

## **DELHI HIGH COURT**

D.D.A.

Vs.

Lala Amar Nath Society, (Delhi)

LPA Nos. 73 to 107 of 1989.

(R.N. Pyne, C.J. and D.P. Wadhwa, J.)

5.9.1990

### **JUDGMENT**

#### **D.P. Wadhwa, J.**

1. This batch of 35 appeals are against the common judgment of the learned Single Judge (B.N. Kirpal, J.) whereby he allowed the petitioner and quashed the demand raised by the Delhi Development Authority (DDA) in excess of increase cost of land at the rate of Rs. 950,000/- per acre calculated on the basis of no profit no loss."

2. All these appeals raise same question of law and can again be disposed of by a common judgment.

3. The facts are not in dispute. The petitioners in the writ petitions are now first respondents in all these appeals and are societies registered under the Societies Registration Act, 1860. They run schools. They were allotted land by the DDA at various places in Delhi for the construction of school buildings. For the purpose of decision of these appeals, it is not necessary to give the details of the land allotted to these societies. These societies were allotted land between the period. 1-4-1987 to 3-10-1988. The allotment letter stipulated that the land was being allotted "for school building at the provisional rate of Rs. 8,00,000/- per acre and annual ground rent at the rate of 2-1/2% per annum of the premium" and further that the society shall pay the difference of cost of land as may be decided by the Government/DDA." The societies were given possession of the respective land allotted to them. In seven cases even perpetual lease deeds were executed. In some cases building plans were sanctioned by the DDA and even construction made and in some cases buildings were under construction or even the plans in some cases were at the stage of being sanctioned. Then the DDA

addressed letters to all the societies stating "that the cost of institutional lands has since been raised by the Government of India from Rs. 8 Jac per acre to Rs. 28.50 lakhs per acre with effect from 1-4-1987." This was where the land was situated in South Zone. Delhi was divided into four zones and for West Zone the cost of land was raised to Rs. 23.75 lakhs; for North Zone to Rs. 19 lakhs and for East Zone to Rs. 14.25 lakhs per acre. This price increase was effective from 1-4-1987 to 31-3-1989. For the earlier two years from 1-4-1985 to 31-3-1987, the price was Rs. 8,90,000/- per acre all over Delhi. This excess demand was challenged in the writ petitions and the stand of the societies was upheld.

4. In seven cases where lease deeds had been executed the following terms relating to enhancement of price was inserted:

"The Lessee shall pay within such time such additional sum or sums toward premium as may be decided upon by the Lessor on account of the compensation awarded by the Land Acquisition Collector in respect of the said land or any part thereof being enhanced on reference or in appeal or both and the decision of the Lessor in this behalf shall be final and binding on the Lessee.

The yearly rent of two and half percent of the premium hereby reserved shall be calculated on the sum received towards premium by the Lessor before the execution of these presents and such additional sum or sums payable towards premium as provided herein from respective dates when possession was handed over to societies."

5. DDA is a body corporate and is constituted under the Delhi Development Act, 1987 (for short the Act"). Its objects are given in Section 6 of the Act, which are to promote and secure the development of Delhi according to plan and for that purpose DDA has been conferred powers to acquire, hold, manage and dispose of land and other property and to carry out building, operations etc. Section 22 of the Act deals with Nazul lands, which are lands vested in the Central Government. This Section is as under

"22(1) The Central Government may, by notification in the Official Gazette and upon such terms and/conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereafter to as "nazul lands") for the purpose of

development in accordance with the provisions of this Act.

(2) No development of any "nazul land" shall be undertaken or carried out except by, or under the control and supervision of the Authority after such land has been placed at the disposal of the Authority under sub-section(1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority."

6. There is no dispute that the lands which are subject matter of these appeals are developed nazul land and are governed by the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (for short "the Rules"). These Rules have been framed by the Central Government in exercise of powers conferred by clause (j) of sub-section (2) of Section 56 read with sub-section (3) of Section 22 of the Act. Section 56 of the Act deals with power of the Central Government to make rules and under Clause (j) of sub-section (2) of this section rules can be framed as to the manner in which nazul lands shall be dealt with after development. Under these Rules "Nazul lands" means the land placed at the disposal of the DDA and developed by or under the control and supervision of the DDA under section 22 of the Act. Under Rule 3 DDA may allot Nazul land for public utilities, community facilities, open spaces, parks, playgrounds, residential purposes etc. and such other purposes as may be specified from time to time by the Central Government by notification Rule 5 specifies respectively the persons to whom Nazul land may be allotted and the premium for allotment of Nazul land to certain public institutions. These Rules are as under :

"4. Persons to whom Nazul land may be allotted - 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, public and private institutions, co-operative house building societies, other co-operative

societies of individuals, co-operative societies of individuals, co-operative societies of industrialists and to the departments of the Central Government, State Governments and the Union Territories.

5. Rules of premium for allotment of Nazul land to certain public institution The Authority may allot Nazul land to schools, colleges, universities, hospitals,, other social or charitable institutions, religious, political, semi-political organizations and local bodies for remunerative, semi remunerative or unremunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time."

7. Again there is no dispute that Nazul lands have been allotted to all the societies as per Rules. As noted above, earlier the Central Government had determined the rates at the rate of Rs. 8,00,000/- per acre, which was on the basis of "no profit no loss." The policy of "no profit no loss" was given a go by in the rates fixed for the period from 1-4-1987 to 31-3-1989. As to On what basis these rates were now fixed for four different zones has not been spelt out. Though these rates are lower than the market rate but higher than the rates which could be arrived at on the basis of "no profit no loss". The term "no profit no loss" would mean the compensation awarded under the Land Acquisition, Act, 1894 for acquisition of the land and of the charges incurred by the Central Government in connection with the acquisition as well as the development charges. Rule 20 stipulates the conditions for allotment of land to public institutions. It says as under:

"No allotment of Nazul land to public institution referred to in rule 5 shall be made unless-

(a) according to the aims and objects of that public institution;

(i) it directly sub serves the interest of the population of the Union Territory of Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by public institution, that the same cannot, with equal efficiency be carried out

elsewhere than in that Union Territory.

(b) it is a society registered Under the Societies Registration Act, 1860 ( 21 of 1860) or such institution is owned and run by the Government or any local authority, or is constituted or established under any law for the time being in force;

(c) It is of non-profit making character;

(d) It is possessed of sufficient funds to meet the cost of land and the construction of buildings for its use; and

(e) Allotment to such institution is sponsored or recommended by a Department of the Delhi Administration or a Ministry of the Central Government."

8. Again there is no dispute that the societies fulfilled all these conditions Under Rule 42 when Nazul land is allotted, it shall be held by the allottee as lessee of the President of India on the terms and conditions prescribed by the Rules and contained in the lease deed to be executed by the allottee. The lease-deed is to be executed in accordance with Form 'C', appended to the Rules and in addition, a lease-deed may contain such other covenants clauses or conditions not inconsistent with the provisions of Form 'C' as may be considered necessary in the circumstances of each case (Rule 43). Then, Rule 45 says, that the Rules are to be supplementary to the directions of the Central Government. This Rule is as under:-

(1) The provisions of these rules shall be supplementary to, but not in the derogation of the direction given, from time to time by the Central Government under sub-section (3) of Section 22 of the Act, for dealing with the Nazul land.

(2) In particular and with prejudice to the generality of the fore going provisions, such directions may be given -

a) For removing any doubt or dispute or difficulty arising in giving effect to the provisions of these rules, or

b) For dispensing with or relaxing the requirement of any rule to such extent and subject to such exceptions and conditions as may be specified in the direction, in any particular case where the Central Government, for reasons to be recorded by it, is satisfied that the operation of any rule in that case causes

undue hardship having regard to the objects of the Act."

