

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2772 of 2010

Smt. Usha Agrawal W/o Late Shri Jagdhar Lal Agrawal, aged about 69 years, R/o 103, Mahamaya Apartment, Durga Chowk, Purani Basti, Raipur, Tahsil And Distt. Raipur CG

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Accommodation & Environment Department Mantralaya Raipur (CG)
2. Commissioner, Chhattisgarh Grih Nirman Mandal, Shankar Nagar, Raipur, Tahsil & District- Raipur (CG)
3. The Executive Engineer, Chhattisgarh Grih Nirman Mandal, Division-I, Kabir Nagar, Ring Road No.2, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Ratnesh Kumar Agrawal, Advocate
For Respondent No.1/State	:	Shri Aditya Bhardwaj, Panel Lawyer
For Respondents No. 2 & 3/Board	:	Shri Sanjay Patel, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/01/2020

1. This petition under Article 226 of the Constitution of India is preferred by the petitioner, aggrieved by the action of respondent-Housing Board in not making allotment of alternative land of equal quality against the land of the petitioner which is consumed and utilized for construction of an approach road to the Housing Colony constructed by the respondent- Housing Board.
2. Indisputably, the petitioner is the owner of land admeasuring 150.75 square meter, situated at Village -Raipura, P.H. No.104, Revenue Circle- Raipur-I, District-Raipur.
3. Respondents No.2 & 3/Housing Board proceeded to develop a colony and

for providing approach road to the Housing Colony, known as Deendayal Upadhyay Nagar, petitioner's land was also used. Dispute arose thereafter when the petitioner claimed alternative plot. Vide letter dated 24.1.1998, the petitioner was asked to submit relevant document of the property, which were submitted by the petitioner. In continuation of his letter dated 14.3.1997 (Annexure R-2/2), the petitioner submitted another letter on 2.2.1998 (Annexure P-2) praying for expediting the proceedings of allotment of alternative plot. Thereafter, for longtime, nothing happened and then, letter was issued on 10.7.2006 informing the petitioner that in the newly developed colony -Deen Dayal Upadhyay Nagar, no residential plot is vacant for being allotted to the petitioner, therefore, petitioner may collect compensation. However, vide letter dated 25.1.2007, the petitioner prayed that instead of compensation, she may be allotted a plot in any other scheme of the Housing Board. Vide communication dated 9.2.2007, the Executive Engineer of the Housing Board sought instructions from the Commissioner as to whether the petitioner may be allotted land in another project of the Housing Board namely Kabir Nagar. In this manner, the matter relating to petitioner's claim of allotment of land remained pending. Finally, the petitioner gave a notice on 4.3.2010 (Annexure P-6) and then filed this writ petition seeking relief for allotment of land.

4. Learned counsel for the petitioner submits that firstly, the respondent-Housing Board encroached upon the petitioner's land and constructed road without there being any acquisition in accordance with law and thereafter, the respondent-Housing Board offered to pay compensation saying that no plot is available. He further submits that later on, the respondent authority, though, offered land but imposed certain condition regarding payment of development cost which is not acceptable to the petitioner. He would submit that the offer of the respondent to allot plot, subject to payment of development cost, is not agreeable to the petitioner and the petitioner is claiming allotment of alternative land in lieu of use of her land for construction of road.
5. Per contra, learned counsel appearing for respondents No. 2 & 3/Housing Board submits that the respondent-Board had offered the alternative land

but the petitioner did not agree for payment of development cost. He would also submit that when the petitioner asked for allotment of land, she was informed long ago vide letter dated 10.7.2006 that plots are not available, therefore, the petitioner may take compensation, but the petitioner insisted on allotment of plot and finally she has been offered some plot but with the condition that he will have to pay development charges which the petitioner did not agree.

6. I have heard learned counsel for the parties and perused the records.
7. Two things are not in dispute in this case. First is that the land in dispute admeasuring 150.75 square meter belonged to the petitioner. The second undisputed position is that the respondents-Housing Board used the land of the petitioner for construction of approach road to the newly developed housing colony known as Deendayal Upadhyay Nagar.
8. The respondent -Housing Board is State under Article 12 of the Constitution of India and is statutory authority constituted under Chhattisgarh Griha Nirman Mandal Adhiniyam, 1972. Under Section 49 thereof, it has been invested with the power of compulsory requisition of any land in the manner provided in the Land Acquisition Act, 1894. However, in the present case, the respondent -Board behaved more like private person and without properly acquiring the land of the petitioner, it encroached upon petitioner's property and forcefully constructed road. It appears that when the petitioner found that his land was already used for construction of road that the petitioner started claiming alternative land. Further, it appears from letter dated 10.7.2006 that the Housing Board had informed the petitioner that there is no alternative plot available so the petitioner may obtain compensation but the petitioner insisted on allotment of alternative land. Therefore, as is reflected from the return, the respondent-Housing Board, at one point of time, also offered alternative land to the petitioner though, with the condition of depositing development charges. The petitioner did not agree to such condition of payment of development charges.
9. In view of the above, it is clear that no agreement could be entered into between the parties with regard to allotment of alternative land to

petitioner and therefore, no specific direction can be used by this Court to the respondent-Housing Board to allot any plot to the petitioner because there is no such contractual or statutory obligation cast on the respondent-Board to allot plot in place of the plot of the petitioner, under any of the provision of the Chhattisgarh Griha Nirman Mandal Adhiniyam, 1972. It is further revealed from the return of the respondent- Housing Board and letter dated 8.5.2006 that a compensation of Rs.43,136/- was offered to the petitioner.

10.The only way in which the respondent -Board could have taken the land of the petitioner was by way of acquisition. No other mode except agreement was permissible to take land of third person. It appears that respondent-Board did not follow any acquisition proceedings nor land of the petitioner was acquired under the law. The respondent-Housing Board encroached upon the petitioner's land and constructed a road. The petitioner is entitled to compensation as per the provision of law. The compensation was required to be determined only under land acquisition proceedings. What the respondent -Board seems to have done is that it has first encroached upon the petitioner's land, constructed a road and then as late as on 8.5.2006 it offered some compensation. That is not the procedure prescribed under the Law. Under the Law, respondent- Board was duty bound to draw acquisition proceedings as provided under Section 49 of the Griha Nirman Mandal Adhiniyam, 1972, in the manner prescribed under the then Land Acquisition Laws, determine compensation and then acquire the land. What has been done in the present case can only be said to be an act of private person in grabbing land.

11.As no compromise has been entered into between the parties with regard to allotment of alternative land and there are disputes, the only direction which can be issued by this Court is to direct respondent- Housing Board to draw acquisition proceedings under the provision of Section 49 of the Griha Nirman Mandal Adhiniyam, 1972, in the manner prescribed under the Land Acquisition Law as is prevalent today. The respondent-Housing Board shall ensure that proper compensation as per law is fixed in the case of the petitioner and such compensation is paid. The respondent-Housing Board

shall complete such acquisition proceedings strictly in accordance with the Land Acquisition Law applicable as on the date and determine compensation and also pay the same to the petitioner within an outer limit of six months.

12.This order, however, shall not come in the way of the parties in arriving at any settlement, in which case, it will not be necessary for the Housing Board to draw acquisition proceedings. For this purpose, the parties may explore possibility of settlement, if any, within a period of six months from today. If no such settlement is arrived at within six months between the parties, within next three months, respondent-Housing Board would be obliged to comply with direction of the Court as stated herein-above.

13.The petition is accordingly allowed in the manner indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen