SUPREME COURT OF INDIA

Delhi Development Autherity

Vs.

Kanwar Kumar Mehta

(K Ramaswamy and G Pattanaik JJ.)

16.09.1996

ORDER

Delay condoned.

Leave granted.

We have heard learned counsel of both sides. The question of law that arises for consideration in these appeals is; whether the High Court was right in directing calculation of interest @ 7% of the escalation charges on the principle of equity?

The facts of the case are not in dispute. On March 27, 1991 draw of plots was made for allotment of 5000 plots in Sectors 23 and 24 of Rohini Scheme in Delhi. Between 6th April, 1991 and March 27, 1991, around 3000 orders of allotment came to be issued. Only 2000 persons are yet to be issued of the allotment letters. It is settled law that the rate of plot is as is prevaling on the date of communication of the allotment letter. Before the letters of allotment was communicated to the rest of the successful applicant, the owners of the lands acquired under the notification issued under Section 4(1), had approached the High Court and had stay of further proceedings. Consequently, the issuance of the letters of allotment was stopped. Subsequently, the stay was vacated on August 4, 1992 and it is stated in the counteraffidavit that the owners had approached this Court by way of appeal and in September 1992 this Court had dismissed the special leave petitions. In the meanwhile, the Government of India have re-determined the cost of the land for allotment of the acquired land for the year 1992-94 effective from April 1, 1993 to March 31, 1994 at Rs.2675.29 per square yard. The DDA evolved the principle of calculating the cost of development charges at par with cost of living index rate which admittedly worked out to 16.62% per annum. On that basis it had worked out the cost of plot at the rate of Rs.1579.17 per square yard. On the basis thereof, they recalculated the cost of allotment and issued letters of allotment to the respondents. The respondents came to challenge this order in the High Court. The impugned judgment made on August 11, 1995 in C.W.P. No. 196/94 was declared invalid. The Division Bench of the High Court has ultimately held that when the DDA seeks equity, it must also do equity. When the claimants have been directed to bear interest only at the rate of per annum on the amount deposited by them towards advance payment deposited adjustable of the successful bidders and refund is made to the unsuccessful applicants with the same rate of interest, the DDA should equally charge the escalation

charges at the rate of 7% per annum. Therefore, directions to deposit the cots of plot at 16.62% per annum as escalation cost is unjust in law.

Mr. Arun Jaitley, learned senior counsel appearing for DDA, has contended that the DDA, with a view to do justice to the claimants, have not demanded the rate of charges prevailing as on the date of allotment as determined by the Government of India, namely, Rs.7675.29 per square yard and instead worked out special equity by enhancing the cost of escalation charges at 16.62% per annum as per the cost of having index. The High Court was not justified in giving the direction to charge the escalation only at the rate of 7% per annum. We find force in the contention. Though Shri M. Shekhar and Shri Bimal Roy Jad, learned counsel appearing for the respondents, have contended that the DDA has not produced any material to show that the escalation cost would be at the rate of 16.2% and that there is no evidence to show that between the date of the stay by the High Court and the date of the demand, this amount has been expended for developmental charges by the DDA. That point was not raised before the High Court, the appellant is not entitled to raise the contention. We find no force in the contention. It is the very basis on which the appellant has justified their demand in the High Court which was also accepted by the High Court, on the basis of which, it proceeded that due to grant of stay by the High Court the escalation charges have increased for improvements effected. Consequently they worked out the escalation charges applying the special equity namely, the basis of living costs of index which admittedly was 16.2% per annum.

Under those circumstances, we are of the view that the basis on which all parties have proceeded and the High Court has accepted was that the escalation charges for improvements have been worked out at 16.2% per annum, on that basis re-calculation, came to be made and the market value was determined at the rate of Rs.1579.17 per square yard. The direction of the High Court, that they have to pay, while working out equity at 7% is not based on any rational principle. The High Curt lost sight of the fact that the appellant had spent money for development of the plots and to meet the cost demand in allotment letters was made at reduced rate. It is also stated that the two allottees were in the low priority list in 1991 had same benefit of pre 1991. rates and the same be extended to the respondents. Though this contention was not raised in the High Court, nor the High Court had advantage of it, we are of the view. that it has no legal foundation is a mistaken allotment to them in 1991 is no ground to allot to respondent at the rame rate.

The appellants are, however, directed to charge the rate of interest at 7% on the deposits made by the respondents till the date of the letter of allotment. Time for payment of the amount at the rate of Rs.1579.17 per square yard is extended for six months and the appellant is directed to deduct the difference of the rate of interest on the deposit amount at 7% from the date of the original draw till the date of communication of the letters of allotment. The appeals are accordingly allowed. The order of the High Court is set aside, but in the circumstances, without costs.