Haryana Urban Development Authority and Others

Vs

Sunita Rekhi

And

Haryana Urban Development Authority and Others

Vs

A. K. Jindal

And

Haryana Urban Development Authority and Others

Vs

Avtar Krishna Sood and Others

And

Haryana Urban Development Authority and Others

Vs

D. R. Chadha

And

Haryana Urban Development Authority and Others

Vs

Gian Chand and Others

And

Haryana Urban Development Authority and Others

Vs

Shalini Varshney

Civil Appeal Nos. 2460 to 2465 of 1989

(S. Natarajan, A. M. Ahmadi JJ)

21.04.1989

JUDGMENT

NATARAJAN, J. –

1. Leave granted in all the special leave petitions.

2. These appeals arise out of a common order passed by the High Court of Punjab and Haryana in a batch of writ petitions filed by the respondents in the appeals before us.

3. Appellant 1, Haryana Urban Development Authority (referred to as "HUDA") was put in possession of land near the border of Haryana State and Delhi comprised in several sectors including Sectors 22, 23, 23-A (Phase II) in District Gurgaon, Haryana State by the State Government of Haryana for augmenting the resources of the State by developing the land and parcelling out sites and selling them at commercial rates and giving the sale proceeds to the government less the charges incurred for development works. In accordance with the scheme, HUDA developed the land and parcelled out plots. As there were numerous applicants for the plots, the selection of allottees was done by draw of lots. The respondents in these appeals were among the successful drawees in the lots so drawn but it so happened that 306 drawees including the respondents could not be given the plots drawn in their favour because of two unexpected developments. One was that the State Government had released from acquisition a certain extent of land in favour of the owners viz. M/s. Usha Stud Farm and the second was that some of the owners of a portion of the acquired land had filed writ petitions before the High Court to challenge the validity of the acquisition proceedings. The writ petitions were dismissed by the High Court but were remitted back by this Court for consideration by the High Court and consequently the writ petitions are again pending consideration before the High Court. As a consequence of these developments, HUDA could not hand over plots to all the 306 drawees whose plots fell either in the area of the land released from acquisition or in the area of land forming the subject matter of litigation before the High Court. Consequently, HUDA offered all the 306 drawees alternate plots in Sectors 31-A, 32-A Part, 30, 39, 40 and 41. The alternate plots offered for allotment are not proximate to the Delhi-Haryana border area and secondly the rates quoted for them were higher than the rates quoted for the plots originally offered.

4. Out of the 306 drawees, 278 applicants accepted the alternate plots offered to them by HUDA in the other sectors and paid the rates fixed for those plots. However, the respondents herein were not prepared to accept the alternate plots offered to them and filed writ petitions before the High Court for allotment of plots in the original sectors themselves viz. Sectors 22, 23 and 23-A. The High Court by a common order allowed the writ petitions and directed HUDA "to allot a plot each to the petitioners in the same sectors to which each has been held entitled for allotment, on the same terms and conditions as if the plot now to be allotted was originally allotted" and further directed that "the allotment of plots should be done within a period of one month and till then the allotment and auction of plots in these sectors be kept stayed". Against the said order of the High Court, HUDA and the State have preferred these appeals.

5. The contention of HUDA in the writ petitions as well as in these appeals is that HUDA cannot be compelled to allot alternate plots to the writ petitioners in the same sectors because it is not the owner of the plotted lands but is only an agency for developing the lands and parcelling them out into plots and selling them to the successful allottees at commercial rates and therefore when the plots became unavailable for allotment due to factors beyond its control, HUDA was entitled to plead novation of contract but by way of concession HUDA had offered alternate plots to the 306

drawees in other sectors and 278 of the 306 drawees have realised this position and accepted the offer of alternate plots and given up their claims to allotment of plots in the original sectors. Learned counsel for HUDA therefore contended that the respondents are not in law entitled to seek a different or preferential treatment for themselves. These contentions were put forth before the High Court also, but it refused to accept them because of the fact that some plots were still available in Sectors 22, 23 and 23-A for allotment and HUDA had actually advertised for sale of those plots by public auction in the newspapers. The High Court was therefore of the view that when plots are available in the original sectors themselves, the denial of allotment of those plots to the respondents would amount to a negation of their rights without justifiable reason and that the offer of alternate plots in other sectors and at higher rates was not a jut and effective arrangement for the respondents. Accordingly, the High Court allowed the writ petitions filed by the respondents and gave directions to HUDA in the manner set out earlier.

6. Before us, Mr. Rajinder Sachar, learned counsel for HUDA contended that the High Court was in error in directing HUDA to allot plots to the writ petitioners in the same sectors and to stay the auction of the available plots in those sectors till the claims of the respondents were satisfied since HUDA had not cancelled the allotment of the plots of its own accord to the respondents and as only an agency entrusted with the task of developing the lands and parcelling out plots and selling them, it was entitled to plead novation of contract even assuming the respondents had acquired an enforceable right in law for allotment of plots merely by reason of the draws in their favour, when the plots became unavailable for allotment due to factors beyond the control of HUDA. It was further contended that in any event when 278 of the drawees similarly placed like the respondents had accepted the alternate plots offered to them in other sectors, the respondents cannot in law seek a different treatment for themselves and insist upon allotment of plots in those sectors themselves in which the plots drawn in their favour were situated. The third contention urged was that the policy underlying the scheme formulated for sale of the plots was to have the plots sold on commercial basis for augmenting the resources of the State and hence the plots now available for sale in the original sectors have to be sold in public auction and not offered in substitution to the respondents. The learned counsel stated that even though HUDA was not bound to offer alternate plots, it had by way of concession offered alternate plots to all the 306 successful drawees in the lot who could not be given plots because of the subsequent developments. The learned counsel further stated that even though the respondents cannot seek a more favourable treatment for themselves than the 278 applicants who had accepted the alternate plots offered to them, HUDA was prepared to give some concession to them by increasing the period for payment of cost of the land in instalments and also by charging a concessional rate of interest for the additional cost that would have to be paid for the alternate plots in the other sectors.

