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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 878/2004

S.C.Khosla ..... Petitioner

! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority

..... Respondent

^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

% DATE OF DECISION: 15-02-2005

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

; **PRADEEP NANDRAJOG, J.**

For orders, see WP(C) No.5755/2004.

P.N.Jog

PRADEEP NANDRAJOG, J.

February 15th, 2005

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IN THE HIGH COURT OF DELHI AT NEW DELHI

1. WP(C) No. 5755/2004

Major General Pradeep Kumar Mahajan
..... Petitioner

! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority
..... Respondent

^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

2. WP(C) No. 9462/2003

Smt.Manju Jindal ..... Petitioner

! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent

^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

3. WP(C) No. 2142/2004

J.S.Chandhok ..... Petitioner

! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

4. WP(C) No. 4575/2004

S.R.Yadav ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

5. WP(C) No. 4574/2004

Chhabil Dass Sharma ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

6. WP(C) No. 3336/2004

Ramesh Arora ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

7. WP(C) No. 10/2004

Mr.Rakesh Babu ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

8. WP(C) No. 3335/2004

Satish Chander ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority
..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

9. WP(C) No. 878/2004

S.C.Khosla ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority
..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

10. WP(C) No. 887/2004

Rakesh Kumar Jain ..... Petitioner
! through: Mr.R.K.Saini, Mr.Sumit Bansal and Mr.A.K.Sinha, Advocates.

VERSUS

$ Delhi Development Authority
..... Respondent
^ through: Mr.Anil Sapra and Ms.Neelima Tripathi, advocates.

RESERVED ON: 05-10-2004

11. WP(C) No. 4602/2004

Shri Suraj Bhan Kaushik ..... Petitioner
! through: Mr.Naresh Kaushik,Advocate.

VERSUS

$ Delhi Development Authority & Ors.
..... Respondent
^ through: Mr.Anil Sapra, advocate.

RESERVED ON: 16-11-2004

% DATE OF DECISION: 15-02-2005

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Petitioners claim that their legitimate expectations cannot be defeated by DDA, midstream changing its policy to allot plots of 60 sq. mts. instead of 90 sq. mts. to them. Promisory estopple is invoked against DDA. Response of DDA is that it held out no promise to allot 90 sq. mts. plot

to the petitioners. It's scheme under which, petitioners applied, clearly provided that DDA had a right to allot smaller plots. It is pleaded that action of DDA is guided by public interest, in that, available land being less and registrants still waiting for being allotted a plot; to accommodate all within the available land, DDA had but no option other than to reduce the plot size. DDA pleads that petitioners had no right, much less indefeasible right to be allotted a plot measuring 90 sq. mts.

2. In the year 1981, DDA floated its Rohini Residential Scheme 1981 whereunder it sought registration from individuals for being allotted a plot of land for residential purposes. In the MIG category, two preferences (not options) were given to the registrants: (i) to prefer for a 90 sq. mts. plot, and (ii) to prefer for a 60 sq. mts plot.

3. As per the scheme, plots had yet to be developed. Salient features of the scheme, on which parties relied in support of their respective stands may be noted at the outset. Object of the scheme was listed under the caption 'HOUSING STRATEGY'. Inter alia, under the said caption it

was stated:-

> 'As a measure of social justice the layout of the residential areas has been planned to give as much as 97% plots to the economically weaker sections and low and middle income groups.'

4. Under the caption 'TERMS & CONDITIONS, inter alia, following was provided:

> (i) Individuals in the EWS/Janta category are entitled for a plot of 26 sq. mts. Those in LIG for plots of 32 & 48 sq. mts. and MIG for plots of 60 & 90 sq. mts.
>
> (ii) The allotment of plots will be made in phases spread over five years by draw of lots among the eligible applicants and different draws will be held for different categories. The DDA reserves the right to create categories and lay down priorities. DDA shall refund the deposits with interest in case plot applied for cannot be made available.
>
> (iii) The DDA reserves the right to allot a different size of plot in the same category.
>
> (iv) After the allotment has been confirmed by the competent authority, the successful applicant will be informed in writing of the plot allotted to him which he will be bound to accept and he will be required, within such time as may be specified, to pay the balance premium.

5. It is apparent that under the scheme, DDA did not

guarantee a firm allotment of a plot evidenced by the term *DDA shall refund the deposits with interest in case plot applied for cannot be made available*. Further DDA had a right to allot a plot of different size in the same category, evidenced by the terms *the DDA reserves the right to allot a different size of plot in the same category*. Further, right to be allotted a plot would mature on the applicant being allotted a specific plot at a draw held and confirmed by the competent authority and the registrant accepting the same, evidenced by a conjoint reading of the terms *the allotment of plots will be made in phases spread over five years by draw of lots among the eligible applicants*, and the term *after the allotment has been confirmed by the competent authority, the successfully applicant will be informed in writing of the plot allotted to him which he will be bound to accept*.

6. Another important facet may be noted. The form of the application to be submitted by the registrant was provided by the DDA and all applicants were required to apply as per said form. Column 6(v) (b) of the form reads as under:

'Give the size of the plot required i.e. 6/32/48/60/90 sq. mts. in order of preference according to your category.'

7. Thus, plot size indicated by the applicant was a mere order of preference.

8. As stated at the bar, initially, all registrants had their names included at a draw of lots as and when plots became available on a particular pocket being developed by DDA. The lucky ones got a plot. Others had to wait. Somewhere around 1989, DDA gave a priority number to the left over registrants. This priority was fixed as per draw held. Thereafter, as and when plots became available for allotment, as per priority, only such number of registrants were included at a draw of lots, equal to number of plots available. Specific plot was allotted at said draw. In other words, post 1989, allotment of a plot was as per priority of the registrant.

9. As per counter affidavit filed by DDA in WP(C) No. 3336/04, at a draw held on 27.3.1996 which was the last draw held prior to 11.6.2003, priority number 1651 was covered in the size of 90 sq. mts. plot and priority number

5101 was covered in the size of 60 sq. mts. plot.

10. As per counter affidavit filed by DDA in WP(C) No. 3336/04 Rohini Residential Scheme 1981 had planned development of an area admeasuring 2497 hectares. Estimated 1,17,000 residential units (not plots) were to come up. Land use distribution envisaged was:-

Sl.No.	Land Use	Area in hectares	%age
a.	Residential, including plots & group housing 1,17,000 units.	1413	56.58
b.	Commercial	108	4.35
c.	Industrial	482	19.32
d.	Public & Semi public facilities.	126	5.06
e.	Recreational	211	8.47
f.	Circulation	155	6.22

11. Counter affidavit of DDA states that Rohini Residential Scheme attracted 82,384 registrants, out of which 1701 persons cancelled/surrendered registrations. By the year 1999 it was noted that 38,295 persons were still wait-listed.

12. DDA had another scheme called New Pattern Registration Scheme 1979. Under this scheme DDA was to construct flats for the registrants. By the year 1999, 24030 registrants were wait-listed under this scheme. Keeping in view land requirement to allot a plot/flat to all registrants under the two schemes, and availability of land, on 9.7.1999, Central Government took a policy decision that henceforth, in the LIG category, plot size of only 32 sq. mts. would be allotted and in the MIG category plot size of only 60 mts. would be allotted. This decision was notified by a public notice published on 1.11.1999 in leading newspapers having circulation in Delhi, both in Hindi and English.

13. I may note that the Union of India has not been impleaded as a respondent in any of the writ petitions.

14. On 8.7.2004, an order was passed as under:

> "08-07-2004
> Present: Mr. Ravinder Sethi with Mr. Sumit Bansal, for the petitioner.
> Mr. Anil Sapra for the DDA.
>
> WP(C) No.5755/2004
> The present writ petition and the batch of connected writ petitions raise an issue whether the DDA is entitled to auction

plots in excess of 3% of the plots allocated to plots in the Rohini Residential Scheme. Case of the petitioner, inter alia, is that at the time when the Rohini Residential Scheme was floated it was indicate that 97% of the land allocated to the plots would be transferred at the pre-determined rates. In other words, 97% of the area under the plots was not available to be auctioned by the DDA. Counsel for DDA contends that 97% plots and not 97% plot area was to be transferred at pre-determined rates.

Adjudication of the writ petition would require some primary data to be made available to this Court. The said primary data would be:-

(a) what was the area of the land in the Rohini Residential Scheme which came to be allocated to plots;

(b) the number of plots and their total area which came to be carved out;

(c) the number of plots with particulars of plot which have been auctioned indicating the total area of those plots;

(d) the number of plots alongwith the total area which have been alloted till date on pre-determined rates.

It is agreed between the parties that W.P(C) 5755/2004 be treated as the lead matter. Mr. Anil Sapra appearing for the DDA states that 3 weeks time be granted for furnishing the information.

List on 11.8.2004.

sd/-

July 08, 2004 PRADEEP NANDRAJOG, J.

15. Additional affidavit was filed by DDA on 9.8.2001. In the said additional affidavit it has been stated that Rohini Residential Scheme 1981, as originally contemplated, envisaged development of Phase-I and II only, a fact stated in the brochure. Gross residential area of Phase I and II was 1413 hectares. Subsequently Phase-III, having area of 394.5 hectares was included. It was expanded to include Phase-IV as well.

16. Additional affidavit further records that 52932 plots have been allotted in the Rohini Residential Scheme 1981. It is stated that only 1091 plots in phase-I and II were auctioned. 20 plots were auctioned in phase-III. None in Phase-IV.

17. It is further explained in the additional affidavit that area known as Prashant Vihar was initially named as Haiderpur Residential Scheme which was approved in October, 1978. It is explained that these plots were subsequently shown as part of Rohini Residential Scheme since the area abuts the area of Rohini. It is thus explained that more than 97% residential units, including dwelling

units in cooperative group housing societies have been allotted in the Rohini Residential Scheme 1981.

18. Immediate cause for filing of the writ petition was a public notice issued by the DDA offering 90 sq. mts. plots to be purchased in an open auction.

19. Learned counsel for the petitioners Mr.Sumit Bansal and Mr.R.K.Saini urged that Rohini Residential Scheme envisaged plots upto 90 sq. mts. to be allotted to the registrants and, therefore, plots being put to auction being contrary to the scheme, DDA could not auction the said plots. This submission was elaborated on the premise that the pockets in which these plots stood carved out were meant for the registrants to be allotted a plot. Rule 27 of the DDA Nazul Land Rules, 1981 was brought into aid by the counsel. Counsel for the petitioners urged that the public notice issued by DDA in the year 1999 was not in conformity with Section 44 of the Delhi Development Act 1957 and, therefore DDA could not deny allotment of 90 sq. mts. plot to the registrants. The most forceful plea urged by the petitioners was that their legitimate expectation of being

allotted a plot of 90 sq. mts. could not be violated by the respondent. Counsel urged that some of the petitioners would have got a 60 sq. mts plot much earlier, but they chose to take a 90 sq. mts plot on a representation made by DDA that those who opted for a 90 sq.mts. plot would be allotted one. It was urged that midstream change of policy by DDA was not only unfair and unjust but even arbitrary and irrational.

20. Per contra, Mr.Anil Sapra and Ms.Neelima Tripathi arguing for DDA urged that under the scheme, 97% of the plots and not 97% area was earmarked for EWS, LIG & MIG registrants. The scheme gave a right to the respondent to alter the plot size in the same category and also a right to create categories and lay down priorities. It was urged that the petitioners have not challenged the rights given to the respondent under the scheme. The scheme was not challenged. Petitioners were bound by the scheme. It was urged that the policy decision of 1999 was in consonance and in conformity with the scheme under which petitioners had applied.