9. After rule was issued in the writ petitions, D.D.A. and Central Government filed separate returns. D.D.A. just said that at the time of allotment it was made clear to the societies that rate being charged at that stage was provisional and that they would have to pay the difference in the rates of the land as may be ultimately decided/determined by the Central Government. It was also said that the rate of land allotted to educational societies had to be determined by the Government from time to time and that D.D.A. was bound to charge the rates as were fixed by the Government and since the revision in rate was in process, D.D.A. made it quite clear that the rate being charged was only of the provisional nature and was subject to revision. It was also mentioned in some cases where lease-deeds had been executed. The lessees had duly executed undertakings that they would pay the difference in rates paid by them and that which may be ultimately fixed by the Central Government.

10. The Central Government took the stand that it had notified three sets of land rates from time to time and these being (i) the pre-determined residential and commercial land rates for various localities in Delhi for the purpose of administering leases and collection of unearned increase, damages etc.; ii) the "no profit no loss" rate for transfer of land between Central Government Departments, and (iii) the land rates for allotment of land to social, cultural, religious and educational institutions which are registered societies and are non-profit making organizations. Paras 2 and 3 of the return of the Central Government may be reproduced :-

"2. The above land rates are notified once in two years. The predetermined Residential and Commercial rates mentioned in category (i) above are notified after taking into account the trend of market price as reflected by auctions and the price reported to authorities like Income Tax, Revenue authorities, Registrars, etc. The 'NO PROFIT, NO LOSS' rate mentioned in category (ii) above is notified after taking into account the acquisition cost of the land, the development charges and the overhead charges charged by the developing authorities.

3. The land rates for allotment to non profit making social, cultural, etc. institutions was, till 31.3.1987, the same rate as was notified as the "NO PROFIT, NO LOSS" rate for transfer of land between Government

Departments. This rate was Rs. 8,00,000/(Rupees eight lakhs only) per acre from 1.9.1985 to 31 3.1987. From 1.4.1987 the 'No Profit No Loss' rate has been worked out and notified as Rs. 9,50,000/- (Rupees nine lakh fifty thousand only) per acre. This notified rate is applicable for transfer of lands between Central Government Departments. When the question of notifying the institutional rates mentioned in category (iii) above from 1.4.1987 was examined, it was found that the rate of Rs. 9,50,000/- (Rupees nine lakh fifty thousand, only) per acre would involve a substantial amount of subsidy if the same is applied to the institutional allotments. The predetermined commercial and residential rates have increased substantially with the revision from 1.4.1987. A copy of the land rates notified from 1.4.1987 to 31.3.1989 is annexed as annexure 1. It will be seen there from that the present commercial rates vary from Rs. 1530/- per square meter for far-flung colonies to Rs. 23,000/- per square meter to Centrally located areas like *Cannaught Place*. The subsidy element, if the no profit no loss rate of Rs. 9,50,000/- (Rupees nine lakh fifty thousand only) per acre is adopted for Institutional allotments, can easily be seen from these rates. It was, therefore, felt that the institutions should be charged a higher rate than the 'no profit no loss' rate and, at the same time, the rate should not be as high as the commercial rates as the institutions cannot obviously afford to make payment of such high rates. It was with this view that a via-media was worked out and after a careful consideration of all facts the land rates for allotment to institutions was revised on Zonal basis depending on the location of the land. A copy of the revised rates from 1.4.1987 to 31.3.1989 is annexed herewith and is marked as annexure II."

11. On the question as to why different rates were fixed on Zonal basis, the Central Government stated that the demand for land by the educational institutions were confined mainly to Central and South Delhi and the owner Zones were deprived of the educational facilities. It is also stated that the rates notified for educational institutions even then contained a high amount of subsidiary element as compared to the predetermined commercial or even the residential rates. Lastly, it was stated that the allotments had been made during the interim period 1.4.1987 to 3.10.1988 on the stipulation that the allottee institution would undertake to pay the difference between the pre revised rates and the revised land rates and they had accepted the allotment on this condition.

