on the petitioner against the said allotment of the plot in Narela, para 10 of the writ petition avers thus:

“It is submitted that the petitioner was allotted plot in Dwarka in the year 2010 at a cost of ₹ 18,810/- per square metre. The total demand of ₹ 39,31,290/- was made for the plot of 209 m². The current demand of respondent No. 1 for Dwarka is ₹ 36,656/- per sq. mtr. i.e. for a 209 sq.mtrs plot the petitioner shall have to pay ₹ 7,661,104/-, whereas the petitioner for his entire land measuring 26,150 Sq. Yds., was paid a total compensation of ₹ 59 lakhs only. It is thus clear that the respondent is compulsorily acquiring petitioner’s land effectively without paying any compensation and over and above demanding about 15 lakhs more from the petitioner for the purported allotment of an alternative plot. The purported compensation and offer of alternative allotment and rehabilitation is a mere mirage, an illusion to give an appearance acceptability. A closer look at the modus operandi of the State however shows that the action is nothing but swindling by the state and its instrumentality. The entire exercise is an effort to give a colour of Constitutionality and acceptability to draconian actions of depriving the person everything and making him a destitute.”

This argument is again sought to be underscored, in para 12 of the writ petition, by averring thus:

“There is absolutely no correlation between the grant of compensation and demand for alternative plot. While the petitioner was paid ₹ 225/- per sq. yd. a demand of minimum ₹ 36,656 per sq. mtr. is likely to be made by the respondent. Thus the demand from the petitioner is about 160 times more.”

10. On these facts, and submissions, are premised the prayers in the writ petition, to which para 1 *supra* alludes.

11. In opposition to the writ petition, the DDA has filed a counter-affidavit, as well as an additional affidavit.

12. In its counter-affidavit, the DDA places strong reliance on the judgment of this Court in *Ramanand v. U.O.I.*, AIR 1994 Delhi 29, to contend that the petitioner did not even have a right to an allotment of an alternative plot, let alone a right to allotment of such a plot in an area of his choice. *Ramanand (supra)*, it is submitted, concludes both the issues, raised by the petitioner in the writ petition, against him. Attention is specifically invited, in this context, to the stipulation, in the letter dated 15th June – 25th June, 2010 *supra*, on which the petitioner places reliance, to the effect that the allotment of the alternative plot was subject to availability thereof, and that the letter did not accord any legal commitment in that regard. Allotment of an alternative plot, it is stated, was “purely an administrative measure of rehabilitation as per the prevailing policy on the subject land at predetermined rates. These predetermined rates being less than the prevailing market price, it is submitted that the discretion, regarding the area in which the land is to be allotted, vests, and rests, with the DDA. The fact that the persons waiting for allotment of alternative plots have already received statutory compensation, equal to the market value of the land acquired, in terms of the Land Acquisition Act, is emphasised. In this connection, the counter-affidavit also points out that the decision in *Ramanand (supra)* further holds that the predetermined rates, prevailing on the date when the offer was made to the petitioner, by the DDA, for allotment of a specific plot of land in a particular area or zone, would be applicable.

13. The DDA further refutes the submission, of the petitioner, that alternative plots are available at Dwarka. The area at Dwarka, it is submitted, is in the vicinity of the Exhibition-cum-Convention Centre (ECC) project, and is in the nature of developed residential and commercial land, which is being further developed by the DDA to enhance the land value. In Sector 24, Dwarka, further, it is submitted that another international project, namely the Second Diplomatic Enclave, is coming up, and the land which remains is already in use for development of the area. Land is lying vacant in Sector 27, 28 and 29 of Dwarka, but the DDA avers that this is “part of the land earmarked for planning the designing of city level Development Plan for High Density, mixed land use (Economic/Commercial Residential Hubs), for which RFP documents were prepared by the Engineering Wing and bids have been invited for appointment of Consultant.” Besides, the land lying vacant in these sectors are subject to a number of litigations, in fact as many as 25 court cases, of which, it is averred, 12 have already been decided against the DDA. The land, which, if at all, would remain in these sectors, it is pointed out, would be in bits and pieces, and not contiguous.

14. Besides, it is submitted, as per the extant policy, as contained in Circular dated 24th November, 2005, of the DDA, regarding allocation of alternative plots against land acquired, such plots are to be allotted in upcoming projects in developing areas, and not in developed areas. Dwarka, it is averred, is no longer an upcoming project, and has become a developed area, in which the land value is very high. The

specific prohibition, in the aforementioned Circular dated 24th November, 2005, of the DDA, against allotment of alternative plots in Dwarka and Rohini, is in the following terms:

“Since the above areas have been declared as **Developed Areas** no alternative plots may be allotted in these areas and allotments may be made only in upcoming projects.”

15. The writ petition, I may note, does not lay any challenge to this Circular which was, even otherwise, of a baker’s dozen years’ vintage, even on the date the writ petition was filed.

16. Further, it is averred, in the counter-affidavit, as under:

(i) At the meeting of the Screening Committee of the DDA, under the Chairmanship of its Vice-Chairman (VC), held on 4th November, 2015, against the proposal for “carving out of 78 residential plots (alternative plots) in pocket-2 in Sector-26, Dwarka Phase-II”, it was specifically decided thus:

“The proposal was presented by Director (Plg) Dwarka. After detailed deliberation, the proposal as reflected in the agenda was deferred with the direction that no land for such alternative plot shall be allotted in Dwarka with immediate effect and PC (LD) to put up a comprehensive list of plots to be allotted and land may be earmarked only in Narela for the purpose if required.”

(ii) At a subsequent meeting of the Screening Committee of the DDA, held on 6th February, 2018, however, a proposal was put up for “revisiting” the above decision, taken at the meeting

dated 4th November, 2015 *supra*, of the Screening Committee, in which it was decided as under:

“The proposal was presented by Dir (Plg) Dwarka.

Dir (Plg) Dwarka deliberated the earlier decisions of Authority resolution and Screening Committee as follows:

- The earlier decision of the SCM held on 04.11.2015 was not in line with the Authority Resolution of the meeting held on 23.12.1997 wherein it has been asked that complete justice should be done to the persons whose lands are required and DDA's Planning Department must adopt a flexible and practical approach so that more residential plots could be carved out within the vicinity of acquired lands.
- There is mismatch with regard to nos. of sizes of available plots vis-à-vis recommendations made by L & B Deptt., GNCTD for allotment.
- The allotment of alternative plots to the farmers whose land was acquired by DDA could not be made in time and as a result certain areas earmarked for allotment of alternative plots have been declared as the Developed Areas.

After detailed deliberation, the proposal is reflected in the agenda was **Approved with following observations:**

1. The decision of SCM held on 04.11.2015 is withdrawn.

2. The Planning Department shall modify the approved Layout Plans to accommodate the nos. and sizes of plots as per the details prepared by Lands Department subject to decision of Authority.

3. *Directions may be sought from Authority with reference to decision taken in 2006 regarding allotment of alternative plots only in upcoming projects in view of facts explained above and for decision on allotment of alternative plots in the already earmarked and now developed in Rohini III & IV and 2nd phase of Dwarka.”*

(Emphasis supplied)

(iii) To the above, the Director (Planning) responded, *vide* a note, addressed to the Commissioner (Planning) and the Commission (LD), which contains the following observations and requests/directions:

“1. Attention is invited towards letters dated 16.6.2017 and 16.10.2017 addressed to Principle Commissioner (LD) and Director (RL), respectively on the above cited subject. Along with the letter, layout plans of alternative plots which has been carved out at Rohini, Narela and Dwarka were forwarded for providing details of plots which have already been allotted, under consideration and the plots which are under litigation to explore the feasibility for reorganisation of plots. *This can be worked out only after the details are provided by the Lands Department. No information regarding details as requested by the Planning Department have been*

provided till date. In the absence of this information, no exercise for re-organisation of plots can be worked out. A copy of the layout plan of alternative plots of Rohini, Dwarka and Narela are again being forwarded for clearly earmarking in different colours, the plots already allotted, under consideration and under litigation.

2. The vacant residential land at Rohini and Narela are part of the land which have been earmarked for planning/designing of vacant plots for which RFP documents was prepared by Engineering Wing and bids have been invited for appointment of the Consultant to evolve city level development plan for High density mix and use Economic/Commercial/Residential hubs in DDA vacant land at Rohini, Dwarka and Narela.

(i) The residential land at Sector 27, 28 and 29 Dwarka are having 25 numbers of court cases as per the information of LM Wing and out of which 12 cases are already decided against DDA under Section 24 of Land Acquisition Act, 2013. There is least possibility for land in these sectors and the land would be in bits and pieces and not contiguous. These pockets are also part of RFP documents prepared as already referred above.