21. In the context of the submission of counsel for the petitioners that the pockets where the plots were being auctioned were intended for the benefit of the registrants, counsel urged that since the scheme permitted DDA to lay down priorities and alter the plot of size in the same category, DDA would be empowered to vary portion of land to be allotted for various categories, as long it is in overall conformity with the master plan and the permitted land use. It was urged that a lay out plan is not a statutory plan and can be amended at any time.

22. It was urged by learned counsel for DDA that the public notice dated 1.11.999 was issued by Respondent authority, formulated and published pursuant to the directions issued by the Ministry of Urban Development, Government of India vide its communication dated 9.7.1999 pursuant to which a policy decision to allot 60 square meters plot to all the MIG registrants under the Scheme and 32 square meters plot to the LIG registrants was taken. Further to gauge sufficient funds for the development of and completion of allotment of plots for EWS, LIG and MIG

category a policy decision to auction some of the plots measuring 90 square meters was taken so as to consolidate funds for ensuring that targets can be met and the remaining allotments can be completed within the prescribed time period. The funds are also required for settlement of acquisition claims in respect of land acquired for allotment under the said Scheme. The decision of the authority is based on sound principles of law, equity and justice and is being applied uniformly to all the registrants under the Scheme. The said decision of the respondent authority was in no matter demonstrably capricious or arbitrary and not informed by any reason of infringing any statute or the Constitution. Hence the same is not subject to judicial interferences. A policy decision is not subject to judicial review unless it is unreasonable or against public interest. Also any policy decision taken by the Government is not liable to interference unless the Court is satisfied t hat the rule making authority has acted arbitrarily or in violation of fundamental rights. Further the policy decision of a government cannot be ordered to be altered if it would

adversely affect the financial standing of the authority more so when the policy decision has been taken keeping the larger public interest into consideration and by taking into consideration all the relevant facts and circumstances. The policy has been implemented uniformly and consistently to all the cases and hence, the policy is not open for judicial review.

23. It was further urged that it is a settled principle of law that in order to judge the validity of any policy or the statutory discretion, the test to be applied is to find out whether the policy was illegal, or suffered from any procedural impropriety. In the present case a notification dated 1.11.1999 had been issued pursuant to the communication of the Ministry of Urban Development, Government of India. It was a change in the policy of the respondent authority thereby deciding to allot a plot of 32 Square meters to the LIG registrants and 60 square meters to the MIG registrants. A change in the government policy must be reasonable, fair and non-arbitrary and the courts would not bind the government to its previous policy unless

the change in the policy is vitiated by mala fides or abuse of power. The respondent authority has the right to change its policy from time to time under the changing circumstances which should not be interfered with if based on relevant facts and circumstances and where the same is being done within the four corners of the Scheme.

24. On plea of legitimate expectation and promissory estopple, counsel for DDA argued that these concepts have to be determined keeping in view larger policy considerations and not according to the claimant's perception of his private interest. In the present case the change in the policy was brought about based on broader policy considerations and hence cannot be held to be arbitrary and unreasonable. The Court would not bind the government to its previous policy by invoking the doctrine of legitimate expectation of the applicant unless the change in the policy is vitiated by malafides or abuse of power. In the present case the change in the policy is equitable and in larger interest and thus the authority is not bound by the promises or legitimate expectations of just a handful of

individuals. The doctrine of promissory estopple and legitimate expectation must yield if equity so requires.

25. Responding to the plea that public notice dated 1.11.1999 was not in conformity with Section 44 of the Delhi Development Act 1957, counsel urged that Section 44 of the Delhi Development Act, lays down the essential ingredients to be complied with in case of the statutory public notice under the DDA Act. Such a public notice would be required to be given where a modification is required to be carried out under the DDA Act as for instance where the authority seeks to bring a change in the Master plan. In the instant case, the notice dated 1.11.1999 was essentially a notice under the Scheme and not notice under the Act and thus would not attract the ingredients of Section 44 of the DDA Act. The said Scheme had been formulated after following the due procedure wherein the terms of the Scheme fully authorized the respondent authority to alter the size of the plot being allotted. It has been held that in cases where all the concerned individuals are well educated, a newspaper publication was definitely

sufficient. Further the Authority was fully authorized to change/reduce the size of the plot under the various categories under the Scheme itself. The public notice dated 1.11.1999 was published in the leading newspapers which had a wide circulation, including two English dailies and two Hindi dailies.