12. All through till the policy for the two years in question (1.4.1987 to 31.3.1989) was announced in October, 1988, the charges for the land allotted to educational societies had been on the basis of no profit no loss. Now when in the allotment letter a society was asked to pay at the rate of Rs. 8,00,000/- per acre, which was the rate prevalent for the earlier two years (1.4.1985 to 31.3.1987) and was further told that it would also pay difference of cost of land, as might be decided by the Government/D.D.A., it could only mean that basis for charges would nevertheless remain the same. No one could imagine that in the allotment letter even a hint was, thrown that charges henceforth would be linked with the prevalent market value of land in Delhi. To a question in Parliament on 7.12.1988 the Minister of State in the Ministry of Urban Development, Government of India, stated that "the revision of rates had been done at no profit no loss, basis to offset the increase in the cost of development for land." But as has been seen above, the figure given of land prices for different Zones in the counter affidavit of the Union of India the price was linked to the market value of the land prevalent in the Zones though the same was not the market value not did this reflect the prices on the basis of "no profit no loss". The Central Government has said that there was an element of subsidy in the prices charged. That would not be correct thing to say. Subsidy means when Government pays money to make prices lower or to make it cheaper to produce goods etc. or sells at a price lower than the cost incurred. That certainly is not the case here, The argument that cost of land" in the allotment letter did not merely mean cost of acquisition, development and other overhead charges does not appeal to us. Accordingly, in our view, "difference in cost of land" can mean nothing but the cost that the Government might ultimately had to incur by way of acquisition, enhancement of compensation and development and other overhead charges minus the price charged on provisional basis never the less remaining the same which existed immediately for earlier years and which was no profit no loss. When such a term was inserted in the allotment letter, the societies paid at the price of Rs. 8,00,000/- per acre, got possession of the land, no objection certificates were also issued by the D.D.A. and some of the societies even got their plant; sanctioned and completed the construction of school buildings or were in the process of constructing.

13. The D.D.A. is the instrumentality of the State. Neither D.D.A. nor the Central Government disown the letter of allotment. It was nowhere the case of D.D.A. that the allotment letter was issued without the authority of the Central

Government. It appears to us from the counter affidavit filed by the Central Government that the allotment letters were issued with the consent and knowledge of the Central Government and to which the Central Government will remain bound.

14. We are of the opinion that principles of promissory estoppel are squarely applicable in the present case. In *M/s. Motilal Padampat Sugar Mills Company Ltd. v. The State of Uttar Pradesh & Ors.*, <sup>1</sup> the Supreme Court observed as under (para 33) :-

"We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promise were to recede from his promise then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promise were allowed to go back on the promise,"

15. In *Delhi Cloth & General Mills Ltd. v. Union of India*, <sup>2</sup> the Supreme Court again observed (paras 24 and 25) :-

"The concept of detriment as we now understand is whether it appears unjust, unreasonable or inequitable that the promiser should be allowed to, resale from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation."

"It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement."

16. It will thus be seen that the allotment letters were issued within the authority given under the law and the societies changed their respective position after making payment and taking possession of their respective lands. We find

no impediment in any way invoking the principle of promissory estoppel.

