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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

IN

S. B. Civil Writ Petition No. 3308/1998

Chandra Pal Singh Vs. Jaipur
Development Authority and Others

Date of Order ::: 30.11.2010

Present

Hon'ble Mr. Justice Mohammad Rafiq

Shri Shiv Charan Gupta, Counsel for petitioner
Shri Dinesh Yadav, Additional Advocate General for
respondents

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By the Court: -

This writ petition has been filed challenging judgment dated 03.04.1998 of Appellate Tribunal, Jaipur Development Authority, Jaipur (for short, 'Tribunal') by which it has rejected appeal filed by petitioner. Petitioner had approached Tribunal with prayer that respondent JDA be directed to allot him plot No.B-68B in terms of decision of Land and Property Committee dated 05.02.1987. Such allotment was made to petitioner on ground that he was survey holder and was dispossessed in process of acquisition by respondents. In fact, learned counsel for petitioner submitted that original survey holder was father of petitioner and when he expired, petitioner was informed by Commissioner (Cooperatives), Jaipur Development Authority, vide letter dated 16.02.1987, that he should produce succession certificate so that further action may

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be taken for allotment of land to him. Learned counsel also referred to subsequent communication dated 18.04.1987 to same effect. It was thereafter that Assistant Commissioner, Jaipur Development Authority, Jaipur by order dated 18.08.1987 permitted petitioner to remove possession from old house and keep his belongings at Plot No.B-68B, Lal Kothi Scheme, Jaipur. Subsequent order was issued on 01.08.1992 by which it was proposed to allot to petitioner plot No.B-68B measuring 250 square yard and for payment of a sum of Rs.667/- as compensation. An enquiry was made from petitioner by officer-in-charge of zone concerned whether he deposited 'nazrana' and, if so, he should produce receipt to that effect so that action may be taken to make allotment. It is contended that when respondent did not make allotment for quite some time and were going to auction disputed plot, petitioner approached Tribunal. Tribunal, however, rejected appeal by mechanically relying on judgment of Supreme Court in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Others – (1997) 1 SCC 35. It is contended that judgment in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Others (supra), arose out of a case where allotment of a larger land was made in lieu of a smaller land acquired by order of Land Acquisition Officer in addition to payment of compensation, whereas in present case land of petitioner has not been acquired rather he was one

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of those residents of 'kachchi basti' of which survey was conducted by government and out of benevolence it has decided to allot plot measuring 110 square yard and additional land of 140 square yard has been ordered to be allotted at reserve price which was Rs.99/- per square yard instead of prevalent rate, which is mentioned in minutes of meeting of Land and Property Committee dated 05.09.1997. For originally allotted plot measuring 110 square yard, it was proposed to charge a sum of Rs.8/- per square yard from petitioner on that account. It is contended that while giving last communication to petitioner vide letter dated 15.05.1996 sent by Jaipur Development Authority for depositing 'nazrana' for another plot, a mistake was committed by respondents in indicating plot no.B-59; and, if that mistake had not been committed, petitioner would have been allotted land and he would have been put in possession thereon and because of that mistake petitioner had been suffered, whereas all other similar situated persons have been allotted land; they are presently in possession of the same. Learned counsel for petitioner submitted that learned Tribunal erred in law in observing that petitioner was not survey holder whereas fact is that petitioner is survey holder No.17739 and his survey number has been disclosed by him in rejoinder and supporting document Annexure R/10.

Learned counsel submitted that judgments of

Supreme Court in JDA Vs. Mahesh Sharma – (2010) 9 SCC 782 and Narpat Singh and Others Vs. Jaipur Development Authority and Another – (2002) 4 SCC 666, cannot be read out of context and those judgments would be applied to cases where land was acquired and owners of land were allotted excess land in lieu of acquired land whereas case of petitioner stands on entirely different footings. It is therefore prayed that writ petition be allowed and action of respondents not making allotment of land despite having decided to do so because similarly situated persons have been allotted such land, be declared to be violative of Articles 14 and 16 of Constitution of India. Impugned judgment passed by Learned Tribunal be set-aside and respondents be directed to allot Plot No. B-68B or in lieu thereof another plot which has been kept reserved by respondents pursuant to interim order dated 10.07.1998 passed by this court in present writ petition.

Shri Dinesh Yadav, Learned Additional Advocate General appearing on behalf of respondents, argued that allotment that was proposed to be made to petitioner was in fact pursuant to award passed by Learned Land Acquisition Officer. Learned counsel referred to award and argued that apart from compensation awarded in favour of petitioner's father, the Land Acquisition Officer directed that he should be provided with smaller plot in rear site if feasible

in same area or in other suitable scheme area at scheme rate fixed by Improvement Trust. Supreme Court in its judgment in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Others (supra) as also in Jaipur Development Authority v. Radhey Shyam – (1994) 4 SCC 370 has declared such orders passed by Land Acquisition Officer to be illegal and held Land Acquisition Officer to be incompetent to issue such directions. Learned counsel submitted that same line of reasoning has been adopted by Supreme Court in subsequent delivered judgments in Narpat Singh (supra) and JDA Vs. Mahesh Sharma and Another (supra). Learned Tribunal was therefore perfectly justified in rejecting petitioner's appeal.

I have given my anxious consideration and considered material on record.

Although, it may be correct that allotment of land that was proposed to be made to petitioner was not in lieu of acquisition of any land of which he was owner but because of fact that owners of 'kachchi basti' were uprooted from their houses and petitioner was also one of survey holders and in lieu thereof he was proposed to allot land. At same time directions contained in award if construed as observations, same can be lost sight because in award dated 09.01.1964 Land Acquisition Officer categorically held that it will be quite appropriate that before huts are removed an alternative site is provided to these persons. It

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was therefore determined that as per Annexure I attached owners of huts may be paid compensation noted against their names and should be provided with smaller plots in the rear site, if feasible in this scheme area or in some other suitable scheme area at the scheme rate fixed by the improvement trust. Now in this case what was proposed by Land and Property Committee in its meeting dated 05.02.1987 was that in compliance of award, survey holders could be allotted land measuring 250 square yard per awardee and out of this, they would be charged at rate of Rs.8/- per square yard for plot measuring 110 square yard and for plot for remaining land measuring 140 square yard at rate of Rs.99/- per square yard was proposed to be charged. Learned counsel for petitioner has argued that allotment of plot made to petitioner was not in compliance of award but it was independent decision made by respondents, I am not persuaded to uphold this argument because minutes of meeting as reproduced by petitioner at Page No.9 of writ petition, clearly shows that decision was taken in compliance of award which is what is mentioned therein. Supreme Court in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Others (supra) and Jaipur Development Authority v. Radhey Shyam (supra) has not approved such action of Land Acquisition Officer and held the same to be illegal. Same view was taken by Supreme Court in its recent judgment in Jaipur Development Authority

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Vs. Mahesh Sharma (supra) and also in Narpat Singh and Others Vs. Jaipur Development Authority and Another (supra). Although, Learned Tribunal while passing impugned award has followed judgment of Supreme Court in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Others (supra), but in other three cases also same view has been expressed by Supreme Court. I, therefore, do not find any infirmity in the order passed by Learned Tribunal.

Writ petition is accordingly dismissed.

(Mohammad Rafiq) J.

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