

**SUPREME COURT OF INDIA**

Delhi Administration Tr.Sec.

Vs.

Umrao Singh

C.A.No.8526 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

11.10.2011

**ORDER**

**A.K.Patnaik,J.,**

SLP.(Civil)No.34168 of 2009

1. Leave granted.

2. These are appeals against the common judgment and order dated 15.12.2008 of the Division Bench of the High Court of Delhi in Civil Writ Petition Nos.2147 of 1992 and 2148 of 1992 (for short the `impugned order').

3. The facts very briefly are that in the year 1959, the Government of India, Ministry of Home Affairs, set up a Committee to study the problems of introducing measures of control on land values and stabilizing land prices in the urban areas of Delhi and this Committee submitted its report recommending some measures. The Government of India considered the recommendations and conveyed its decision to the Chief Commissioner, Delhi, by its letter dated 02.05.1961 regarding acquisition, development and disposal of land (hereinafter called `the 1961 Scheme').The 1961 Scheme inter alia contemplated that land may be allotted at pre-determined rates, namely, at the cost of acquisition and development plus the additional charges mentioned in the Scheme, to individuals whose land has been acquired as a result of the Chief Commissioner's notifications dated 17.07.1959, 03.09.1957, 13.11.1959 and 10.11.1960 or other such notifications with a view to rehabilitate such individuals. Pursuant to the 1961 Scheme, land-owners, whose land was acquired, applied for allotment of alternative plots pursuant to advertisements inviting applications and after the necessary requirements as stipulated in the 1961 Scheme were complied with, plots were allotted to the persons who were the recorded owners prior to the issue of notification under Section 4 of the Land Acquisition Act.

4. By an Officer Order dated 03.04.1986 issued by the Delhi Administration, Delhi, Land and Building Department, the 1961 Scheme was amended. The Office Order dated 03.04.1986 is extracted hereinbelow:-

"DELHI ADMINISTRATION, DELHI  
LAND AND BUILDING DEPARTMENT VIKAS MINAR, NEW DELHI.  
37(32)/1/12 Dated: 3rd April' 86

Office Order

In supersession of and previous order issued on the subject, the Administrator Delhi is pleased to order that following norms should be followed in respect of allotment of alternative plots in lieu of the land acquired for Planned Development of Delhi under the scope of large scale Acquisition, Development and Disposal of land in Delhi of the Government of India contained in their letter dated 2.5.1961.

1. In order to make applicant eligible for all allotment of alternative plot, the minimum land acquired for Planned Development of Delhi will be one bigha instead of 150 sq. yds. which was being followed earlier.
2. In case the applicant has purchased the requisite land of 1 bigha he should have purchased the same 5 years earlier than the date of notification under Section 4 of the Delhi Land Acquisition Act in order to make him eligible for allotment of alternative plot.
3. Condition No. 2 will, however, not be applicable in respect of ancestral cases.
4. Minimum size of the plot will be restricted to 250 sq. yards where land acquired is more than 10 bighas. Cases where land acquired is more than 5 bighas but upto 10 bighas plot size of 150 sq. yds. will be recommended and in respect of the cases where the land acquired ranges between 1 bigha to 5 bighas, the size of the plot will be restricted to 80 sq. yds.
5. The plot will be allotted by DDA on pre- determined rates fixed by the Competent Authority from time to time. It is also clarified that these orders shall also apply to all pending applications.

(P.S. Bhatnagar) SECRETARY (LAND AND BUILDING)"

It was, thus, stipulated in the amended Scheme that in case the applicant has purchased the requisite land of one bigha, he should have purchased the same five years earlier than the date of notification under Section 4 of the Land Acquisition Act in order to make him eligible for allotment of alternative plot.

