

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : LAND ACQUISITION

LPA No.2593/2005

Judgment delivered on: July 19, 2006

ADARSH SHARMA

with

..... Appellant
Through: Mr.Amit S. Chadha, Sr. Adv.
Mr.Dharmesh Misra & Mr.Kunal
Sinha, Advocates.

versus

UOI & ORS.

..... Respondent
Through: Ms.Anusuya Salwan, Advocate.
Ms.Rachna Srivastava, Adv.
for L & B Deptt.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE KAILASH GAMBHIR

VIJENDER JAIN, ACJ (ORAL):

1. This appeal has been filed impugning order of the learned Single Judge as the learned Single Judge has not taken into consideration that the appellant was allotted an alternative plot under the scheme of 'Large Scale Acquisition, Department and Disposal of Land in Delhi-1961. On the basis of that the learned counsel appearing for the appellant has contended that no notice of acquisition was issued before acquiring the land. We do not go into this controversy as the appellant has himself admitted that land was taken over by the respondent DDA and he has not challenged the acquisition proceedings after the award was made. From the record, we find that there is a letter of 6th February, 1986 issued by Delhi Administration, Land and Building Department, Vikas Bhawan, New Delhi which is reproduced below:

" DELHI ADMINISTRATION
LAND & BUILDING DEPARTMENT
VIKAS BHAWAN: NEW DELHI

No.F.32(12)/1/81/L&B/Alt

Dated 6.2.86

To,

The Deputy Director (Res),
Delhi Development Authority,
3rd Floor, 'A' Block, I.N.A.
Vikas Sadan, New Delhi.

Sub:- Allotment of alternative plot under the scheme of 'Large Scale Acquisition, Department and Disposal of Land in Delhi-1961'.

Sir,

I am directed to request you to allot a plot measuring 250 sq. yards (Two hundred and fifty) to Shri Adarsh Sharma son of Shri B.M. Sharma of village Basant Ngs., Delhi in lieu of his acquired land bearing Kh. Nos. 139/27/1 total measuring 0-18 biswas in which applicant's share comes to 0-18 biswas which were acquired vide Award No.111-A/80/81 dated 16.3.81 of village Basant Ngr Delhi in the South Zone as he has been found entitled for the same.

Yours faithfully,

sd/-

(S. Sartharaman)

Jt. Secretary (L&B)

No.F.32(12)/81/L&B/Alt/4298

Dated 6.2.86

Copy to Shri Adarsh Sharma s/o Shri B.M. Sharma, 32-B, Western Rao Tula Ram Marg, New Delhi Further correspondence in the matter may please be made with the above-mentioned officer. The allotment of alternative plot is subject to the availability of plot with the D.D.A. 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 the Urban Land (Ceiling and Regulation) Act, 1976, the allottee will apply to the Competent Authority u/s 15 of the Act.

sd/-

Jt. Secretary (L&B)"

However, the learned Single Judge has taken into consideration that since the appellant has not deposited the amount demanded by the respondent-DDA pursuant to their letter dated 9th August, 1986 for allotment of an alternative plot of 100 to 150 square yards in North Zone, therefore, the appellant was not entitled to 100 to 150 square yards of plot and under the revised policy of the DDA, the appellant became entitled to a plot size of 31.69 square metres. On that basis, the learned Single Judge had issued a direction to the DDA to issue a fresh offer for a plot of 31.69 square metres in accordance with the offer made by the respondent in the year 1989 at the same cost within six weeks from the date of the impugned order. Learned Single Judge gave this finding on the basis of the said revised policy of 3.4.89 which is at page 64 whereby for the land acquired upto 1000 square yards, a plot of 40 square yards was to be allotted irrespective of the area from where the land was acquired and relying on this policy, the learned Single Judge held the appellant to be entitled to a plot size of 31.69 square metres. Aggrieved by the said order, the appellant has filed the present appeal before us.

The short question which has to be determined as to whether the appellant who is entitled under the policy of 1989 or pursuant to the policy which existed prior to 1989. The letter issued by the Government of Delhi recommending the case of the appellant was as per the policy which was in existence at that time. We find force in the argument of counsel for the appellant that the Land and Building Department, Government of Delhi had recommended the case of the

appellant pursuant to the policy which was in vogue at the relevant time. As a matter of fact, our attention was drawn to the policy by the learned counsel for the DDA itself which is at page 52 of the paper book. As per this policy, the issue of allotment of plots by the DDA was discussed in a meeting held in the Chamber of the Lieutenant Governor of Delhi on 22.5.86. The policy makes abundantly clear that the DDA would allot plots to all eligible claimants and the size of the plot would be the same as recommended by the department i.e. the Department of Land and Building. Apart from that, it was also made clear that the allotment should be made in the same area as far as possible. This is how the allotment of plots by DDA have to be considered (page 53, para 2). Now let us examine as to whether the finding returned by the learned Single Judge is as per the said policy of DDA and non-deposit of the amount by the appellant was futile to get the relief sought for. Vide letter dated 6th February, 1986 as reproduced above, the appellant was entitled for a plot measuring 250 square yards in the South Zone. We fail to understand as to how the letter dated 9th August, 1986 was written by the DDA implementing the policy of 1989 which had not yet come in force. The DDA was bound to allot land in the same locality where the land of the appellant was acquired as per the allotment letter dated 6.2.86 and as per the policy reflected in the minutes dated 22.5.86. There is no dispute that the land of the appellant was acquired by the DDA. If the DDA has to differ with the recommendation of the Land and Building Department, that has to be pursuant to certain policy of the DDA with notice to the affected party. Not only the policy has been changed and tinkered with but altogether the size of 250 square yards for which the appellant was entitled has been reduced to 100 and 150 square yards and area from South Zone has been converted to North Zone just in a span of four months. Nothing has been placed on record as to how this change could have been done by the DDA. The decision to change ought to have been effected on account of some material either in terms of some policy or exigencies of the ground realities i.e. non-availability of the plots in South Zone or plots upto 250 square yards not being available. Nothing has been brought on record to suggest except letter of 9th August, 1986 pursuant to which the appellant has been denied a plot of 250 square yards in complete negation of its own policy of the DDA. Therefore, we set aside the impugned order and direct the respondent-DDA to allot a plot of 250 square yards pursuant to the recommendation of the Department of Land and Building in terms of letter dated 6th February, 1986. As the stay order was passed in the writ petition on 4th September, 1989 directing the respondent-DDA to reserve a plot measuring 250 square yards in South Zone and the same continued when the appeal was filed in this Court which came up for hearing on November, 2005, therefore, the respondents are directed to give the allotment letter of a plot measuring 250 square yards in South Zone at the rates of the year 1989 within a period of four weeks and on the receipt of the allotment-cum-demand letter, the appellant shall deposit the same within four weeks.

The appeal stands disposed of.

Sd/-
Acting Chief Justice

Sd/-
Kailash Gambhir, J.