26. It was urged that admittedly the notification was published in the year 1999 which is now sought to be challenged in the year 2004 which on the face of it makes it wholly belated. The said alteration in the Scheme was duly published in a leading newspaper vide notification dated 1.1.1999 however none of the petitioners raised any objection at that point of time and have belatedly sought the quashing of the policy after a long period of nearly 4 years. Nowhere in the entire writ petition have the petitioners pleaded ignorance of the notification.

27. It was finally urged that the DDA is a public authority constituted for acquisition of land and its development into an urban township. To promote urban township, DDA from time to time has come up with various

housing schemes namely SFS Scheme, MIG Scheme etc. These several modes of disposal of the property acquired by DDA is for public purpose. When a public authority discharges its public duty, it is to be done in consistence with the public purpose and clear and unequivocal guidelines. In the instant case the change in the Scheme was necessitated due to paucity of land and the long waiting queue of registrants which it was deemed appropriate should be allotted land at the earliest. It has been held that in case of broad policy considerations, minor deviations are permissible if the circumstances justify the same. If there is a substantial compliance with the terms of the Guidelines, it does not call for any interference from the Court where such deviations from the guidelines intend to achieve the broader policy objectives.

28. Section 44 of the Delhi Development Act, 1957 reads as under:-

> "44. Public notice how to be made known- Every public notice given under this Act shall be in writing over the signature of the secretary to the Authority and shall be widely made known in the locality to be affected

thereby by affixing copies thereof in conspicuous public places within the said locality or by publishing the same by beat of drum or by advertisement in local newspaper or by any two or more of these means, and by any other means that the secretary may think fit."

29. A bare reading of Section 44 shows that it deals with a public notice given under the Act and not to all public notices which the DDA would issue. Decision cited by learned counsel for the petitioners being 43(1991) DLT 10 *Syed Hasan Rasul Numa & Ors. Vs. U.O.I.* does not apply as it dealt with a notice under Section 11 of the D.D.Act, 1957; a notice under the Act. Instant notice is a public notice notifying to the public a change in the scheme pursuant to decision taken by the Government. Section 44 would apply to a statutory notice required to be given under the Act and not to a notice under a scheme of the authority.

30. In support of plea of promissory estopple, Shri Sumit Bansal and Shri R.K.Saini, advocates for the petitioners, relying upon paras 39 to 41 of the Full Bench decision of this court reported as 57 (1995) DLT 801 *Sheelawanti & Ors. Vs. D.D.A.* argued that petitioners have

acted to their detriment by opting for a 90 sq. mtr. plot. Their rights would have matured earlier had they opted for a 60 sq. mtr. plot. For example, in reference to writ petitioner of WP(C) No. 878/2004, it was urged that his priority number being 2038, in the 60 sq. mtr. category he would have got a plot of 60 sq. mtrs. in the year 1991. It was urged that today, this petitioner cannot be allotted a plot of 60 sq. mtrs. and that too at current price. Few other such cases were shown. It was also shown by some counsel that their clients were offered 60 sq. mtrs. plots much earlier, which offer they declined on the assurance that they would be allotted a 90 sq. mtr. plot.

31. Promissory estopple would be attracted if it is shown that there was a promise and the petitioner acting on basis of promise, acted to his detriment.