5. On 27.01.1984, a notification was issued under Section 4 of the Land Acquisition Act for acquisition of 3787 bighas and 12 biswas of land situated in Village Andheria for the public purpose of Planned Development of Delhi, which included the lands of the respondents, and the respondents were paid compensation in accordance with the Awards. The Government thereafter invited applications for allotment of alternative plots under the 1961 Scheme and the respondents applied for allotment of alternative plots in their applications dated 07.11.1986. As the applications submitted by the respondents lacked material particulars and were not accompanied with the relevant documents, the respondents were intimated to furnish material particulars and the relevant documents including the sale deeds by which they had purchased the land. The respondents furnished the particulars and documents and on scrutiny, it was found that the respondents had purchased the land in the years 1982 and 1983. The applications of the respondents were rejected by communications dated 30.09.1991 as they had purchased the lands within five years of the date of the notification under Section 4 of the Land Acquisition Act, i.e. 22.01.1984.

6. Aggrieved, the respondents filed Civil Writ Petition Nos.2147 of 1992 and 2148 of 1992 in the High Court and contended that the 1961 Scheme had been incorporated in the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (for short 'the Nazul Land Rules'), which are statutory in character and these rules could not be amended by an administrative order dated 03.04.1986. The High Court accepted the contention of the petitioner and held in the impugned order that Nazul Land Rules had been made by the Central Government under clause (j) of sub-section (2) of Section 56 read with sub-section (3) of Section 22 of the Delhi Development Act, 1957 (for short 'the Act') and could be amended only in the manner prescribed under Section 56 read with Section 22 of the Act and by an administrative order a further condition could not be stipulated under Rule 6 of the Nazul Land Rules. The High Court accordingly set aside the communications dated 30.09.1991 rejecting the applications of the respondents for alternative plots and remitted the matter to the appellants to consider the request of the respondents in the light of the provisions contained in the Nazul Land Rules and made it clear that the appellants would be permitted to take into consideration the nature of the policy as well as the condition stipulated in the 1961 Scheme as explained in the Full Bench judgment of the High Court in *Ramanand v. Union of India & Ors*<sup>1</sup>.

7. The only contention raised by the learned counsel for the appellant before us is that the view taken by the High Court that the 1961 Scheme could not have been amended by the administrative order dated 03.04.1986 was not correct. Learned counsel for the respondents, on the other hand, supported the impugned order of the High Court.

8. Rules 4 and 6 of the Nazul Land Rules, which are relevant for deciding the issue raised in this appeal, are extracted hereinbelow:

"4. Persons to whom Nazul land may be allotted.-(1) The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, [body of persons, firms, companies], public and private institutions, co-operative house building societies, other co-operative societies of

individuals, cooperative societies of industrialists and to the departments of the Central Government, State Governments and the Union territories.

(2) The Authority shall, in conformity with plans and subject to the provisions of these rules, dispose the Nazul land by auction to the following institutions :

- (a) hospitals;
- (b) dispensaries;
- (c) nursing homes;
- (d) higher or technical education institutions;
- (e) community halls;
- (f) clubs;
- (g) schools;

Provided that nothing in this sub-rule shall affect the allotment of land to the Central Government, State Government, Union territory, local body, autonomous bodies or organisations owned by the Central Government."

"6. Allotment of Nazul land at pre-

determined rates.-- Subject to the other provisions of these rules, the Authority shall allot Nazul land at the pre-determined rates in the following cases, namely:-

(i) to individuals whose land has been acquired for planned development of Delhi after the 1st day of January,1961, and which forms part of Nazul land:

Provided that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted;

(ii) to individuals in the low income group or the middle income group other than specified in clause (i) --

(a) who are tenants in a building in any area in respect of which a slum clearance order is made under the Slum Areas Act;

(b) who, in any slum area or the other congested area, own any plot of land measuring less than 67 square metres or own any building in any slum area or other congested area;

(iii) to individuals, other than those specified in clauses (i) and (ii), who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee;

(iv) to individuals belonging to Scheduled Castes and Scheduled Tribes or who are widows of defence personnel killed in action, or ex-servicemen, physically handicapped individuals subject to the provisions of rule 13;