(ii) As regards the decision of Screening Committee, it is submitted that as per the Authority resolution, it has been mentioned that the alternative plots be allotted in the coming project of Dwarka, Narela, Rohini PH II & III. It may be seen that the decision of the Authority was in the year 1995 and the reference for allotment of alternative plots was for the upcoming projects at that time. As on date, the Dwarka Project is fully developed and the land value in Dwarka is very high. Further, it is informed that the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide letter dated 9.3.2017 of

Additional Secretary regarding Development and implementation of Exhibition-cum-convention Centre Project in Dwarka Sector-25 related to value capturing in terms of appreciation of value of DDA/Government land in the vicinity of Project site of ECC Dwarka (copy enclosed). DDA in its comments to Ministry have mentioned that ECC complex is to be developed in Sector 25, New Delhi the surrounding of which has already been developed as Residential and Commercial Area. Besides this, the area is being further developed by DDA and the enhanced value due to the proposed development of ECC complex will be captured by DDA/Government of India.

The matter needs to be seen in view of the above observations of DDA while considering planning and allotment of alternate plots.

In view of the above observations Land Department may take necessary action for revisiting the decision of Screening Committee taken on 4.11.2015. Further the details as desired above may kindly be provided immediately so that the feasibility of re-organisation of the plots can be worked out.”

17. In such circumstances, it is submitted that allotment of these plots, to the petitioner and other similarly situated persons, at predetermined rates, would result in a loss, to the DDA of ₹ 711.38 crores. It is submitted that the DDA can ill afford to sustain such a loss, as the main source of its income is auction, from which it meets its expenses.

18. The counter-affidavit further points out that the initial allotment of a plot, to the petitioner, at Dwarka, was cancelled by the DDA owing to non-payment, by the petitioner itself, of the requisite amounts, on time. It is pointed out that the payment of 10% premium, of ₹ 3,93,129, was delayed by 9 days. Payment of 25% of the total premium, amounting to ₹ 9,82,823/–, which was further payable within 60 days from the date of issue of demand letter, was further delayed by 82 days. The next instalment, of 50%, amounting to ₹ 19,65,645/–, which was to be paid within 60 days from the last date fixed for payment of 25% premium, was also paid, by the petitioner, only after a delay of 318 days, whereas the last instalment of 15%, of ₹ 5,89,694/–, was, again, paid after a delay of 290 days. It is pointed out that, though the petitioner had requested for condonation of the delay in payment, the DDA informed, by way of reply, that the allotment of the plot, in favour of the petitioner, stood cancelled, and that the policy of the DDA did not permit restoration beyond 180 days in the case of the first chance of allotment. However, the petitioner was informed that his case would be considered, again, for allotment, after a gap of one year, as per the Policy of the DDA. It was pursuant to this consideration, afresh, that the petitioner was allotted the plot at Narela.

19. It was in these circumstances, avers the DDA, that, on 27th April, 2018, a draw of lots was held, pursuant to which the petitioner was allotted an alternative plot in Narela, which was an upcoming project. It is contended that the issue of the zone, or locality, in which

the alternative plot is to be allotted, is a policy matter, with which this Court ought not to interfere.

20. On the above pleadings, arguments were advanced, in detail, by Mr. C. Mohan Rao, on behalf of the petitioner, and Mr. Dhanesh Relan on behalf of the DDA.

21. Mr. Rao, while conceding, fairly, that both the issues arising in the present case (as adumbrated in para 2 *supra*), stood decided, against his client, by ***Ramanand (supra)***, sought to contend, nevertheless, that ***Ramanand (supra)***, despite being a decision rendered by the Full Bench of this Court, ought not to be followed by this Court, while adjudicating the present writ petition. This, he would submit, was because (i) ***Ramanand (supra)*** was a decision rendered *per incuriam*, and (ii) ***Ramanand (supra)*** was “no longer good law”, in view of the “march of the law” and understanding of the relevant legal concepts, which has metamorphosed with time.

22. Expounding on both the submissions, as it were, in the same breath, ***Ramanand (supra)***, Mr. Rao seeks to contend, is *per incuriam*, being contrary to the earlier decisions of the Supreme Court in ***State of U. P. v. Smt. Pista Devi, (1986) 4 SCC 251*** and ***Hansraj H. Jain v. State of Maharashtra, (1993) 3 SCC 634***. Expanding on the submission, Mr. Rao first invites attention to Sections 21 and 22 of the Delhi Development Authority Act, 1957 (hereinafter referred to as “the DDA Act”), which read thus:

“21. Disposal of land by the authority or the local authority concerned

(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of-

(a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon; or

(ii) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.

(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

PROVIDED that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

(3) Nothing in the Act shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

22. Nazul lands

(1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "nazul lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that government upon such terms and conditions as may be agreed upon between the government and the Authority.”

23. Next, Mr. Rao would invite attention to Rule 6 of the Delhi Development Act (Disposal of Nazul Land) Rules, 1981 (hereinafter referred to as “the Nazul Land Rules”), which reads as under:

“6. Allotment of Nazul land at pre-determined rates

Subject to the other provisions of these rules, the Authority shall allot Nazul land at the pre-determined rates in the following cases namely:-

(i) to individuals whose land has been acquired for planned development of Delhi after the 1st day of January, 1961, and which forms part of Nazul land:

PROVIDED that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted;

(ii) to individuals in the low income group or the middle income group other than specified in clause (i) -

(a) who are tenants in a building in any area in respect of which a slum clearance order is made under the Slum Areas Act;

(b) who, in any slum area or the other congested area, own any plot of land measuring less than 67 square metres or own any building in any slum area or other congested area;

(iii) to individuals, other than those specified in clauses (i) and (ii), who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee;

(iv) to individuals belonging to Scheduled Castes and Scheduled Tribes or who are widows of defence personnel killed in action, or ex-servicemen, physically

handicapped individuals subject to the provisions of rule 13;

(i) to industrialists or owners and occupiers of warehouses who are required to shift their industries and warehouses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act:

PROVIDED that the size of such industrial plot shall be determined with reference to the requirement of the industry or warehouses set up or to be set up in accordance with the plants and such industrialists and owners of warehouses have the capacity to establish and run such industries or warehouses and on the condition that the land allotted at pre-determined rates shall not, in any case, exceed the size of the land which has been, if any, acquired from such industrialist or owners and occupiers of warehouses and which form part of Nazul land:

PROVIDED FURTHER that in making such allotment, the Authority shall be advised by the Land Allotment Advisory Committee;

(ii) to co-operative group housing societies, co-operative housing societies, consumer co-operative societies and co-operative societies of industrialists on "first come first served basis".

24. Mr. Rao seeks to submit that, in paras 9 and 10 of the judgment in *Pista Devi (supra)*, the Supreme Court drew attention to the provisions of Section 21(2) of the DDA Act, and opined that the provision thereof, which "contains a wholesome principle ... be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas". This philosophy, Mr. Rao would seek to point out,

was reiterated in *Hansraj (supra)*. Had the attention of the Full Bench deciding *Ramanand (supra)* been invited to the aforesaid judgements in *Pista Devi (supra)* and *Hansraj (supra)*, Mr. Rao would venture to submit, the decision in *Ramanand (supra)* might have been different. In *Hansraj (supra)*, Mr. Rao would seek to place reliance on paras 10 and 33.

25. In conjunction with this submission, Mr. Rao also places reliance on *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353, Ramji Veerji Patel v. Revenue Divisional Officer, (2011) 10 SCC 643, Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., (2007) 8 SCC 705, Bhusawal Municipal Council v. Nivrutti Ramchandra Phalak, (2015) 14 SCC 327, Wazirpur Bartan Nirmata Sangh v. U.O.I., 2002 SCC OnLine Del 1335 and Surjeet Singh v. Delhi Development Authority, 2013 SCC OnLine Del 972*. These decisions, Mr. Rao would seek to submit, indicate that legal thought has progressed, with the passage of time, from being acquisition-based to rehabilitation-based. For these reasons, Mr. Rao would exhort this Court not to feel shackled by *Ramanand (supra)*, and would submit that, if this Court is convinced with his arguments, it ought to either depart from the ratio of the said decision in view of the “march of law” that has taken place in the interregnum, or to refer the matter to a Larger Bench.

26. In support of his submission that a binding precedent would be ignored, even by a judicial authority lower in the precedential

echelons, owing to the change in legal thought that has taken place with the march of time, Mr. Rao would place reliance on *State of Punjab v. Dewans Modern Breweries Ltd.*, (2004) 11 SCC 26 and *Zee Telefilms Ltd v. Union of India*, (2005) 4 SCC 949; AIR 2005 SC 2677.

