

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th December, 2010.

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W.P.(C) No.12334/2009

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RISHI PAL

..... PETITIONER

Through: Dr. S.P. Sharma & Dr. Ashwani
Bhardwaj, Advocates

Versus

**MUNICIPAL CORPORATION OF
DELHI & ORS.**

..... RESPONDENTS

Through: Ms. Mansi Gupta, Advocate for MCD

AND

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W.P.(C) No.9974/2009

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MOHD. SUALEHEEN

..... PETITIONER

Through: Dr. S.P. Sharma, Advocate

Versus

**MUNICIPAL CORPORATION OF
DELHI & ORS.**

..... RESPONDENTS

Through: Ms. Mansi Gupta, Advocate for MCD

AND

+

W.P.(C) No.2858/2010

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CHARAN SINGH & ORS.

..... PETITIONERS

Through: Mr. Roshan Lal Goel & Ms. Anjali
Gupta, Advocates

Versus

**MUNICIPAL CORPORATION OF
DELHI & ANR.**

..... RESPONDENTS

Through: Mr. Mukesh Gupta & Mr. Sumit
Gupta, Advocates for R-1.
Ms. Bandana Shukla, Adv. for Ms.
Ruchi Sindhwani, Adv. for R-2.

AND

+ W.P.(C) No.6625/2010

% VINOD YADAV

..... PETITIONER

Through: Mr. Roshan Lal Goel & Ms. Anjali Gupta, Advocates

Versus

MUNICIPAL CORPORATION OF
DELHI & ANR.

..... RESPONDENTS

Through: Mr. Mukesh Gupta & Mr. Sumit Gupta, Advocates for R-1.
Mr. Alok Singh, Adv. for Mr. Sanjeev Sabharwal, Adv. for R-2.

AND

+ W.P.(C) No.7891/2010

% PARITOSH TYAGI

..... PETITIONER

Through: Mr. Sumit Bansal & Mr. Attev Mathur, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI RESPONDENTS

Through: Ms. Mansi Gupta, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitions involve a common question of law and fact and have been taken up together for consideration. All the petitioners impugn the

demand by the respondent MCD of the price of plots of land at Ghogha Dairy Project (Narela), Delhi at the rate of ₹7,000/- per sq. mtr. and claim to be entitled to the said plots at the rate of ₹2,500/- per sq. mtr. It is the case of the petitioners that the respondent MCD had, in or about the year 2004 invited applications for rehabilitation of those running unauthorized dairies in the Delhi Urban Areas, vide notices published in the newspapers and in which notices it was clearly mentioned that the cost of developed plots shall be ₹2,500/- per sq. mtr. and which would include the cost of roads, drain, electricity, water, sanitation, horticulture and other civil works and developments; that the petitioners had applied for allotment on the said offer / representation of the respondent MCD and had deposited 50% of the price at the said rate with the MCD and subsequently on allotment had deposited the remaining 50% also at the said rate only and thus a binding contract for allotment of land at the rate of ₹2,500/- sq. per mtr. came into being between the petitioners and the respondent MCD and the respondent MCD in breach of the same could not in the year 2010 unilaterally demand the price at the rate of ₹7,000/- per sq. mtr. and / or threaten cancellation for non-payment thereof.

2. Notices of the petitions were issued and interim orders made.

3. The respondent MCD in the counter affidavit filed in some of the petitions and which is adopted in the others has taken a stand that pursuant to the directions of this Court in Public Interest Litigation being W.P.(C) No.3791/2000 titled *Common Cause Society Vs. Union of India*, development of a modern dairy colony was initiated at Ghogha (Narela), Delhi for the purpose of relocation of eligible illegal dairies from urban limits of Delhi; that in the early phase a total number of 1373 applicants had booked plots against 50% of advance payment at the rate of ₹1,250/- per sq. mtr. and allotments made; that there were however complaints of irregularity committed in allotment and this Court vide order dated 30th August, 2006 in

W.P.(C) No.3791/2000 aforesaid directed that running of a dairy business should be the sole criteria for allotment and subsequently a Committee was appointed for verification of all the applicants; that on such verification only 535 applicants were found eligible and the remaining 838 applications cancelled. It is further pleaded that in the meeting of the said Committee held on 17th July, 2008 & 17th October, 2008, it was decided that only one plot could be allotted at the notified rates to applicants whose unauthorized dairy was found to be operating on the premises belonging to him and allotment to others should be at market rate; that in a subsequent meeting on 30th July, 2009, it was further decided that those running unauthorized dairies on public / government encroached land will be allotted plots in that dairy colony as per their eligibility at market rate only; that the market rate was determined to be ₹36,560 per sq. mtr.; that in the year 2004, 189 acres of land was transferred to the respondent MCD for the said Project at the rate of ₹23,00,000/- per acre and which price stood revised in 2009 to ₹27,00,000/- per acre; that the rates were also required to be re-estimated on the basis of total expenditure on developmental activities including installation of tube wells etc.; however, on 13th January, 2010 the rate was reduced from ₹36,560/- per sq. mtr. to ₹7,000/- per sq. mtr. after taking into consideration all the relevant criteria and the said rate has been duly approved by the respondent MCD vide Resolution No.78 dated 24th May, 2010.

4. The respondent MCD along with its counter affidavit has filed copy of the Resolution dated 24th May, 2010 fixing the rate at ₹7,000/- per sq. mtr. and from a perusal of which Resolution, it transpires that considering the costs paid by respondent MCD of the land and the expenditure incurred by it on development thereof, the rate worked out to ₹6,820/- per sq. mtr.; that a cushion of another ₹100/- per sq. mtr. was built for unforeseen expenditure. It is also recorded therein that the project is based on “No

Profit No Loss” scheme.

5. The petitioners have filed a rejoinder to the aforesaid counter affidavit but in which the case of the petitioners remains the same as hereinabove recorded.

6. The counsels for the petitioners without prejudice to their pleadings aforesaid have also argued that increase in rate of land from ₹23,00,000/- per acre to approximately ₹27,00,000/- is of approximately 20% only; that going by the said criteria also, the respondent MCD could have at best asked for 20% increase of the earlier price of ₹2,500/- per sq. mtr. and the respondent MCD cannot increase the price arbitrarily by about 150%.

7. It was further argued that the respondent MCD itself was offering the first plot to those running unauthorized dairies over their own land at ₹2,500/- per sq. mtr. only and which shows that there was no increase in price and there was no basis for charging ₹7,000/- per sq. mtr. from others and with respect to other plots.

8. Though the arguments of the petitioners of the respondent MCD being not entitled to back out on a contractual rate of ₹2,500/- per sq. mtr. appears impressive but I am unable to find any elements of a contract or of the transaction being contractual in nature. The Public Interest Litigation aforesaid was for removal of unauthorized dairies from urban areas. The question of re-location was ancillary or incidental thereto. No element of negotiation is found in the transaction. The persons from whom applications were invited had no choice in the matter of price or the size of the plot or the location of the plot within the proposed colony. The Scheme to which the petitioners have given the colour of a contract and on the basis whereof respondent MCD is sought to be bound, else was like any other development or relocation scheme of the government or public bodies like DDA, the price

wherein is not in the hands of the purchasers but is determined by the development agency. The Division Bench of this Court in ***K. Bhattacharjee Vs. Delhi Development Authority*** 63 (1996) DLT 467 held that the scheme floated in that case by the DDA was a non-statutory scheme and registration under the scheme confers merely an eligibility to make an application for allotment and the letter of allotment issued by DDA is an offer which the allottee may or may not accept; if he accepts, then a concluded contract comes into existence. It was further held that there is no reason to disbelieve the statement on affidavit that the cost was determined on no-profit-no-loss basis and in the absence of any material to show that the price had been fixed arbitrarily, whimsically or capriciously, no challenge thereto was maintainable. It was further held that the prices announced were only tentative and it will be arbitrary to bind down the DDA in the year 1993 to the price tag of the year 1979. This Court in ***Bawana Relocated Ind. Plot Owners Vs. Govt. of N.C.T. of Delhi*** 104 (2003) DLT 177 reiterated that the authorities can revise the costs after taking into consideration the relevant factors that have caused such revision and normally the Court would not interfere with such executive function. Similarly in ***Shri Ajit Singh Vs. Delhi Development Authority*** MANU/DE/1139/2005 this Court also held that persons who are being allotted plots under a scheme cannot plead any assurance. The Division Bench again in ***Delhi State Industrial and Infrastructure Development Corporation Vs. Yashpal Madan*** 148 (2008) DLT 642 in the case of a scheme of relocation as in the present case held that allotment could only be according to price determined from time to time.