(v) to industrialists or owners and occupiers of warehouses who are required to shift their industries and warehouses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act: Provided that the size of such industrial plot shall be determined with reference to the requirement of the industry or warehouses set up or to be set up in accordance with the plans and such industrialists and owners of warehouses have the capacity to establish and run such industries or warehouses and on the condition that the land allotted at pre- determined rates shall not, in any case, exceed the size of the land which has been, if any, acquired from such industrialist or owners and occupiers of warehouses and which form part of Nazul land: Provided further that in making such allotment, the Authority shall be advised by the Land Allotment Advisory Committee;

(vi) to co-operative group housing societies, co-

operative housing societies, consumer co-

operative societies and co-operative societies of industrialists on "first come first served basis."

9. It will be clear from sub-rule (1) of Rule 4 of the Nazul Land Rules that the Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals and other categories of persons. Sub-rule (2) of Rule 4 further provides that the Authority shall in conformity with plans and subject to the rules dispose the Nazul Land by auction to the categories of institutions named in clauses (a) to (g) in sub-rule 2 of Rule 4. The Full Bench of the High Court has held in the case of Ramanand v. Union of India & Ors. (supra) that Rule 4 requires that the allotment of land shall be made in conformity with the plans and 'plans' means the Master Plan and the Zonal Development Plan for a zone. Thus, there is nothing in Rule 4 which envisages allotment of Nazul land to different category of persons to indicate that the 1961 Scheme has been incorporated in Rule 4. The Full Bench of the High Court has also held in the aforesaid decision that the word 'may' in sub-rule (1) of Rule 4 cannot be construed as 'shall' and discretion has been vested in the Authority to allot land to the categories of persons mentioned in the sub-rule.

10. Rule 6 is titled "Allotment of Nazul land at pre-

determined rates" and it provides that subject to the other provisions of the rules, the Authority shall allot Nazul land at the pre-determined rates in the cases enumerated in clauses (i) to (iv) and clause (i) of Rule 6 covers cases of individuals whose land has been acquired for planned development of Delhi after the 1st day of January, 1961 and which forms part of Nazul land. Sub-Rule (1) of Rule 6, therefore, only provides that when the Authority decides to allot land to any individual under the 1961 Scheme, it shall allot at the predetermined rates.

11. This is the view that the Full Bench of the Delhi High Court has taken in *Ramanand v. Union of India & Ors.* (supra). The relevant portion of the Full Bench judgment is quoted hereunder:

"Rule 6, in reality, controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein. In other cases, the rules provide for sale of land at the market price determined by the highest bid on public auction of land."

Thus, according to the Full Bench of the High Court in *Ramanand v. Union of India & Ors.* (supra) Rule 6 controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein and in other cases, the rules provide for sale of land at the market price determined by the highest bid on public auction of land.

12. We are therefore of the considered opinion that Rule 6(1) of the Nazul Land Rules is not really a rule which incorporates the 1961 Scheme, but it only provides that if the Authority decides to allot Nazul land to the individuals eligible under the 1961 Scheme, then Nazul land shall be allotted at pre-determined rates and not at the rates determined in a public auction. The High Court has taken an erroneous view in the impugned order that Rule 6 of the Nazul Land Rules, which was a statutory rule, laid down conditions for allotment of land under the 1961 Scheme and the conditions for allotment of land under the 1961 Scheme could therefore be amended by only statutory rules under Section 56 read with Section 22 of the Act. In our considered opinion, Rule 6 of the Nazul Law Rules did not stipulate the conditions for allotment under the 1961 Scheme and the 1961 Scheme being an administrative scheme could be amended without a statutory rule made under Section 56 read with Section 22 of the Act.

13. In the result, the appeals are allowed and the impugned order is set aside. There shall be no order as to costs.

Judgment Referred.

<sup>1</sup>*AIR 1994 Del. 0029*