27. Espousing his client's right to allotment of an alternative plot in Dwarka, as opposed to any other area including Narela, Mr. Rao would seek to submit that the said right flows from the proviso to Rule 6(i) of the Nazul Land Rules *supra*. He emphasises the fact that the Nazul Land Rules are in the nature of a social welfare legislation, which are to be interpreted in favour of the landholder. At the time when land was acquired, from his client, prior to 1992, Mr. Rao would seek to point out, abundant land in Dwarka was available. Mr. Rao also seeks to place reliance on the decisions of this Court in *Dr. Ravi Shankar Garg v. Delhi Development Authority*, 1996 SCC OnLine Del 727, *Adarsh Sharma v. Union Of India*, MANU/DE/8860/2006 and *Amolak Raj v. Union of India*, 1997 SCC OnLine Del 592, to submit that these decisions upheld the principle that alternative land was required to be allotted in the same area in which the land, which was acquired, was situated. These decisions, Mr. Rao would seek to point out, also clarify that it is the policy in vogue on the date of allotment, which would govern the area, and other considerations, to which the allotment of the alternative land/plot would be subject. Mr. Rao emphatically contended that there is no policy mandating that alternative plots would be allotted only in developing areas, as is sought to be contended by the DDA. He submits that, had plots not

been available in Dwarka, the submission of the DDA might have passed muster; as things stood, however, plots were available, and were being auctioned to others. This, Mr. Rao would seek to submit, was impermissible.

28. Advancing submissions in response to those of Mr. Rao, Mr. Dhanesh Relan submits that (i) both the issues that arose, for decision in the present case, stood concluded, against the petitioner, by the judgment of the Full Bench of this Court in *Ramanand (supra)*, which was binding on me, (ii) the petitioner's grievances were completely unfounded, as, against the acquisition of his land, statutory compensation already stood paid to him, (iii) the petitioner had neither any enforceable right for allotment of an alternative plot, nor any right to be allotted such alternative plot in the same area in which land had been acquired from him, (iv) as per the policy existing today, which would govern the field, allotments of alternative plot, against acquired land, was not being made at Dwarka, and was being made only at Narela, (v) even otherwise, it was not commercially feasible to allot alternative land, against the land of the petitioner, which had been acquired, at Dwarka, (vi) the petitioner was himself to blame, as he had, by defaulting in making payments against the earlier allotment of a plot, to him, at Dwarka, within the stipulated time, thereby allowing the allotment to go abegging, as a result whereof it was cancelled, and (vii) the present policy of allotment of alternative plots, against acquired land, permitted such allotment only in upcoming areas, and not in developed areas, whereas Dwarka is now a developed area. For

all these reasons, Mr. Relan submits, the writ petition of the petitioner merits dismissal.

29. Mr. Relan further submits that the issue of the rate being charged, for allotment of the the plot at Narela which was being offered to the petitioner, also stood concluded, against the petitioner, by paras 34 to 36 of the judgment in *Hansraj (supra)* and paras 6 and 40 of the decision of the Full Bench in *Ramanand (supra)*. The judgment of this Court in *Amolak Raj (supra)*, further, held, categorically, that the policy which would apply would be that which was extant on the date of allotment. The allotment of a plot at Dwarka, in favour of the petitioner, in 2012, standing cancelled, the position as it existed today was that there was no plot allotted in the petitioner's favour. Any allotment to be made now would, therefore, have to abide by the policy of the DDA as it exists today, which permits such allotment only in developing areas and, specifically, at Narela, and not at Dwarka. Reliance was placed, by Mr. Relan, in this regard, on the decisions in *Khursheed Jahan v. Delhi Development Authority, 1997 SCC OnLine Del 397* and *Chander Singh v. Delhi Development Authority, 1993 SCC OnLine Del 156*. Mr. Relan emphasised the fact that the DDA operated on no-profit, no-loss basis, and it was not economically feasible for it, therefore, to allot fully developed flats, at Dwarka, to the petitioner on predetermined rates. Mr. Relan also invited attention to several decisions, of which a compilation was handed over across the Bar, to emphasise that policy decisions were ordinarily outside the scope of judicial review.

30. In rejoinder, Mr. Rao sought to submit that the interests of justice demanded that there had to be some correlation, between the premium charged for allotment of an alternative plot, and the compensation paid against the acquisition of land. Such correlation, he submitted, would be possible only if the plot was allotted on the basis of the predetermined rates as they existed on the date of acquisition of the land. He pointed out, in this regard, that the land acquired from him was worth, today, more than ₹ 51 crores.

31. Mr. Rao further submitted that, even according to the policy as it exists today, his client was entitled to be allotted the plot in the same zone in which the plot, which was acquired from him, was situated. He emphasised the fact that the decision of the Screening Committee, dated 4th November, 2015, was withdrawn in its next meeting. He submitted, further, that there was no policy decision of the DDA, forthcoming, after the said subsequent meeting, which revitalised the decision taken on 6th February, 2018. Apropos the communication dated 24th November, 2005 from the Director (Planning), DDA, Mr. Rao would submit that there was nothing to indicate that the Director (Planning), DDA was empowered to take such a decision.

Analysis

32. Much of the discussion, in the course of arguments, revolved around the judgment of the Full Bench of this Court in *Ramanand (supra)*. Detailed allusion to the said decision would, therefore, be

required. Before proceeding to *Ramanand (supra)*, however, I deem it appropriate to examine, first the judgments of the Supreme Court in *Pista Devi (supra)* and *Hansraj (supra)*, as it is Mr. Rao's submission that *Ramanand (supra)* deserves a second look, as, were the decisions in *Pista Devi (supra)* and *Hansraj (supra)* shown to the Full Bench deciding *Ramanand (supra)*, its decision might have been different.

33. Logistically, I must confess that the submission of Mr. Rao befuddles me. Is it open to an authority, lower in the judicial hierarchy, to ignore the decision of one higher, on the ground that, had it been apprised properly of the legal position, its decision *might* have been different? Is it open to me, sitting singly, to psychoanalyse the minds of the learned Judges who decided *Ramanand (supra)*, and to avoid following the said decision on the basis of some presumed possibility of the decision having been otherwise, had the submissions made before the learned Bench been different? The answer, needless to say, is self-evident. In case the decision of the higher authority is contrary to any binding precedent, or statutory provision to which its attention might not have been invited, it would, no doubt, be *per incuriam* for that reason. Even so, the Supreme Court has, in *South Central Railway Employees Cooperative Credit Society Employees Union v. B. Yashodabai*, (2015) 2 SCC 727, clearly held that an authority lower in the judicial echelon is not empowered to declare the decision, of one higher, as *per incuriam*.

34. I have, in my judgment in *Vikram Bakshi v. State*, 2017 SCC OnLine Del 10271, had occasion to opine thus, on the *per incuriam* principle:

“25. *Per incuriam* literally translates as “through lack of care”. There is wealth of judicial authority delineating the contours of the expression, and they all speak in one voice. We need, therefore, only refer to the hallowed 7-judge bench decision in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602, which explained the expression “*per incuriam*” as meaning “*decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.*” It is not enough, therefore, to show that a judgement, which is cited, has been rendered in ignorance of a statutory provision, or binding judicial precedent, to make out a case for ignoring such cited judgement as *per incuriam*; it has also to be shown that, on account of such ignorance, the decision, or reasoning therefor, as contained in such cited judgement, is, for that reason, “demonstrably wrong”. Almost identical is the definition, of the term “*per incuriam*”, as contained in *State of Madhya Pradesh v. Narmada Bachao Andolan*, (2011) 7 SCC 639.

26. Forgetfulness, inadvertence, or ignorance, are generally regarded as the *sine qua non* for the *per incuriam* principle to apply. Even so, there are some decisions which apply the principle even in cases of mere omission, such as *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.”

State of U.P. v Pista Devi, (1986) 4 SCC 251

35. *Pista Devi (supra)* was an appeal, against the judgment of the High Court of Allahabad, which set aside the acquisition, by the Meerut Development Authority, of about 412 acres of land. By the time the High Court decided the matter, the Meerut Development Authority had spent more than ₹4 crores in developing the acquired land, on which 854 houses had been constructed and 809 plots allotted to various persons. The persons, whose lands had been acquired, had also been paid two-thirds of the statutory compensation payable in *lieu* of the acquisition. The Supreme Court reversed the judgment of the High Court, and the judgment of the Supreme Court, to that extent, is not of any relevance to the present case. Mr. Rao relies on paras 9 and 10 of the judgment of the Supreme Court, which read thus:

“9. It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21(2) of the Delhi Development Act, 1957 which reads as follows:

“21. (2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section 1 shall be

so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.”

10. Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.”

36. It is obvious that, in the above extracted passages from the judgment of the Supreme Court in *Pista Devi (supra)*, no mandamus

has been issued. The Supreme Court has expressed “hope and trust” that the Meerut Development Authority would, taking a leaf, as it were, from Section 21(2) of the DDA Act, provide houses or shops of reasonable size, at reasonable terms, to persons who stood uprooted by the acquisition. This hope and trust, Mr. Rao correctly contends, was echoed, by the Supreme Court, in several decisions, including ***Hansraj H. Jain (supra)***. What is significant is, however, that, in none of the said decisions, has the Supreme Court deigned to lay down, as an inexorable mandamus, that persons whose land was acquired had necessarily to be allotted alternative plots, far less plots in areas proximate to the land which was acquired. The submission, of Mr. Rao, that this Court should desist from following ***Ramanand (supra)*** as it is *per incuriam*, or, alternatively, that the Full Bench would not have arrived at the decision at which it did arrive, had it been shown the decision in ***Pista Devi (supra)*** and ***Hansraaj (supra)***, has to be appreciated keeping in view this legal position.