7. Controverting these contentions, learned counsel for the respondents stated that the respondents are entitled to allotment of plots in the original sectors themselves by reason of the draw and HUDA cannot plead any excuse when more than 100 plots in the original sectors are still available for allotment and are being advertised for sale by public auction. As regards the argument that out of the 306 allottees 278 persons have already accepted alternate plots and hence the respondent cannot seek a different treatment for themselves, the submission was that there is no possibility of those allottees reopening the issue and seeking revised allotments for them in the existing plots in the original sectors because they had agreed to the novation of the contract and abandoned their claim for allotment of plots in the original sectors and accepted the alternate plots offered to them. With reference to the third contention, the argument was that there is neither grace nor justice in HUDA taking the stand that even though plots are available in the original sectors, those plots could not be offered in substitution to the respondents and they can only be sold in auction so as to argument the

resources of the State. It was therefore submitted that the order of the High Court directing HUDA to allot plots to the respondents from among the available plots in the original sectors at the old rates does not call for any interference.

8. On a consideration of the matter, we find both the parties to be taking extreme stands and that their respective contentions merit only partial acceptance. It is not the case of HUDA that the allotment of plots to the respondents in the original sectors of allotment is a practical impossibility because of non-availability of plots. On the other hand, the admitted position is that about 100 plots in those sectors are still available for allotment. In such circumstances, there is force in the contention of the respondents that they may be given plots in the original sectors of allotment themselves taking into consideration the fact that the non-allotment of plots of them has not been brought about by any laches or remissness on their part. At the same time, however, HUDA cannot be compelled to offer plots to the respondents at the old rates because 278 drawees (out of the 306 drawees) placed similar to them have paid higher rates and accepted the alternate plots allotted to them. The respondents cannot therefore have a double advantage i.e. allotment of plots in the original sectors as well as at the old rates. It would therefore be appropriate to hold that if the respondents want plots in the original sectors, then it should be at a rate different from the old rate but not so high as contemplated by HUDA. A fair solution would be to call upon the respondents to pay 50 per cent more of the rate at which they were originally offered the plots when the lots were drawn for the plots. We were told that the rate at which the alternate plots have been sold to the 278 allottees is nearly twice the original rate. Such being the case, the respondents cannot grudge paying 50 per cent more for the plots in question.

9. Since the learned counsel for HUDA made an offer to give some concession to the respondents in extending the period of payment of the cost of the plots and also charging reduced rates of interest on the additional cost, provided the respondents paid the full additional cost, we feel that those concessions should be extended even now. Therefore we direct that the period for payment of the cost of the plot be increased by 50 per cent and the instalments restructured so as to cover the extended period also and secondly the respondents should be charged interest only at half the contractual rate insofar as the additional 50 per cent cost is involved. The respondents will therefore pay interest at the contractual rate for the original cost of the plot and interest at half the contractual rate for the additional cost of the land they are called upon to pay.

10. Learned counsel for the appellants stated that the respondents in SLP Nos. 15264 and 15304 and the second respondent in SLP No. 15299 of 1988 cannot seek equation with the other respondents because the plots allotted to them are not comprised within the land released to M/s. Usha Stud Farm but are comprised in the areas under litigation and as such they are not entitled to ask for allotment from out of the available plots in the original sectors. We are unable to accept this contention because it was brought to our notice that HUDA has provided alternate plots for some other allottees similarly placed to these respondents. Such being the case, we see no reason why these respondents should be refused allotment of plots from out of the available plots in the original sectors.

11. As regards the apprehension of HUDA that other allottees in the group of 306 drawees may also seek allotment of plots in the original sectors, if the respondents are to be given plots in the said sectors, we find the apprehension to be imaginary because those allottees have abandoned their claims and 278 allottees have accepted alternate plots. However, in order to allay the fears of the appellants, we give a direction as under as was done in Neelima Shangla v. State of Haryana ((1986) 4 SCC 268, 273 : (1986) 3 SCR 785, 792) while directing the inclusion of some students in the

select list of admission. We therefore make it clear that the benefit of allotment of plots in the original sectors, which has been given to the respondents by the High Court and which has been modified by us insofar as the value of the plots is concerned, will be confined only to the respondents herein and to such of those among the 28 drawees who have not accepted the alternate plots offered to them and who have already initiated proceedings in the Court or the High Court to challenge the non-allotment of plots to them in the original sectors. In the case of those who have not so far chosen to question the non-allotment of plots to them, they will not be allowed to do so in future because of their laches. To the extent the sale price of the plots is modified, the appeal will stand partly allowed and will stand dismissed in other respects.

12. In the facts and circumstances of the case, we direct the parties to pay and bear their respective costs.

</html