32. Terms and conditions of the scheme, noted in para 4 above clearly informed the applicants that DDA reserved the right to allot a different size of plot in the same category. Further, as per policy, right to be allotted a plot matured when the applicant being allotted at a draw, a specific plot,

accepted the same. Further, application form required the applicant to state preference for the plot size. In the MIG category, two plot sizes were indicated, 60 sq. mtr. and 90 sq. mtr. scheme did not hold out any promise that those who gave preference for a 90 sq. mtr. plot would be given one. One the contrary, scheme clearly stipulated that those who were not allotted a plot, their application money would be refunded.

33. In the decision reported as (1989) 2 SCC 116 *Bareilly Development Authority & Anr. Vs. Ajai pal Singh* it was held that where a housing scheme reserves the right to alter the scheme, no right accrues to an applicant till allotment is made, and prior to allotment the scheme can be altered.

34. Decision of the Full Bench in *Sheelawanti's case (supra)* relied upon by the petitioners was on its facts and does not apply to the instant case. As noted in para 39, DDA had floated a special scheme for retired and retiring public servants in the year 1982 as per which 50% flats were to be allotted on cash down basis and 50% on hire

purchase basis. In the year 1993 DDA again invited applications from the retired/retiring government servants on the same basis as per 1982 scheme. When allotment was made, cash down payment was demanded from all. DDA did not given prior notice of change in the scheme. In aforesaid backdrop of facts, in para 41, it was observed.

> "41. We feel that it is not necessary for us to go into the larger question whether under Clause 26 of the 1982 Scheme, the D.D.A. could abandon its Scheme of allotting flats on hire purchase basis and insist for lump sum payment because we find that in the present case no fresh scheme was announced in the year 1993 and the registrants under various schemes had been invited to apply for out of turn allotment on the basis of the scheme announced in 1982, which admittedly provided for 50% allotment on hire purchase basis. In our view, the members of the petitioner association having acted to their detriment on the basis of the original scheme of 1982, the D.D.A. cannot by a unilateral action, without notice, abandon the scheme originally announced." (emphasis supplied)

35. Counsel for the petitioners argued on legitimate expectations of the petitioners. It was urged that the scheme afforded a good and fertile basis for the petitioners to legitimately expect that they would be allotted a plot of 90

sq. mtrs. Mr.Naresh Kaushik, learned counsel for the writ petition of WP(C) No. 4602/2004 argued that this petitioner had applied under the NPRS Scheme of 1979 under which he would have got a MIG flat. He opted for transfer under the Rohini Residential Scheme as he had a large family and hoped for a 90 sq. mtrs. plot. Having been made to wait for over 20 years. DDA cannot shatter his legitimate expectations.

36. Defence of DDA is that it was the Central Government which took the decision on 9.7.1999 that henceforth only 60 sq. mtrs. plot would be allotted in the MIG category and DDA intimated said decision by way of public notice on 1.11.1999.

37. Petitioners have not impleaded Union of India as a respondent in spite of aforesaid fact being intimated to him. Policy decision of the Central Government has not been attacked. The only conclusion would be that legitimacy of the policy decision has not been questioned. What was really highlighted was the notwithstanding the policy, rights of the petitioners are affected.

38. Since Union of India has not been impleaded as a respondent, writ petitioners are liable to be dismissed for non joinder of necessary party. However, since arguments were addressed on estopple and legitimate expectations being affected I would be unfair to resort to short cuts.

39. Promissory estopple and legitimate expectation are doctrines rooted in administrative law, requiring every state action to be reasonable i.e. fair, non arbitrary and guided by public good.

40. Lord Diplock in *Council of Civil Service Unions Vs. Minister of the Civil Service* 1985 AC 374 laid down that :-

> "the doctrine of "legitimate expectation" can be invoked if the decision which is challenged in the court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he had been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing

reasons for contending that it should not be withdrawn."

41. Concept of legitimate expectation in India is no different. In *Navjyoti Coop. Group Housing Society v. Union of India* (1992) 4 SCC 477, their Lordships of the Supreme Court noted the decision of Lord Diplock aforesaid and summarized the law in the following words:-

> " It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on said reasons."