9. Attention of the counsels for the petitioners was also invited to Section 200 of the Delhi Municipal Corporation Act, 1957 dealing with the disposal of the property of the respondent MCD. The counsels of course protested that no such plea has been taken by the respondent MCD neither in

its counter affidavits nor in the oral arguments and hence they had no occasion to prepare thereon. While reserving order in the matters, liberty was given to the counsels to mention the matter within two days if had anything new to say qua Section 200 of the Act. Nothing has been argued on the said aspect by any of the counsels.

10. Section 200(d) of the Act requires that consideration for which any immovable property belonging to the MCD may be sold, leased or otherwise transferred by the MCD shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition. Section 200(c) & (e) permit such sale / transfer only with the sanction of the Corporation or the Standing Committee. Section 200(f) makes provisions of Section 200 applicable to all disposals of property of the Corporation. Section 201 & 202 provide for the procedure for making of contracts by the Corporation. Section 203(2) provides that contracts not made in accordance with the provisions of the Act shall not be binding on the Corporation.

11. There is nothing to indicate that there was any such sanction for the disposal of the plots aforesaid at the rate of ₹2,500/- per sq. mtr. Without the same, any contract even if existing as contended by the petitioners would be void and the MCD is not bound thereby and the petitioners would not be entitled to any benefit therefrom.

12. I find that in *Nirmal Kumar Jain Vs. MCD* MANU/DE/1318/2000 (DB) even though a resolution of the Corporation for disposal of the property existed but the same was still not permitted owing to the Commissioner having not consented to the same. It was held that Section 200 provides a dual check on the disposal of the properties of the Corporation by requiring not only a Resolution of the Corporation but also the consent of the Commissioner. The Division Bench of this Court held

that the reasoning and the decision of the Single Judge reported in 39 (1989) DLT 517 had in fact been approved by the Supreme Court in a different case. It was further held that no mandamus can be sought on mere legitimate expectation since legitimate expectation is not an independent legal enforceable right and that a public authority possesses powers only to use them for public good. The Division Bench also observed that the rights have 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. The Single Judge in his judgment approved by the Division Bench had also held that it would be inequitable to hold the Government or public authority to the promise or representation made by it on the doctrine of promissory estoppel and that the said doctrine would be displaced if the facts and equity would not require that the Government or public authority should be held bound by the promise or representation made by it.

13. To the same effect is the judgment of another Division Bench of this Court in *Amar Nath Behal Vs. MCD* 44 (1991) DLT 273.

14. The advertisements and communications of the respondent MCD in the present case were at best a promise or a representation and which have been held to be unenforceable.

15. This Court in *MCD Vs. Shail Agencies* MANU/DE/0498/1981 also held that a contract which does not strictly conform to the formalities prescribed by Sections 201- 203 is unenforceable and invalid.

16. The counsels for the petitioners have also urged that there are no pleadings that the prices of ₹2,500/- per sq. mtr. earlier offered was not normal and fair price.

17. There is undoubtedly a mistake on the part of the respondent MCD in while inviting applications not stipulating that the rate of ₹2,500/- per sq. mtr. was tentative or subject to revision as is normally done whenever applications in any such development scheme are invited. However, such mistake will still not entitle the petitioners to a relief in violation of the Act. On the contrary, the rate now demanded of ₹7,000/- per sq. mtr. has been fixed in accordance with the procedure prescribed in the Act. On the contrary, there is no plea of the price earlier offered of ₹2,500/- per sq. mtr. having been fixed in accordance with the provisions of the statute.

