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

% *Date of Decision : 9<sup>th</sup> December, 2009*

+ **LPA 412/2004**

DELHI ADMINISTRATION LAND & BUILDING ..... Appellant  
Through: Ms.Rachana Srivastava, Advocate.

versus

KANWAR SAIN GOEL ..... Respondent  
Through: Mr.Rajiv Bansal, Advocate and  
Mr.Prashant Mehra, Advocate.

**W.P.(C) 829/1985**

NIRMAL GUPTA ..... Petitioner  
Through: Mr.R.K.Saini, Advocate.

versus

DDA & ORS. .... Respondent  
Through: Mr.Sanjay Poddar, Advocate for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**PRADEEP NANDRAJOG, J.**(Oral)

1. The facts of the instant appeal and the writ petition show, how bureaucrats misuse the process of law to fatten their coffers.

2. It is not in dispute that on 26.9.1966 a notification

was issued under Section 4 of the Land Acquisition Act 1894 notifying the intention of the Appropriate Government to acquire various lands including the lands in some Khasras comprised in the revenue estate of village Sarai Peepal Thala.

3. Declaration under Section 6 was issued on 30.12.1966.

4. On 13.11.1972 various persons, which included Smt.Nirmal Gupta, the writ petitioner of WP(C) No.829/1985, Shri Kanwar Sain, the respondent in LPA No.412/2004 and one Shri J.P.Goel, the writ petitioner of WP(C) No.911/1985 entered into a common sale agreement to purchase land comprised in Khasra No.2148, 455/413/24/5, 27 Min., 52, 26 and 43 in the revenue estate of village Sarai Peepal Thala, which was under acquisition.

5. Needless to state, that the sale agreement is on a stamp paper of Rs.2/-. It is not a sale deed. It is simply an agreement to sell. Further, the date of the agreement is much after the notification under Section 4 of the Land Acquisition Act 1894 and the declaration under Section 6 of the said Act were issued.

6. Notwithstanding the parties to the agreement to sell dated 13.11.1972 not being ever recorded as the owners of the subject property, they proceeded to stake a claim under the award dated 23.3.1973 where-under the lands in question

as also other lands notified for acquisition were acquired.

7. Three out of the various purchasers under the agreement to sell in question, namely, Smt.Nirmal Gupta, Shri Kanwar Sain and Shri J.P.Goel made applications to the Delhi Administration (Land & Building Department). As per the applications they prayed that under the policy of acquisition of lands in Delhi for purposes of planned development of Delhi they be allotted an alternative residential plot.

8. It is not in dispute that the policy in question mandates that the person who makes the application in question should be the owner of the land as on the date when notification under Section 4 of the Land Acquisition Act 1894 was issued. Ignoring that the three claimants were not the owners of the land on the date when notification under Section 4 was issued, the officer concerned in the Delhi Administration (Land & Building Department) recommended the entitlement of the three persons to DDA for allotment of an alternative residential plot. This happened, as we are told, on 31.5.1980.

9. DDA is the authority which has to give effect to the recommendations. DDA proceeded to process the case of the said three persons for allotment of an alternative residential plot when somebody in Delhi Administration realized that the three recommendations were contrary to the policy and hence vide letter dated 2.1.1982 cancelled/withdrew the

recommendations.

10. We may note that in the meanwhile the name of the three recommendees were entered in a draw of lots and specific plots were allotted and even demand was raised for payment of the premium which was paid by the three allottees.

11. The withdrawal of the recommendations took place before possession could be actually handed over.

12. The three writ petitions came to be filed.

13. Smt.Nirmal Gupta filed WP(C) No.829/1985. J.P.Goel filed WP(C) No.911/1985. Kanwar Sain filed WP(C) No.574/1985.

14. All three staked their claim under the agreement to sell dated 13.11.1972. They stated that they had received the compensation for the acquired lands and that they were entitled to be allotted an alternative residential plot. They alleged that their names were rightly forwarded for allotment of a residential plot and that DDA rightly entered their names in the draw of lots. Each of them alleged that specific plots were allotted to them for which the premium at the pre-determined rates demanded by DDA has been paid.

15. It was alleged that the recommendations were withdrawn in violation of the principles of natural justice, in that, none was put to notice before the recommendations and

the allotments were withdrawn.

16. The writ petition filed by Kanwar Sain and J.P.Goel were allowed by the learned Single Judge vide two separate judgments, identically worded, dated 20.2.2003.

17. Briefly recorded, the learned Single Judge held that since Kanwar Sain and J.P.Goel had received the compensation it was apparent that both of them were the owners of the acquired lands. Thus, learned Single Judge has held that under the policy in question both of them would be entitled to a residential plot of land at the pre-determined rates. The allotment of a plot each to J.P.Goel and Kanwar Sain was restored.

18. Writ petition filed by Smt.Nirmal Gupta chartered a difference course. It was listed before the Division Bench on 25.7.2002 and was dismissed in the absence of any representation from the side of Smt.Nirmal Gupta. The Division Bench noted that as per the policy only such persons could be allotted an alternative plot who were the owners of the acquired land at the date when the notification under Section 4 of the Land Acquisition Act 1894 was issued.