37. The judgment of the Full Bench of this Court in ***Ramanand (supra)***, having constituted a larger part of the discussion in the Court, it would be appropriate, before proceeding further, to examine and appreciate the said decision.

Ramanand v. Union Of India, AIR 1994 Delhi 29 (FB)

38. In its very opening passage, the judgment of the Full Bench in ***Ramanand (supra)*** delineates the two issues, arising before it and, accordingly, decided by it, in the following words:

“1. Whether the person whose land has been acquired for planned development of Delhi has got a vested right to the allotment of alternative plot of land for residential purposes?

2. What is the relevant date with reference to which premium at predetermined rates would be chargeable from such a person for allotment of the residential plot—should it be the date when his land is acquired, or when he makes the application to the Administrator of the Union Territory of Delhi for allotment, or when the Administrator makes the recommendation for allotment, or when the allotment is made by the Delhi Development Authority under the Nazul Rules?”

39. Needless to say, these two issues also arise, pivotally, for consideration in the present case.

The facts in *Ramanand (supra)*

40. The facts in *Ramanand (supra)* may briefly be noticed. The Central Government acquired a large chunk of land, comprising several villages, including the agricultural land of the petitioner, admeasuring 7 *Bighas*, for the purposes of the planned development of Delhi. The award, in respect thereof, was made in March, 1986. Compensation was paid to Ramanand, whereafter physical possession of the land was taken over by the Delhi Administration. Ramanand applied for allotment of an alternative plot of land, on which the Delhi Administration, *vide* letter dated 20th December, 1988, addressed to the DDA, recommended that an alternative plot of land, admeasuring 250 square yards, in the North Zone, be allotted to Ramanand. A copy of the said letter was also endorsed to Ramanand. *Vide*

communication dated 13th January, 1993, the DDA informed Ramanand that it had been decided to allot him a plot admeasuring 207 sq. m., in the 'Rohini Residential Scheme', and that the allotment would be made at predetermined rates, as decided by the Government of India/DDA, for the said area, for the year 1992-1993. Provisional allotment was offered, to Ramanand, at the rate of ₹ 1650.65 per square metre. Aggrieved thereby, Ramanand moved this Court for issuance of a writ of mandamus, to the DDA, to allot, to him, a plot admeasuring 250 square yards, at the rate of ₹ 417 per square yard, or at the rates prevailing on the date when he submitted his application to the Administrator for allotment of plot, in the year 1986. For this purpose, Ramanand relied on a judgment of this Court in ***Rajinder Kumar v. U.O.I., 1992 Rajdhani Law Reporter 80***. It may be noted, even at this juncture, that, during the course of hearing before the Full Bench, Ramanand give up this challenge to the size of the plot allotted to him.

41. The Division Bench, before which the case of Ramanand came up for hearing, took stock of the plea, of Ramanand, that the rate payable by him, for allotment of plot, had to be as on the date of the application, and not as on the date of allotment. Having noted the said submission, this Court felt that the decision in ***Rajinder Kumar (supra)*** deserved a re-look, and so opined in the following words:

“Learned counsel for the petitioner has brought to our notice a Division Bench judgment of this Court in the case of ***Rajinder Kumar v. Union of India, 1992 Rajdhani Law Reporter 80*** and has contended that the rate which is payable has to be as on the date of the application and not on the date of allotment.

The attention of the Court, while, deciding the aforesaid case, was not invited to the provisions of the Nazul Rules which contemplate pre-determined rates being charged in respect of alternative allotments. One of the elements which has to be taken into consideration while determining the pre-determined rates is the cost of acquisition plus the cost of development. The cost of development obviously cannot be ascertained till the development of the land is complete. It may happen that the application for alternative allotment of plot can be filed before developed plots are available for allotment. It is, therefore, doubtful whether the proposition laid down in *Rajinder Kumar's case (supra)* is correct because if the price is to be as on the date of application but no plots of land which are developed and ready for allotment are developed and ready for allotment are available then, it will not be possible to determine, the rate as specified by the Nazul Rules. The decision in *Rajinder Kumar's case* possibly needs re-consideration.”

42. The Full Bench noted, at the outset of its discussion, that, in 1961, the Central Government had made and published a Scheme, containing general directions regulating the acquisition, development and disposal of lands in Delhi, *inter alia* to secure the development of Delhi according to plan. This Scheme envisaged large-scale acquisition of land, for being developed by different authorities. Clause 6 of the said Scheme provided for giving of Nazul land in the name of the President only on leasehold basis, to local bodies, cooperative societies, industrialists, individuals, institutions, etc. Clause 8 laid down, as a general policy, that the disposal of developed land should be made by auction and that premium be determined by the highest bid. An exception was, however, made in cases where land could be allotted at predetermined rates, which constituted cost of

acquisition and development, plus some additional charges, to certain categories of individuals, including individuals whose land had been acquired. It was further noted that the Nazul Rules, when enacted in 1981, provided for all matters earlier governed by the 1961 Schemes *supra*, insofar as they concerned disposal of developed Nazul land by the DDA, to be governed by the said Rules. While Rule 3 of the Nazul Rules provided for allotment of Nazul land for residential purposes, Rule 4 specified the categories of persons to whom Nazul land could be allotted. The Nazul rules also contained provisions regulating the method and manner of making such allotments and for determination, from time to time, of the price/premium payable for allotment of Nazul land to different categories of persons.

43. After extracting the relevant statutory provisions, the Full Bench in *Ramanand (supra)* noted that the challenge, laid by Ramanand, to the acts of the DDA, was founded on the premise that the right, to alternative allotment, against the land acquired from him, had accrued, in his favour, at the time of acquisition of land in 1986, and at the rates prevailing when he applied, to the Administrator, for allotment of alternative plot or, at the latest, when the Administrator recommended such allotment, i.e. on 28th December, 1990. It was contended, by Ramanand, that he could not be burdened with the requirement of paying a higher rate, as per the predetermined rates as applicable in 1992-1993, the delay in allotment of an alternative plot to him being solely attributable to the DDA. As against this, the DDA contended that, if a person, whose land was acquired, desired an alternative plot, he had to apply to the Delhi Administration, which

would recommend his case for such allotment, if found fit. It was further sought to be contended, by the DDA, that it made the seniority list of eligible persons, based on the date of recommendation by the Delhi Administration, for allotment of residential plots, after the land was developed in accordance with plans, and that allotment was made, by draw of lots, on the basis of the said seniority list, as and when specific plots of the requisite size were available. Premium, in such cases, it was contended, was charged on the basis of the predetermined rates prevailing on the date of allotment. The predetermined rates themselves, it was further contended, were fixed on no-profit no-loss basis, taking into account, *inter alia*, the cost of acquisition and the cost of development of land. The DDA further asserted that actual market rates were several times higher than the predetermined rates at any given point of time and that the allottee stood to gain in a big way, when he was charged premium on this basis. In the case of Ramanand, the DDA submitted that it had offered, to him, the plot in Rohini, on the basis of a provisional rate of ₹ 1650 per square metre, without waiting for notification of the predetermined rates for the Rohini area, and on the basis of the rates notified by the Central Government for the year 1992-1993 in respect of another project, being simultaneously developed and – a tad ironically? – known as “Dwarka”. Awaiting the determination of predetermined rates for Rohini, it was pointed out by the DDA, before the Full Bench, would result in further delay in allotment of the alternative plot to the petitioner, and would also result in hiking of the rates at which the allotment would be made. The DDA also contended, empirically, that “an individual whose land is acquired

does not get a vested right to allotment of an alternative plot, but he becomes eligible to be considered for allotment of a plot, and that is too subject to certain conditions, in accordance with the plans”. In view thereof, it was contended that “the question of specifying the particular point of time at which such a right would accrue does not arise”. The predetermined rates, at which an allottee would be liable to pay premium, it was further contended, would be those prevailing at the time of allotment of the plot.

44. Having thus set out the rival stances, adopted before it, the Full Bench, in para 13 of the report (*AIR 1994 Del 29*) noted the basis of Ramanand’s contention, regarding the existence, in him, of the right to allotment of an alternative plot, in the following words:

“**13.** The right to allotment is asserted firstly, on the basis of Section 21 of the Act and clause 8 of the 1981 scheme. In the alternative, it is contended that such a right would flow from Section 22 of the Act and rules 4 and 6 of the Nazul Rules.”

45. Clearly, therefore, learned counsel appearing for Ramanand, before the Full Bench, premised his case, regarding the right to allotment of an alternative plot, on a foundation which was more or less akin to that on which Mr. Rao has, before me, sought to support the case of his client.