42. In para 15 and 16, their Lordships further observed:-

> "The existence of "legitimate expectation" may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter.

* * *

> It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case is 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in."

43. In decision reported as (1993) SCC 71 *FCI Vs. Kamdhenu Cattle Feed Industries*, in para 8 it was observed:

> "Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

44. In the decision reported as (2003) 5 SCC 437 *UOI Vs. International Trading Co.* it was held:-

"12. Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary.

* *

15. While the discretion to change the policy in exercise of the executive power, when not trampelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

45. The procedural ambit of legitimate expectation was not pressed in aid by counsel for the petitioners and challenge was to the substantive concept of legitimate expectation. Have the petitioners shown lack of discernible principles emerging from the action impugned? Have the petitioners shown palpable unreasonableness requiring the court to enter the field of administrative policy?

46. As observed in (1999) 4 SCC 727 *Punjab Communications Vs. U.O.I.*, the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness".

47. Today is yesterdays present and would be the yesterday of tomorrow. Nothing is static. A policy operates in the entire span of time, past, present and future as observed by their Lordships in *International Trading Co.* (supra). Decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. Field in a court of law is to see whether the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

48 What led to change in policy by restricting entitlement under MIG category to 60 sq. mtr. plot alone has been noted in paras 9, 10, 11 and 12 above. In a nutshell, large number of applicants pending allotment even till 1999 and lack of adequate land. To satisfy claims of all pending applicants within the available land is good enough justification, in public interest, to tinker with the policy.

49. Arguments of the petitioners that had they opted for a 60 sq. mtrs. plot, they would have got one in 1991 and at price of said year and as a result of the change in policy they would be burdened with price of year 2005 and onwards depending upon when DDA offers a plot to them is best answered by the observations of Professor Wade in *'Administrative Law'* by H.W.R. Wade 6th edition:

> "There is ample room within the legal boundaries for radical difference of opinion in which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power."

50. Court is not to test reasonableness on its own standards as it might conceive in a given situation. A thing

is not unreasonable in the legal sense merely because the court thinks it to be unwise. "Wednesbury's reasonableness" is the test to be applied.

51. It was urged that plots in pocket S-5 Rohini cannot be auctioned for the reason when plans were approved for said pocket, 90 sq. mtrs. plots were carved out and all were intended to be allotted by draw of lots. It was argued that in view of Rule 26 of the DDA (Disposal of Developed Nazul Land) Rules, 1981, since plots in pocket S-5 were as per sanctioned lay out plans to be allotted by draw of lots, they could not be auctioned.

52. Rule 26 of the Nazul Land Rules 1981, reads as under:-

> "26. Allotment by auction: Subject to the plans, such Nazul land as the Authority may decide, with the previous approval of the Central Government, may be allotted by auction in the manner provided in this chapter."

53. I really fail to comprehend what the petitioners wanted to urge. It was the Central Government which took a decision on 9.7.1999 to limit size of plot under MIG

category to 60 sq. mtrs. Thus, qua DDA mandate of Central Government was not to allot any plot of 90 sq. mtrs. after 9.7.1999 under the Rohini Residential Scheme to an applicant in the MIG category.

54. DDA has to dispose of Nazul Land subject to any direction which may be issued to it by the Central Government. If on 9.7.1999, Central Government decided that henceforth, under the Rohini Residential Scheme, in the MIG category plots of only 60 sq. mtrs. would be allotted, DDA is bound by it. In any case as held in AIR 1994 Delhi 299 *Shanti Devi Gupta Vs. DDA;* 76 (1998) DLT 329 *Triveni Educational & Welfare Society Vs. DDA & Anr.* and 87 (2000) DLT 603 *BU Block Residents Welfare Association & Ors. Vs. DDA,* DDA has the power to amend or alter a layout plan.

55. The petitions must fail. Rule is discharged.

56. No costs.

PRADEEP NANDRAJOG, J.

February 15th, 2005
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C.M. No. 7130/05 filed