18. In *Ramanand Vs. Union of India* 1993 (26) DRJ 594 the Full Bench of this Court held that it is the premium calculated at the time prevailing when firm offer of allotment is made by DDA that would properly constitute the consideration for concluding a valid contract between the parties. The price of land prevailing at the time of communication of the letter of allotment is the rate payable by an allottee as held in *DDA Vs. Pushpender Kumar Jain* 1994 Supplement (3) SCC 494. The reason for this principle has been stated that in case the allottee is not willing to take or accept the allotment at the rates, it is always open to him to decline the allotment.

19. The Supreme Court in *Premji Bhai Parmar Vs. Delhi Development Authority* (1980) 2 SCC 129 and *Shri Sitaram Sugar Company Limited Vs. Union of India* 1990 (3) SCC 223 has held that it is not the function of the Court to sit in judgment and interfere in price fixation matters or over such matters of economic policy and it must be left to the government to decide the same.

20. This Court in *Jaipur Golden Charitable Clinical Laboratory Trust Vs. Delhi Development Authority* 105 (2003) DLT 277 also even in the absence of any provision for revision of the rates held that the notified rates are binding and the final authority to fix the rates for allotment of land is the

allotting agency and the rates have to be fixed in accordance with the statute. The Division Bench while dismissing the appeal vide judgment dated 9th December, 2009 in LPA No.82/2003 reported as MANU/DE/3305/2009 held that no question of estoppel arose.

21. The Supreme Court recently in ***Kisan Sahkari Chini Mills Limited Vs. Vardan Linkers*** (2008) 12 SCC 500 held that if the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract, the Civil Court ought to have been approached and when a writ petition is filed in regard to a contractual dispute, the issue is whether the authorities had acted arbitrarily or unreasonably and the issue whether there was a concluded contract becomes secondary. The Supreme Court in ***M.P. Housing Board Vs. Anil Kumar Khiwani*** (2005) 10 SCC 796 also held that time has come when the Courts should be slow in interfering with schemes which are based on costing. In ***Meerut Development Authority Vs. Association of Management Studies*** (2009) 6 SCC 171 it was held that disposal of public property by the State or its instrumentalities partakes the character of a Trust and the government cannot give a contract or sell or lease out its property for a consideration less than the optimum.

22. The counsel for the respondent MCD has also relied on ***Defence Enclave Residents Society Vs. State of U.P.*** AIR 2004 Supreme Court 4877 & ***Fuljit Kaur Vs. State of Punjab*** AIR 2010 Supreme Court 1937 but in view of the case made out by the petitioners, the said judgments are not apposite. The counsel for the respondent MCD has also referred to the orders both dated 28th May, 2010 in W.P.(C) No.9964/2009 and in W.P.(C) No.567/2010 also filed with the same grievance. However, the said orders are on consent and do not decide the controversy and are thus irrelevant for the present purpose.

23. The petitions therefore fail. The petitioners are not entitled to bind the respondent MCD to the rate of ₹2,500/- per sq. mtr. The respondent MCD is found entitled to the rate now demanded of ₹7,000/- per sq. mtr. Even if the respondent MCD has given any concession to those displacing their unauthorized dairies from their own land / property, the same would still not entitle them and others to contend that additional plots should be given with the same concession. The respondent MCD while developing the Scheme is fully entitled to grant the said concession. The respondent MCD is thus entitled to demand the price of ₹7,000/- per sq. mtr. To avoid any hardships to the petitioners, they are given an opportunity to now pay the differential price within four weeks hereof together with interest at the rate of 10% per annum from the last date prescribed of payment till the date of payment failing which respondent MCD shall be entitled to cancel the allotment or take other such coercive action as may be deemed fit. I may record that the counsel for the respondent MCD during the hearing had offered that if any of the petitioners are not willing to pay the price of ₹7,000/- per sq. mtr., the respondent MCD will refund the amount deposited by them together with interest.

24. The respondent MCD having been awarded interest to compensate it for the delay and equities flowing from the interim order having been balanced, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

24th December, 2010
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