46. The Full Bench proceeded, straightaway, to reject the reliance, by Ramanand, on Section 21 of the DDA Act, in para 14 of the report, in the following words:

“14. According to learned counsel for the petitioner, a duty is cast upon the DDA, by sub-section (2) of Section 21, to so exercise its power of disposal of the acquired land as to give to the persons who are living or carrying on business or other activities on the said land, if they so desire, accommodation thereon suitable to their reasonable requirements. *Careful reading of Section 21, however, shows that it is not at all applicable to Nazul land, and that it applies only to land which belongs to the DDA, and is referred to as land acquired by the Central Government and transferred to the DDA.* This is the particular kind of land that is clearly described, in so many words, in clause (a) of Sub-section (1) of Section 21. *In the next clause, the expression “such land” obviously, eludes to the land mentioned in the earlier clause. The only difference in the two clauses is in respect of disposal of such land, under clause (a) without development, and under clause (b) after development.* Sequentially, Sub-section (2) proceeds to regulate the exercise of power of the Authority to dispose of that very land, which is the subject matter of sub-section (1), i.e., the land which belongs to the DDA *It is, thus, clear that Section 21 does not apply to acquired land which continues to vest in the Central Government and is known and described as Nazul Land. It appears that the impression, reflected in the case of **Rajinder Kumar (supra)**, that allotment of Nazul Land will be made in accordance with the provisions of Section 21 of the Act, is not quite correct.”*

(Emphasis supplied)

47. The reliance, by Ramanand, on Clause 8 of the 1961 Scheme, which, while stipulating that disposal of developed land should be made by auction, and premium determined by the highest-paid, contemplated an exception, for allotment of land at predetermined rates in the case of certain individuals, including those whose land had

been acquired, was also found, by the Full Bench, to be of no help to his case. The Full Bench held that, though Clause 8 contemplated allotment of alternative land, to individuals, covered by the exception, on the basis of premium at the pre-determined rates, rather than at the market rate, nevertheless, *“this clause cannot be construed to mean that a right to allotment of alternative plot was conferred upon such persons”*.

48. Equally, it was noticed, Section 22 of the DDA Act, while superseding the provisions contained in the 1961 Scheme (which stood impliedly repealed), did not contain any specific provision for allotment of an alternative plot. It was noticed that, conscious of this position, Ramanand placed reliance on Rules 4, 6 and 12 of the Nazul Rules (as does Mr. Rao before me), “to set up the right claimed by the petitioner”. The Full Bench opined, however, that “a combined reading of these rules, and some of the other rules, proves just the opposite”.

49. Rule 3 of the Nazul Rules, it was observed, only provided for allotment of Nazul land, for public utilities, community facilities, open spaces, parks, playgrounds, industrial and commercial uses and residential purposes which, the Full Bench observed, was “indeed necessary for planned development of any zone”. Rule 4, on the other hand, envisaged allotment of Nazul land to different categories of persons. However, the Full Bench held that the word “may”, as used in the said Rule could not be interpreted as “shall” and, therefore, conferred, on the DDA, the power to allot land to the categories of

persons specified in the Rule, without conferring, upon any person, the *right to allotment*, or, upon the DDA, any obligation or duty to *make such allotment* to any particular person or category of persons.

50. With respect to Rule 4 of the Nazul Rules, it was sought to be contended, by Ramanand, that, as the said Rule directed that allotment had to be made subject to other provisions of the Nazul Rules, Rule 12 of the said Rules required that individuals, whose land had been acquired, were entitled to an overriding and preferential right to allotment of land, as against others. However, regarding this argument, the Full Bench held thus (in para 22 of the report):

“It was contended, on the basis of rule 12, that the individuals whose land has been acquired, as against the others, should be given over-riding and preferential right to allotment of residential land. *This proposition would hold good only to the extent of priority for allotment inter-se the individuals referred to in clauses (i), (ii) and (iii) of rule 6. Rule 12 does not place the individuals mentioned in clause (i) at any advantage or over-riding position in relation to the other sub-categories of individuals referred to in clause (iv) or clause (v) of rule 6 itself, much less in relation to the other categories of persons named in rule 4. In any event, the provisions made in rule 13 expressly impinge upon availability of residential plots for allotment to various categories of individuals. It casts upon the DDA a duty, in mandatory terms, to reserve a certain percentage of Nazul land available for residential purposes at any given time, for allotment to individuals placed in a special category, who are members of the Schedule Castes and Schedule Tribes, widows of defence personnel killed in action, ex-servicemen, physically handicapped individuals etc.*”

(Emphasis supplied)

51. Perhaps the most significant passages in *Ramanand (supra)*, especially in view of the somewhat radical submission, of Mr. Rao, that I should, sitting singly, ignore the decision of the Full Bench as it was *per incuriam*, and also not in line with the “march of judicial thought” that has taken place since the pronouncement of the said judgment, till today, are paras 24 and 25 of the report which, therefore, may be reproduced, *in extenso*, thus:

“24. Rule 6, in reality, controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein. In other cases, the rules provide for sale of land at the market price determined by the highest bid on public auction of land. Thus, the principle expressed in the form of ‘exception’ in clause 8 of the 1961 Scheme, which has already been discussed above, is embodied into the Nazul Rules. Where the DDA decides to allot Nazul land to the persons named in this rule, it is bound to charge premium from the allottees only at the predetermined rates. The right and corresponding duty contained in this rule is of a different kind than that sought to be invoked by the petitioner. **The right or entitlement of any one to allotment of Nazul land is not regulated by this rule. It regulates only the rate at which premium shall be chargeable in certain cases, and it restricts the liability of allottees, in specified cases, to pay premium for allotment of Nazul land at the pre-determined rates, and no less and no more.**

25. Rule 6(i) Proviso, undoubtedly, provides for determination of the size of the plot by the Administrator if an individual is to be allotted a residential plot. But, the power to make the allotment lies within the domain of the DDA. The Administrator, being the land acquiring authority, is to verify whether the land of an individual applicant is acquired, and the area and value thereof. On these facts, then, the DDA, who is entrusted with the power and function of development and disposal of land,

would examine the matter, in the light of the plans and the other rules, and decide whether a plot may be allotted to him, and, if so, of what size and where. *It cannot be said, on the basis of this provision, that the right to allotment of a plot would accrue, merely on verification of the claim, and even on the basis of recommendation made by the Administrator in favour of the individual whose land is acquired.*”

(Emphasis supplied)

52. The above extracted passages are of stellar significance, in appreciating, and dealing with, the submissions of Mr. Rao. One of Mr. Rao’s main submissions – which he reiterated several times – was that, had the Full Bench been made aware of the judgments of the Supreme Court in *Pista Devi (supra)* and *Hansraj (supra)*, it might have interpreted Rule 6 of the Nazul Rules differently. A reading of paras 24 and 25 of the report in *Ramanand (supra)*, however, makes it clear that no such possibility could be said to exist, even if one were to take the liberty to so hypothesize. *Ramanand (supra)* clearly held that Rule 6 of the Nazul Rules did *not* deal with the right, of a person whose land was acquired, to allotment of alternative land, at all, and dealt *only with* the rate of premium, in the event land was allotted. Once, according to the Full Bench, Rule 6 of the Nazul Rules did not deal with the right to allotment of alternative plot, consequent to acquisition of land, there could be no question of the Full Bench possibly having taken a different view, were its attention drawn to the judgments in *Pista Devi (supra)* or *Hansraj (supra)*. This argument of Mr. Rao, therefore, is rejected.

53. Needless to say, the decision, of the Full Bench, in *Ramanand (supra)* that Rule 6 of the Nazul Rules does not deal, at all, with the right, of a person whose land has been acquired, to allotment of any alternative plot, is binding on me, no decision, to the contrary, having been cited before me by either side.

54. Proceeding further, with the judgment of the Full Bench in *Ramanand (supra)*, para 26 thereof also places reliance on the specific stipulation, in the letter of the Delhi Administration, dated 28th December, 1988, to the effect that it did not carry, with it, the legal commitment for allotment of any alternative plot. Para 26 of *Ramanand (supra)* may, in this context, be reproduced thus:

“In the present case, letter dated 28th of December 1988 (Annexure P.2) did not convey even a firm offer to the petitioner for allotment of a plot. Indeed, copy of the said letter sent by the Delhi Administration to the petitioner made the position abundantly clear that it did not carry any legal commitment for allotment of a plot. The relevant portion reads thus:

“The allotment of alternative plot is subject to the availability of plot with the Delhi Development Authority. However, it may clearly be noted that this letter does not carry with the legal commitment for the allotment of alternative plot.”

55. An identical caveat, it may be noted, was entered, by the Delhi Administration, in its letter, dated 31st January, 2006 *supra*, whereby it recommended allotment of an alternate plot to the petitioner.

56. On the issue of the entitlement, of a person, whose land was acquired, to allotment of an alternative plot, in *lieu* thereof, **Ramanand** (*supra*) concludes, in para 28 of the report, thus:

“As a result of the above discussion, we find that *an individual whose land has been acquired for planned development of Delhi, has no absolute right to allotment, but, he is eligible to be considered for allotment of an alternative plot for residential purposes*; and that the DDA may allot Nazul land to such an individual, in conformity with the plans and subject to other provisions of the Nazul Rules.”