17. Under Rule 20 Nazul land could not be allotted to educational societies unless it was a non-profit making body and among other things, was in possession of sufficient funds to meet the cost of land and the construction of buildings for its use. At the time allotment letter was issued, the D.D.A. and the Central Government satisfied themselves or these criteria and the case of the societies was also sponsored/recommended by the Director of Education, Delhi Administration, Delhi. Now when the cost of land was certainly jacked up to Rs. 28,00,000/- from Rs. 8,00,000/ per acre, there is nothing on record to show that any satisfaction was arrived at by authorities that societies had sufficient funds to meet the cost of land. In fact these societies expressed their inability to pay such high cost of the land. When earlier the allotment letters were issued and the societies gave undertakings to pay the difference of cost of land all concerned were under the belief that any enhancement in the cost of land would be with reference to the increased cost of acquisition and other development charges and no one could even entertain a belief that basis of "no profit no loss" would altogether change and the authorities would demand difference in cost of land on the basis of market value in contravention of the conditions as given in Rule 20 of the Rules. We are of the opinion that this demand on the basis of market value of the land is even otherwise not valid as no enquiry was stipulated before issuing such a demand if these societies were possessed of sufficient funds to meet the cost of the land on the basis of market value because it was clearly understood that difference in cost of land had to be on the basis of "no profit no loss".

18. As noted above, in some of the cases even perpetual lease had been executed as given in Form 'C' appended to the Rules and the extra condition added regarding payment of any additional sum that the lessor might have to pay on account of enhanced compensation for acquisition of land, subject matter of the lease deed. The terms of the lease deed bind both the parties. Lease deed is in fact a statutory document. It was argued by the D.D.A. that provisions of the Rules were supplementary and not in derogation of the directions given from time to time by the Central Government under sub-section (3) of Section 22 of the Act in dealing with Nazul land. It was submitted that outside perpetual lease the Central Government could demand enhanced premium. We do not accept this position. Under sub-section (3) of Section 22 the Nazul land shall be

dealt with by the D.D.A. in accordance with the Rules made and the directions given by the Central Government in that behalf. Now once lease deed is executed, no further direction can be given by the Central Government in that behalf. Now once lease deed is executed, no further direction can be given by the Central Government unless such a right is reserved by the Central Government under the terms of the lease deed. Under sub-section (4) of Section 22, the Central Government can require the D.D.A. to replace the Nazul land at the disposal of the Central Government which earlier had been placed at the disposal of the D.D.A. could it be said. if the argument of the D.D.A. is taken to be correct, that the D.D.A. could even place at the disposal of the Central Government that Nazul land which was the subject matter of perpetual lease. The answer obviously is no. Only such land can be placed at the disposal of the Central Government which had not been dealt with by the D.D.A. as per the Rules and directions of the Central Government. Any demand of extra premium outside the perpetual lease is not valid and there is no, difficulty in our holding that in cases where perpetual leases had been executed the demand of premium is wrongful unless such demand is related to the increase in the cost of acquisition of the land or incurring of development charges. The demand of increase of premium has strictly to be in accordance with the terms of the perpetual lease agreed to by the parties. That being so, the societies in whose cases perpetual leases have not been executed. Their cases are of the same nature and they cannot be discriminated against merely because perpetual leases have not been executed. Terms of allotment letter and the terms of the perpetual lease respecting payment of increased cost of land have to be read together and the only meaning that could be given is that any "difference in cost of land" has to be on the basis of no profit no loss.

19. It is a known fact that land prices in Delhi have skyrocketed. Authorities certainly cannot take advantage of that and increase the cost of land allotted to the societies on that count. Societies are non-profit making bodies and the schools they run are under the Delhi Education Act and the Rules made there under. Under Article 41 of the Constitution, the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education etc. The educational societies are performing this function and it will certainly be too much to expect the societies to pay the cost of land on the basis of the market value. Of course, we should not be understood to lay that "no profit no loss" basis can never be changed or that would be legal

or not, as in these cases we are not called upon to examine that aspect. It was submitted with reference to the affidavit of the Central Government that, the rates notified were applicable in the case of primary and secondary schools only for the building operation out of which about 50% was allotted to them as playground and open space at the rate of Re. 1/- per acre. The argument was that since the land allotted to the schools for playgrounds etc. was almost free, the Central Government could link the price of the land where school building was to be constructed on the basis of the market value prevalent there. This again is not correct. In the present cases, the allotment letters and the perpetual leases show purposes only and there is no reference to allotment of any land for playground etc. There is no dispute that if the land price is calculated on the basis of 'no profit no loss', it would be Rs. 9.50 lakhs per acre. The authorities therefore cannot charge more than that.