19. To keep the records straight, it may be noted that on an application being filed, order dated 25.7.2002 dismissing WP(C) No.829/1985 was recalled and the said writ petition was restored and has thus been listed before us today for

consideration.

20. For the reason, with the promulgation of the Government of NCT of Delhi Act 1996 the affairs of the Union Territory of Delhi being taken over from the Delhi Administration by the Government of NCT of Delhi, the concerned officer had to consider what to do after the learned Single Judge allowed the writ petitions filed by J.P.Goel and Kanwar Sain.

21. Surprisingly enough, the same person concerned, took a decision to challenge the decision of the learned Single Judge in favour of Kanwar Sain, and not J.P.Goel. This resulted in DDA executing a conveyance deed in favour of J.P.Goel giving him a plot of land at pre-determined rates.

22. The issue in the appeal and the writ petition requires a look at the policy as per which four conditions have been mandated for being eligible to be allotted an alternative residential plot. The four conditions are as under:-

“(a) The application must have been filed within a period of one year from the date of receipt of compensation.

(b) He/she should be recorded owner of the acquired land on the date of Section 4 Notification.

(c) He must have received the compensation for the said land.

(d) Neither he nor his spouse or any of his dependent children own any residential property in Delhi.”

23. We need not waste much energy on the interpretation of the policy for the reason the issue is no longer *res integra*.

24. In the decision reported as (1995) 2 SCC 427 Union of India vs. Shivkumar Bhargava & Ors. as also the decision reported as (1996) 7 SCC 426 Sneh Prabha (Smt.) & Ors. Vs. State of U.P. & Anr., the Supreme Court has opined that the policy is clear. The requirement of law is that the person concerned must be the owner of the land when the notification under Section 4 of the Land Acquisition Act 1894 was issued.

25. In para 5 of the decision in Sneh Prabha's case (supra) the following was held:-

"5. Though at first blush, we were inclined to agree with the appellant but on deeper probe, we find that the appellant is not entitled to the benefit of the Land Policy. It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and, thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this

Court in Union of India vs. Shivkumar Bhargava considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy.”

26. Under the circumstances, there is no scope to effect any allotment of alternative plot in favour of the persons who have entered into the agreement to sell on 13.11.1972.

27. The plea urged before us today is that since J.P.Goel has been given the benefit of allotment, Smt.Nirmal Gupta and Kanwar Sain being identically situated, relief cannot be denied to them. We note and reject the argument for the reason, a plea of discrimination can never be founded on a wrong.

28. We may note that a somewhat similar situation confronted the Supreme Court in Sneh Prabha's case (supra).

In para 8 of the said decision it was observed as under:-

“8. .... It would thus be seen that no discrimination, much less invidious discrimination, was meted out to the appellant. Even if a benefit is wrongly given in favour of one or two, it does not clothe with a right to perpetuate the wrong and the court cannot give countenance to such actions though they are blameworthy and condemnable. Equality clause does not extend to perpetuate wrong nor can anyone equate a right to have the wrong repeated and benefit reaped thereunder.”

29. Thus, WP(C) No.829/1985 filed by Smt.Nirmal Gupta is dismissed with a direction to DDA to refund the premium which Smt.Nirmal Gupta has deposited.

30. LPA No.412/2004 is allowed. Impugned judgment and order dated 20.2.2003 allowing WP(C) No.574/1985 is set aside. The said writ petition is dismissed.

31. Directions are issued to DDA to refund the premium deposited by Kanwar Sain.

32. This is not curtains down. Certain directions need to be issued to unearth the scum which is rampantly rearing its head and flourishing in the corridors of power.

33. The facts of the instant case require refund of the loss to the Government in respect of the conveyance deed executed in favour of J.P.Goel to whom plot of land ad-measuring 209 sq.yds. had been allotted at the pre-determined rates. It is known to one and all that pre-determined rates are a fraction of the market value of the land.

34. We call upon the appellant in LPA No.412/2004 to file an affidavit within 3 weeks from today. The affidavit would indicate as to who were the officers concerned who received the decisions of the learned Single Judge, both decisions dated 20.2.2003 allowing the writ petitions filed by Kanwar Sain and J.P.Goel. It would be indicated as to why no appeal was filed

with respect to the decision in favour of J.P.Goel. The name of the official would be indicated for the reason we propose to issue a show-cause notice to the officer concerned to respond as to why he should not be directed to pay the difference of the price as per the market value of the plot and the pre-determined rate at which the Government has demised the plot in favour of J.P.Goel.

35. List LPA No.412/2004 before this Bench for directions on 18.1.2010.

36. Copy of this order be given dasti to learned counsel for the appellant in LPA No.412/2004.

**PRADEEP NANDRAJOG, J.**

**SURESH KAIT, J.**

DECEMBER 09, 2009

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