(Emphasis supplied)

57. Having thus held, categorically, that no absolute right to allotment of an alternative plot accrued in favour of a person whose land had been acquired, and that the right of such a person was limited to consideration for such allotment, subject to availability of land, the Full Bench went on to the second issue before it, relating to the rate at which premium, for allotment of alternative land, was chargeable, were such allotment to be made. The very opening paragraph of the discussion on this aspect (para 29 of the report) is instructive, and reads thus:

“Now, let us turn to the second question. *It may be stated at the outset that individuals whose land has been acquired, are not given residential plots in lieu of acquisition of their land, for which they are paid full compensation, under the Land Acquisition Act. This is an additional benefit envisaged for resettlement of the displaced individuals, and premium is chargeable from such individuals at predetermined rates for allotment of alternative plots under the Nazul Rules.*”

58. This passage is important, as it recognizes, and exposit, the legal position, that the allocation, and allotment, of alternative plots, to persons whose lands have been acquired, is not *in lieu of* such acquisition. What is given, to the displaced landowner, instead, is the compensation which is statutorily payable therefor. The allotment of an alternative plot is *an additional benefit*. Being in the nature of an additional benefit, it is available only against payment of “premium”. Premium is, in turn, chargeable at the predetermined rates, as per the Nazul Rules.

59. It must be recognized, therefore, that no plea of exploitation, or “compulsorily acquisition of land”, can be based on the rate charged for allotment of the alternative plot, alone. Any such submission conveniently glosses over the fact of payment of compensation, as per statute. It is this compensation which, actually, alone carries the statutory imprimatur, as a recompense for the acquisition of the land. The allotment of alternative plot being an added benefit, the very approach of linking the rate charged, therefor, to the price of the acquired land, or the compensation paid, is fundamentally flawed.

60. “Pre-determined rates” are defined in clause (1) of Rule 2 of the Nazul Rules in the following manner:

‘(1) “pre-determined rates” means the rates of premium chargeable from different categories of persons and determined by notification from time to time, by the Central Government, having regard to -

- (a) cost of acquisition,
- (b) development charges, and

(c) concessional charges for use and occupation

-

- (i) for developed residential plots, at the rate of Rs. 3.60 per square metre for the first 167 square metres or part thereof, Rs. 4.80 per square metre for the next 167 square metres or part thereof, Rs. 6 per square metre for the next 167 square metres or part thereof, Rs. 7.20 per square metre for the next 167 square metres or part thereof, Rs. 8.40 per square metre for the next 167 square metres or part thereof, and Rs. 9.60 per square metre thereafter;
- (ii) for developed industrial plots, at the rate of Rs. 3.60 per square metre for the first 0.81 hectares or part thereof, Rs. 4.80 per square metre for the next 0.81 hectares or part thereof, Rs. 6 per square metre for the next 0.81 hectares or part thereof, Rs. 7.20 per square metre for the next 0.81 hectares or part thereof, Rs. 8.40 per square metre for the next 0.81 hectares or part thereof, and Rs. 9.60 per square metre thereafter:

PROVIDED that the pre-determined rates at which allotment is made to persons belonging to middle income group may be higher than the rates of premium fixed for plots allotted to persons in the low income group:

PROVIDED FURTHER that in fixing the pre-determined rates of premium, the Central Government may fix a higher rate of premium for plots situated on main roads, corners or two roads, or at

other advantage positions than the rates of premium fixed for plots situated far away from the main roads;’

The *raison d’etre* for the fixation, and charging, of predetermined rates, was explained, in paras 30 and 31 of the report in ***Ramanand (supra)***, thus:

“**30.** The definition of predetermined rates in Clause (l) of rule 2 makes it clear that the rates of premium chargeable from different categories of persons shall be determined by notification from time to time, by the Central Government. The expression “from time to time” implies that the rates may be determined as and when required, and that the rates once notified would operate during the period that may be specified, or till such time that the rates may be changed as and when necessary. Further, the definition requires the Central Government to fix the predetermined rates having regard to development charges and two other factors specified therein.

31. The DDA has explained that development of land, even after plots for residential purposes are demarcated, requires the formation and laying out of roads, means of water supply and sewerage etc., in conformity with the plans. This, naturally, involves a lot of expenditure spread over a long period of time. It executes such projects on no profit no loss basis. It gets funds for undertaking development of land on realisation of premium on allotment of land. Development of land, and the input of funds for meeting the cost of development, therefore, must go on side by side, and from stage to stage, for expeditious disposal of land in any area or zone.”

61. The necessity for charging predetermined rates, explains para 32 of the report in *Ramanand (supra)*, arises because, (i) in any transaction for immovable property, a price/premium has to be settled in order to conclude a valid and binding contract between the parties, and (ii) “when the DDA enters into such a contract, it is bound to charge premium only at the predetermined rates in force at the time when it proceeds to allot a plot of land under Rule 6 of the Nazul Rules”.

62. Having thus explained the inevitability of the charging of premium, for allotment of land by the DDA, at predetermined rates, the Full Bench in *Ramanand (supra)* went on, in paras 33 and 34 of the report, to chalk out the precise reason why the predetermined rates had to be adopted as on the date of allotment, rather than the date of acquisition, thus:

“**33.** In any event, development can be undertaken only after land is acquired. How can development charges be ascertained without undertaking development in a particular area or zone? Obviously, predetermined rates having regard to development charges, cannot be worked out at the time when the land is acquired. For this simple reason alone, the plea that premium for allotment of a plot to an individual whose land has been acquired, should be chargeable at the predetermined rates prevailing at the time when his land was acquired, cannot be accepted. The position would be the same at the next two stages also, when the application is made to the Administrator for allotment of a plot, and when the Administrator may recommend the case for allotment. *Logically, predetermined rates would come into play for calculation of the amount of premium chargeable from the concerned person only at the time when the offer is*

made to him for allotment of a plot in a particular area or zone.

34. *We, therefore, proceed to answer the second question, and hold that the rates of premium chargeable from different categories of persons, including an individual whose land has been acquired, shall be the predetermined rates in force at the time when the offer is made to the concerned person for allotment of a specific plot of land in a particular area or zone, under rule 6 of Nazul Rules.”*

(Emphasis supplied)

63. *Ramanand (supra)* proceeds to conclude thus:

“For the foregoing reasons, we over-rule the decision in the case of *Rajinder Kumar (supra)*. We hold that an individual, whose land is acquired, does not have an absolute right to the allotment of alternative plot of land for residential purposes, and that such a person is only eligible to be considered for allotment of a plot, subject to certain conditions. Further, we hold that premium shall be chargeable from such a person at the pre-determined rates prevailing on the date when the offer is made to him by the DDA for allotment of a specific plot of land in a particular area or zone, under the Nazul Rules.”

The upshot

64. *Ramanand (supra)*, therefore, holds that

- (i) a person, whose land is/was acquired, does not have an enforceable right to allotment of an alternative plot, his right

being limited to being considered for such allotment, subject to availability of a suitable alternative plot,

(ii) allotment of alternative plot, if at all, is not in lieu of the acquisition of the land, but by way of an added benefit, which, for the entitlement of the benefit thereto, would, therefore, require payment of premium,

(iii) no person has a right to allotment of alternative plot in any particular area or zone,

(iv) in deciding the said aspect, the policy in force on the date of allotment of the plot would apply, and

(v) the premium chargeable for allotment of the alternative plot would be as per the pre-determined rates as applicable on the date of allotment of the alternative plot.

65. As has already been noted hereinabove, Mr. Rao, fairly, does not dispute the fact that the issues raised by him stand concluded, against him, by the judgment of the Full Bench in ***Ramanand (supra)***. Mr. Rao, nevertheless, exhorts me to abjure from following ***Ramanand (supra)***, firstly, because it is *per incuriam*, and, secondly, because, with the change in legal thought since ***Ramanand (supra)***, as is manifested from various decisions, to which Mr. Rao sought to draw attention, the enunciation of the law, as contained in ***Ramanand (supra)***, had ceased to be applicable, or relevant.

66. To bring home the proposition that I could refrain from following *Ramanand (supra)*, despite the fact that it is a judgment rendered by a Full Bench of this Court and is, otherwise, binding on me, Mr. Rao sought to place reliance on *Dewans Breweries (supra)* and *Zee Telefilms Ltd (supra)*.

67. Mr. Rao seeks to place reliance on para 313 of the report in *Dewans Breweries (supra)*, which, in my view, is of no applicability, whatsoever, in the facts of this case, as the said para held, unexceptionably, that “a law which was at one point of time constitutional may be rendered unconstitutional because of the passage of time”. I fail to see how Mr. Rao could seek to capitalise on this proposition, which has nothing, whatsoever, to do with the liberty – if any – of a Court, lower in the precedential hierarchy, to ignore, or decide contrary to, the judgment of a Court higher in the precedential hierarchy. I am not concerned, in the present case, with an issue of constitutionality of a provision, or whether, with the passage of time, a provision, which was once treated as constitutional, has become unconstitutional. The reliance, by Mr. Rao, on *Dewans Breweries (supra)* is, therefore, misplaced.

68. Equally misplaced, in my view, is Mr. Rao’s reliance on the well-known decision of the Supreme Court in *Zee Telefilms (supra)*. Mr. Rao draws my attention, specifically, to para 60 of the said decision, which quotes, and relies on, the following passage from Bennion’s ‘Statutory Interpretation’:

“It is presumed that Parliament intends the court to apply to ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (and updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.”

Again, this passage, too, does not deal, in any manner, with the binding value of the precedent, of a “higher court”, on that of a “lower court”. It deals exclusively with interpretation of statutory instruments, and holds that the exercise of interpreting any statute has to take, into account, changes that have taken place over time. A well-known instance of such an exercise is to be seen in the case of statutes of long vintage, where courts have often held that the technological advancements that have taken place, over a period of time, necessitate factoring of such changes, into the exercise of interpretation of the statute. I am not concerned, in the present case, with any such exercise; as such, no further discussion, on this issue, which is, otherwise, involved complex, is merited. Suffice it to state that the judgment in *Zee Telefilms (supra)*, too, cannot go to support Mr. Rao’s submission that I should desist from following *Ramanand (supra)*, despite its being the decision of a Full Bench of this very Court.

69. Apropos Mr. Rao’s submission that the “march of time” justifies departure, by me, from the enunciation of the law in *Ramanand (supra)*, it is obvious that, empirically stated, such a

submission has merely to be stated to be rejected. If the requirement of courts, lower in judicial hierarchy, to follow decisions of courts higher in the judicial hierarchy, can evaporate with the “march of time” alone, one may as well do away, altogether, with the notion of precedent, as one of the sources of law in our legal system. Adherence to precedent is one of the bedrocks on which our legal system stands. Strict compliance with the rigour of the precedential precept lends, to the edifice of any legal system, stability and strength, born, in its place, out of consistency and certainty – two of the most hallowed, and cherished, virtues of any system governed by the rule of law. K. S. Radhakrishnan, J. (as His Lordship then was), sitting as a learned Single Judge of the High Court of Kerala, tellingly apostrophised the importance of consistency, in judge-made law, thus (in *Joy v. Regional Transport Authority*, 1998 SCC OnLine Ker 344:

“4. Judicial discipline demands consistency in rendering judgments. A Judicial Officer may hold different views on various aspects. A Judicial Officer may err and pass contradictory orders inadvertently. But once it is brought to the knowledge of the Judicial Officer, he is duty bound to keep track of consistency. Inconsistent orders passed by a judicial officer almost in the same fact situation, and that too on the same day, would give rise to complaint of discriminatory treatment, which will undermine the people's faith in judicial system and the rule of law. It will cause resentment and anguish and make an imprint in the mind of the litigant that he has been discriminated. A Judicial Officer may err and pass illegal orders, but he shall not err in consistency. He should be consistent even in illegality.”

70. Though the above note of caution, as sounded by Radhakrishnan, J, was in the context of inconsistent orders passed by

one judicial officer, the principle applies, equally, in respect of orders passed by different judicial officers functioning under one authority, i.e., in the present case, this Court.

71. The principles enunciated in *Ramanand (supra)* have stood the test of time for a quarter of a century, as on date, and I, at this distance of time, have no inclination, whatsoever, to chart a different course, despite Mr. Rao's impassioned exhortation, to me, urging me to do so. Any such misadventure, by me, would be an affront, in my view, to the principle of judicial discipline and consistency.

72. Mr. Rao, however, sought to rely on *Tukaram Kana Joshi (supra)*, *Ramji Veerji Patil (supra)*, *Chairman, Indore Vikas Pradhikaran (supra)*, *Bhusawal Municipal Council (supra)*, *Wazirpur Bartan Nirmata Sangh (supra)* and *Surjeet Singh (supra)*, in his attempt to convince me to depart from *Ramanand (supra)*. One may, therefore, examine the merits of the reliance, by Mr. Rao, on these authorities, as well.

73. *Tukaram Kana Joshi (supra)* involved a situation in which a large chunk of land, owned by their predecessors-in-interest of the appellants before the Supreme Court was notified under Section 4 of the Land Acquisition Act, 1894, on 6th June, 1964, for the establishment of a project for industrial development. No proceedings, however, were taken up thereafter, as a result of which the acquisition proceedings lapsed. Despite this, the officers of the Maharashtra

Industrial Development Corporation (“MIDC”), taking advantage of the illiteracy of their predecessors-in-interest of the appellants before the Supreme Court, persuaded them to hand over possession of the land, pursuant to which actual physical possession of the land was taken over by the State authorities and handed over to MIDC in 1964 itself. In 1981, however, the MIDC realised that grave injustice has been done to the appellants before the Supreme Court. This persuaded the MIDC to issue a fresh Notification, under Section 4 of the Land Acquisition Act, on 14th May, 1981, in respect of the same land. These proceedings, too, lapsed, on account of non-issuance of any declaration under Section 6 of the said Act.

74. On 30th April, 1988, the MIDC, under the instructions of the Government of Maharashtra, handed over possession of the said land to the City Industrial Development Corporation of Maharashtra. This ultimately, the appellants before the Supreme Court were unable to get any compensation for the land, or any land in *lieu* of the lands taken from them, despite their best efforts. Frustrated at their inability to secure any relief from any executive authority, the said appellants moved the High Court of Bombay, by way of a writ petition which, however, was dismissed, by the High Court, on the ground of delay and non-availability of certain documents. The appellant, therefore, moved the Supreme Court.

75. The Supreme Court held, in unmistakable terms, that “the functionaries of the State took over possession of the land belonging

to the appellants *without any sanction of law*". It was further observed that "the State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode". It was observed that the acquisition proceedings, initiated by the State, had lapsed for want of further action, so that "the claimants" who were "illiterate and inarticulate persons who have been deprived of their fundamental rights by the State, *without it resorting to any procedure prescribed by law*, without the High Court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself." It was in these circumstances that the Supreme Court held thus, in para 17 of the report, which reads thus, and on which Mr. Rao placed reliance:

"Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development."

76. The Supreme Court was, therefore, in *Tukaram Kana Joshi (supra)*, concerned with the case of illegal deprivation of a citizen's property by a muscle-wielding State. No such situation exists, in the present case. The acquisition of the petitioner's property was in

accordance with the procedure prescribed by law. Compensation, as payable under the statute, was paid to the petitioner. The considerations, which persuaded the Supreme Court, in ***Tukaram Kana Joshi (supra)***, are, therefore, completely absent in the present case, as well as in ***Ramanand (supra)***. The reliance, by Mr. Rao, on the said decision has, therefore, to be characterised as misplaced.

77. *Ramji Veerji Patel (supra)* involved a challenge to the acquisition proceedings, under the Land Acquisition Act, themselves. The Supreme Court ultimately decided the appeal against the appellant-landowners, upholding the acquisition of the land. The passage, on which Mr. Rao relies (para 10 of the report), which was clearly in the nature of incidental observations relating to the Land Acquisition Act, constituting no part of the *ratio decidendi* of the judgment, reads thus:

“The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the landowners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300-A of the Constitution. We expect the law-making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”

78. Here, again, it is seen that the Supreme Court, while expressing an opinion that the Land Acquisition Act merited a revisit, stopped short of issuing any mandamus in that regard. That apart, the facts of the present case do not call for any examination of the merits of the acquisition, of the petitioners land, so that the above observations of the Supreme Court cannot even be said to be of persuasive value, insofar as the resolution of the controversy in the present case is concerned.

79. Reliance was, next, sought to be placed, by Mr. Rao, on the following passages from *Chairman, Indore Vikas Pradhikaran (supra)*:

“53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

“17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid”.

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to

shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

“Property is surely a right of mankind as real as liberty.”

Adding,

“The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.”

These passages only serve to underscore the importance of the right to property, as a sanctified constitutional right, under Article 300-A of the Constitution of India. There can be no gainsaying this legal position. In the present case, however, there has been no compulsory acquisition of the petitioner’s property, otherwise than in accordance with the procedure prescribed by law in that regard.

80. Indeed, I find it difficult to appreciate the submission, by Mr. Rao, that his client has been given a raw deal. Against the acquisition of his property, the petitioner was paid ₹ 59 lakhs as compensation, as per the provisions of the statute. By way of an added benefit, the petitioner is now being offered land at the presently applicable pre-determined rates, which are, admittedly, far lower than the prevailing

market price for the same land/plot. It is inconceivable, therefore, how Mr. Rao could seek to submit that the DDA has unfairly deprived his client of his property. Accepting the submission of Mr. Rao would amount to completely eviscerating the right of the Government to acquire land for public purposes.

81. Para 13 of *Bhusawal Municipal Council (supra)*, on which Mr. Rao relies, merely reiterated *Tukaram Kana Joshi (supra)*, with which I have already dealt, hereinabove. In fact, *Bhusawal Municipal Council (supra)* was concerned, more, with the adequacy of compensation, to the persons whose lands were acquired.