20. The learned Single Judge has, therefore, taken the correct view of the matter. It pointed out that as a matter of fact that judgment was accepted by the Central Government inasmuch as it did not prefer any appeal against the judgment. It was submitted that was a circumstance to be taken into account and since D.D.A. was bound by the directions given by the Central Government, it could not file an appeal. It is true that the D.D.A. has *locus standi* to file an appeal and any decision in appeal would certainly be binding on the Central Government. The fact, however, remains that the Central Government did accept the judgment. Nothing has been shown that the Central Government wanted to challenge the judgment or had instructed the D.D.A. to file an appeal and in that case, the Central Government would certainly have been one of the appellants. That was not so.

21. Mr. Rao, learned counsel appearing for the DDA, then submitted that the dispute in the present controversy involved adjudication of contractual relations between the parties and that the writ petitions on that account were thus not maintainable. No such plea was raised before the learned Single Judge. It is too late in the day now, to permit the D.D.A. to raise such a plea. It does not merit any consideration as well. Perpetual lease, is not an ordinary contract executed between the two equal parties. Its form has been prescribed under the Rules and it is a statutory document. The lessee has to sign only on the dotted lines. There is no other way that a lessee can acquire land for the purpose of school building in Delhi and it is no secret that DDA has complete monopoly for the

development of land in Delhi. Here the petitioner societies complained breach of statutory condition when the Central Government demanded difference in the cost of land not on the basis of 'no profit no loss but on the basis of 'market value' of the land. We find no bar under Article 226 of the Constitution to invoke the jurisdiction of this Court.

22. Mr. Rao did refer to a few decisions in support of his arguments, notable being : (1) *Vishal Builders (P) Ltd. v. Delhi/Development Authority*<sup>3</sup> *State of Punjab v. Jagdip Singh and Ors.*,<sup>4</sup> (3) *M/s. Jasjeet Films (Pvt.) Ltd & Anr. v. Delhi Development Authority and Ors.*,<sup>5</sup> *The state of Tamil Nadu and ors. etc v. S.K. Krishnamurthy etc.*,<sup>6</sup> *Excise Commissioner v. Ram Kumar etc.*,<sup>7</sup> (6) *Union of India and ors. v. Godfrey Philips India Ltd.*,<sup>8</sup> (7) *Hiralal Chawla & Anr. v. State of U.P. & Ors.*,<sup>9</sup> (8) *K.V. Rajalakshmia Setty and Anr. v. State of Mysore and Anr.*,<sup>10</sup> (9) *Ram and Shyam Company v. State of Haryana and Ors.*,<sup>11</sup> (10) *Divisional Forest officer v. Bishwanath Tea Co. Ltd.*,<sup>12</sup> *M/s. Shenoy and Co. v. Commercial Tax Officer*,<sup>13</sup>

23. But because of the view which we have taken it is not necessary to refer to these judgments in any detail, our view, however, certainly not in any way conflicting with them.

24. The result is that the judgment of the learned Single Judge is affirmed. All these appeals fail and are dismissed with costs in favor of respondent No. 1, Counsel fee Rs. 550/- in each appeal.

Cases Referred.

1. AIR 1979 Supreme Court 621,
2. AIR 1987 Supreme Court 2414,
3. ILR (1977) 1 Delhi 724;
4. AIR 1964 SC, 521;
5. AIR 1983 Delhi 83; (4)
6. AIR 1972 Supreme Court 1126;
7. AIR 1976 Supreme Court 2237;
8. AIR 1986 Supreme Court 806;

9. JT 1990(1) SC 194;
10. AIR 1967 Supreme Court 993;
11. AIR 1985 Supreme Court 1147;
- 12.(1981) 3 SCC 238; and (11)
13. (193) 1 Kant LJ 135.