A BRIJ MOHAN & ORS.

v.

HARYANA URBAN DEVELOPMENT AUTHORITY & ANR.

(Civil Appeal No. 1 of 2011)

B JANUARY 03, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Land Acquisition Act, 1894 – Land acquisition for development of a city – Formulation of Scheme by State C *Urban Development Authority - Allotment of land to land losers/outsees – Rate to be charged in regard to such allotment – Actual land cost plus development charges for the plots allotted to oustees/land losers or market price/normal allotment price – Held: The Statute contemplates only* D *benefits like solatium, additional amount and higher rate of interest to the land losers and not allotment of plots at cost price – State Government or HUDA also does not have any scheme providing for allotment of plots at actual cost to land losers - HUDA scheme requires the land loser-allottee to pay* E *the normal allotment rates for the plots to be allotted to them under the scheme – Thus, land owners should be allotted plots under the scheme at the initial price at which the Layout/ Sector plots were first offered for sale after the acquisition – Merely because HUDA delayed the allotment in spite of the* F *applications of the outsees and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the outsees become liable to pay the allotment price prevailing as on the date of allotment – HUDA directed to charge for the allotted plots only the rate* G *of Rs.1032/- per sq.m. (or Rs.863/- per sq.yd.) and not the rate as revised in 1993 ,namely Rs.1122/- per sq.yd.*

'Normal allotment rate' – Meaning of.

Certain lands belonging to the appellants were

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acquired for the development of the city. The award was passed and thereafter, the possession of the land was taken. The first respondent-State Urban Development Authority formulated a Scheme for allotment of plots to land losers/oustees at the normal allotment rates. The claims of the outsees were to be invited before the Sector was floated for the sale. The first respondent developed a layout for the benefit of general public in the acquired lands and offered the residential plots in that Sector for allotment at the specified rate. The appellants were not allotted plots. They filed writ petition seeking direction to the first respondent to allot each of them plot developed by the respondents at cost on 'no profit and no loss basis'. The appellants were allotted plots at the normal allotment rate which was being charged from any ordinary allottee to whom the plots were allotted in that Sector. The appellants again filed a writ petition seeking direction that the allotment should be made at cost plus development charges basis and not at market price. The writ petition as also the appeal were dismissed. Therefore, the appellants filed the instant appeal.

Partly allowing the appeal, the Court

HELD: 1.1 If there was any statutory provision in the Land Acquisition Act, 1894 or other scheme, providing for allotment at cost price, a land loser could certainly claim allotment in terms of the scheme. But the Statute contemplates only benefits like solatium, additional amount and higher rate of interest to the land losers and not allotment of plots at cost price. Nor does the State Government or HUDA have any scheme providing for allotment of plots at actual cost to land losers. [Para 10] [22-E-G]

1.2 Where there is a scheme but it does not regulate the allotment price, it may be possible for the court to direct the State Government/Development Authority to

A allot plots to land losers at a reasonable cost, and in special and extra-ordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment, its terms cannot be ignored. If B any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot ask the court to ignore the terms of an existing or prevailing scheme and demand allotment at cost price. C The scheme of HUDA contemplates allotment of plots only in terms of the scheme, that is at normal allotment rates. This benefit is extended in addition to the benefits under Sections 23(1A), 23(2) and 28 of the Act, and, therefore, the scheme provides for allotment at normal D allotment rate. Necessarily, the allotment and the price to be charged, would have to be strictly in accordance with such HUDA Scheme. In the instant case, the HUDA scheme requires the land loser-allottee to pay the normal allotment rates for the plots to be allotted to them under E the scheme. Therefore, a land loser cannot claim allotment of a plot at acquisition cost of land plus development cost or at any other lesser price. [Para 11] [23-C-F]

Hansraj H. Jain v. State of Maharashtra 1993 (3) SCC F 634 – distinguished.

2.1 The scheme requires the allottees under the scheme for land-losers/oustees, to pay the *normal allotment rates* for the allotted plots. No doubt, the term 'normal allotment rate' would ordinarily refer to the G allotment rate prevailing at the time of allotment. In the instant case, the application for allotment was made in 1990. On 09.09.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the allotment rate was shown as H

Rs.1032 per sq.m. (Rs.863/- per sq.yd) for plots of 300 sq. m. In the year 1993, the allotment price was increased to Rs.1342/- per sq.m. (Rs.1122/- per sq.yd.) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready for allotment. [Para 11] [24-B-G]