82. Adverting, now, to the two judgments, of this Court, on which Mr. Rao relies, *Wazirpur Bartan Nirmata Sangh (supra)* dealt with removal and relocation of slum dwellers. The issue before this Court, in the said case, was whether land, which was compulsorily acquired for the purposes of development, could be given to encroachers; needless to say, the poser was answered in the negative by this Court. The said decision has no applicability, whatsoever, to the controversy before me. Similarly, the grievance of the petitioner, in *Surjeet Singh (supra)*, the allotment of land, validly made to him as a migrant from Pakistan, with the approval of the Vice-Chairman, DDA, was arbitrarily cancelled, and, instead, an uninhabitable plot, with no approach road or any other facility, was issued to him. This decision, too, therefore, does not advance the case of the petitioner, to any noticeable extent.

83. None of the above decisions, on which Mr. Rao relied, therefore, persuade me to arrive at a view, even *prima facie*, that, ***Ramanand (supra)*** needs a re-look, or that, since the day the Full Bench pronounced the decision, there has been a change in legal perception. It is important to note that, despite the Supreme Court having, time and again, reiterated its view that alternative rehabilitatory measures ought to follow on acquisition of land, the Supreme Court, too, has stopped short of issuing any mandatory directions in that regard.

84. In that view of the matter, the grievance, expressed by Mr. Rao, regarding the rates being charged, from his client, for the alternative plot at Narela, has no legs to stand on. The petitioner's plot was acquired in 1981 and, against such acquisition, the petitioner was paid statutory compensation of ₹ 54 lakhs – which, at that time, was a large sum. Today, an alternative plot, if allotted to the petitioner, would be made available at around ₹ 38 lakhs, i.e. at the presently existing predetermined rates, which are far lower than the market price of the plot/land being allotted. The allotment of such an alternative plot is itself in the nature of an added benefit, to which a person, whose land is acquired, has no compulsorily enforceable right. It cannot, in my view, be said, by any stretch of imagination, that the price being charged, from the petitioner, for allotment of an alternative plot, is unreasonably high, or delegates from the petitioner's right under Article 300-A of the Constitution of India.

85. Moreover, *Ramanand (supra)* has clearly held that the alternative plot, if any, which would be allotted to a person whose land is acquired, would be at the predetermined rates as applicable on the date of allotment. The said decision, being of a Full Bench of this Court, binds me, and Mr. Rao's submissions, though compulsively canvassed, do not persuade me to take a view that, with the passage of time, the law, as enunciated in *Ramanand (supra)*, has lost its meaning, or deserves a fresh look. I have already held, hereinabove, that *Ramanand (supra)* is, in any case, not *per incuriam*, or capable of being disregarded on that ground.

86. In passing, I may note that, though I have attempted to deal with the submissions of Mr. Rao on that score, it is a trite position, in law, that an authority, lower in the judicial hierarchy, cannot declare the judgment of an authority, higher in the judicial hierarchy, as *per incuriam*. [Refer *South Central Railway Employees Cooperative Credit Society Employees Union (supra)*]

87. The prayer, in the writ petition, that the DDA be directed to allot, to the petitioner, an alternative plot, "at the rate commensurate with the rate at which the petitioners land was acquired", is, therefore, rejected.

88. The only other aspect, which is required to be examined, is whether the petitioner would be entitled to allotment of an alternative

plot at Dwarka, instead of Narela. That the policy, which would govern the allotment of the alternative plot, would be the policy in existence on the date of allotment, is no longer *res integra*, having been settled by a catena of authorities, including the judgment of the Supreme Court in *Amolak Raj v. Union Of India*, **MANU/SC/1147/2002; JT 2002 (10) SC 86**, on which Mr. Relan places reliance. In fact, *Amolak Raj (supra)* also effectively seals the submission, of Mr. Rao, that I should depart from the law laid down in *Ramanand (supra)*. The facts, as noted by the Supreme Court in *Amolak Raj (supra)* disclose that, against the acquisition of his land, the appellant, before the Supreme Court, was allotted a plot of land, admeasuring 250 square yards, in the ‘Rohini Residential Scheme’. Dissatisfied with the said allotment, the appellant moved this Court, contending that he was entitled to allotment of a plot admeasuring 800 square yards. He also complained about the area in which the allotment had been made. The Supreme Court noted the reliance, by this Court, on its earlier Full Bench judgment in *Ramanand (supra)*, in the following words:

“The full bench of the High Court in the case of *Ramanand (supra)*, noticed in the impugned judgment, held that a person whose land has been acquired has no absolute vested right to claim allotment of a plot as a matter of right; of course if a scheme provides for allotment of alternative plot, the same could be considered based on the scheme and the policy; it is clear from the records that the scheme of allotment of alternative plots for the persons whose lands are acquired was modified from time to time; the appellant was allotted a plot as per the prevailing policy and the scheme as on the date of allotment. In our view, the appellant could not claim to be allotted a plot in a particular area of

his choice, even the recommendation made in his favour as extracted above clearly shows that allotment of alternative plot was subject to availability of plot with the DDA and that recommendation for allotment was not a legal commitment for allotment of alternative plot. In this view, the High Court was right in dismissing the writ petition following its earlier full bench judgment.”

(Emphasis supplied)

89. Mr. Rao, too, candidly admitted that the policy, governing the allotment of the alternative plot, would be as existing on the date of allotment.

90. As regards the policy of the DDA, regarding allotment of alternative plots to persons whose lands were acquired, Mr. Relan has invited my attention to the communication, dated 24th November, 2005 *supra*, addressed by the Delhi Development Authority, Land Costing Wing [Projects Branch], clearly stating that alternative plots could not be allotted in Dwarka as it was a developed area. This communication remains unchallenged. Furthermore, the minutes of the meeting, dated 6th February, 2018, of the Screening Committee of the DDA, too, refers to the “decision taken in 2006 regarding allotment of alternative plots only in upcoming projects” which, apparently, has not been revisited till date. It is apparent, therefore, from the record, that, since 2005/2006, there has been an extant policy, of the DDA, not to allot “alternative plots”, to persons whose lands stood acquired, except in upcoming projects, or in developing areas. A policy decision stands taken, by the DDA, not to allot

“alternative plots” in areas which have, with the passage of time, developed, and the land value of which has increased multifold. The wisdom of this policy is not called into question in the present writ petition; consequently, the DDA cannot be faulted in deciding to allot, to the petitioner, the alternative plot at Narela, instead of Dwarka. The petitioner had, indeed, been allotted an alternative plot at Dwarka on 25th June, 2010, when the area was still developing, but, owing to the petitioner’s own lassitude, the allotment could not fructify. Opportunity, however, never knocks twice, and the petitioner cannot, now, seek to capitalize on the benevolence of the DDA in allotting the petitioner yet another alternative plot, despite his having foregone the allotment made in his favour in 2010, by his own default.

91. The decision, of the DDA, to allot “alternative plots”, which, by virtue of the law, have necessarily to be allotted at predetermined rates, only in developing areas, and not in areas which stand fully developed and in which land values have escalated, is backed by sound commercial considerations, which are inextricably intertwined with good governance. The development of Delhi is, constitutionally and statutorily, vested in the DDA, and depletion of its coffers can never be in public interest.

92. There is another, and more empirical, aspect of the matter. It cannot be said, with any modicum of legitimacy, that the DDA has any axe to grind against any person to whom land is to be allotted by it, or that it acts *mala fide* in that regard. To be fair, no such *mala*

fides have been alleged, either, by the petitioner. The decision of allotment of alternative plots, to persons whose lands have been acquired, is, at all times, essentially and fundamentally a decision of policy. So long as the decision does not result in unconstitutional, or unjust, deprivation of the right of the citizen to property, it remains substantially immune from judicial review. Courts are not the best, or even the better, arbiters of the areas in which alternative plots are to be allotted, or the price at which such allotments are to take place. Caution and circumspection must necessarily inform the decision of any court which is called upon to sit in judicial review over policy decisions. Policy decisions which derogate from public interest, unquestionably, may be justifiably decapitated by the judicial scimitar. However, assessment of public interest is itself an intricate, and involved, exercise, and the court must desist from the temptation of adopting any watchdog approach in this regard. The DDA, like any public authority of similar standing, is presumed to act in public interest, and in full awareness thereof. The ultimate duty of the DDA is to ensure the development of Delhi as efficiently, and in as optimum a manner, as is possible, and, in discharging the said duty, the DDA has necessarily to be allowed the latitude to exercise discretion, vested in it for the said purpose, as it thinks best. Even if, in a given case, the Court were to feel that the DDA could have acted otherwise, restraint has, nevertheless, to be exercised, and deference accorded to the subjective discretion conferred, by law, on the DDA.

93. Thus viewed, it is clear that the petitioner cannot claim any enforceable right to be allotted an alternative plot at Dwarka, or that

such allotment should be at a price which is “commensurate to the rate at which” his land was acquired in 1981.

Conclusion

94. For the foregoing reasons, I am of the opinion that the prayers in the writ petition cannot be granted.

95. The writ petition, accordingly, stands dismissed, with no order as to costs.

C. HARI SHANKAR, J

APRIL 29, 2019

HJ