2.2 The policy clearly states that "claims of the oustees would be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19.3.1992. It is, therefore, evident that the land loser-applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged would be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In the instant case, when the sector was floated for sale, the rate that was fixed in regard to plots of 300 sq.m. or less, was Rs.1032/- per sq. m. (Rs.863/- per sq.yd). The appellants had made the applications in 1990 and approached the High Court in 1992. There was even a direction by the High Court to consider their applications within a fixed time. The appellants should, therefore, be allotted plots under the scheme at the initial price at which the Layout/Sector plots were first offered for sale after the acquisition. Merely because HUDA delayed the allotment in spite of the applications of the appellants and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the appellants become liable to pay the allotment price prevailing as on the date of allotment. Having regard to the terms of the scheme which clearly requires that the land losers would be invited to apply for allotment before the sector is floated for sale, it is clear that the initial price alone should be applied provided the land losers had applied for allotment at that time. In the instant case, such applications were in fact made by the

A **appellants. Therefore, the respondents could charge for the allotted plots only the rate of Rs.1032/- per sq.m. (or Rs.863/- per sq.yd.) and not the rate as revised in 1993 namely Rs.1122/- per sq.yd. [Para 12] [24-H; 25-A-G]**

B **2.3 The orders of the Division Bench and the Single Judge of the High Court are set aside and the respondents are directed to charge for the six plots allotted to the appellants at a price of Rs.1032/- per sq.m. (or Rs.863/- per sq.yd) instead of Rs. 1342/- per sq.m. Each of the appellants would be entitled to costs of Rs.2500/-** C **from HUDA. [Para 13] [25-H; 26-A-B]**

3. The submission that allotment of plots to land losers should be at actual cost (acquisition cost of land plus development cost), appears to be reasonable and D **attractive. That should be the ultimate goal in a changing scenario favouring acquisitions which are land loser-friendly. The arguments of the appellants do certainly make out a case for such a scheme to create a better settlement and rehabilitation policy in regard to land** E **acquisitions. The State of Haryana is now proposing to introduce a more attractive and land-loser friendly rehabilitation and resettlement policy, which contemplates allotment of bigger residential/commercial/ industrial plots to land losers and oustees. But that is for** F **the future. [Para 10] [22-E-H; 23-A-B]**

Case Law Reference:

1993 (3) SCC 634 Distinguished Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. : 1 G of 2011.

From the Judgment & Order dated 20.05.2009 of the High Court of Punjab & Haryana at Chandigarh in L.P.A. No. 220 of 2009.

H Punit Dutt Tyagi for the Appellants.

Neeraj Kumar Jain, Sanjay Singh, Urga Shankar Prasad for the Respondents. A

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Leave granted. B

2. The first respondent Haryana Urban Development Authority (for short HUDA) formulated a Scheme vide Circular dated 10.9.1987 (as clarified by circular dated 9.5.1990) for allotment of plots to land losers/oustees at normal allotment rates. The said scheme inter alia provides for allotment of a C plot measuring 250 sq. yd. to a landowner whose acquired land measures between 500 sq. yd. to one acre. It also provides that where there are a number of owners in respect of an acquired land, efforts should be made to accommodate each of them subject to a limit of one plot of 250 sq. yd., for every acre of D land acquired. It requires that "claims of the oustees shall be invited before the sector is floated for sale". A revised policy/ scheme was introduced by HUDA by circular dated 18.3.1992 which *inter alia* provided as follows :

> "(vi) Allotment of plots to the oustees will be made at the E allotment rates advertised by the Haryana Urban Development Authority for that sector Land-owners will be given compensation for their land which is acquired.
>
> (vii) Claims of the oustees for allotment of plots under this F policy shall be invited by the Estate officer, Haryana Urban development Authority concerned before the sector is floated for sale."

3. The appellants 1 to 6 were the owners of 38 bighas and G 3 biswas of land in Hudbust No.1, Kasba Karnal. Their lands were acquired for development and utilization of land as residential and commercial area of Karnal under a preliminary notification issued in 1989 followed by final notification issued in the year 1990. On making the award, possession was taken on 19.12.1990. The appellants made an application to HUDA H

for allotment of plots under the aforesaid oustees policy on 28.12.1990.

4. HUDA developed a layout (Sector-4 Part-II) for the benefit of general public in the acquired lands and offered the residential plots in that sector for allotment at the rate of Rs.1032/- per sq. m. (Rs.863/- per sq. yd.) for 300 sq. mtr. plots and Rs.1135/- per sq. m. for 420 sq.m. plots. As the appellants were not allotted plots, they filed a writ petition (CWP No.2596/1992) seeking a direction to HUDA to allot to each of them a plot measuring 250 sq.yd. in Sector 4 or 5 which were being developed by the respondents, at cost on "no profit no loss basis". The said writ petition was disposed of by order dated 29.7.1992 recording the statement of the respondents that the case of the appellants was under consideration and they will be allotted plots, with a direction to the respondent to decide the matter expeditiously preferably within six months. As the order dated 29.7.1992 was not complied with, the appellants filed a contempt petition (COCP No.240/1993). Only thereafter, the second respondent (Estate Officer, HUDA) sent letters of allotment dated 13.9.1993 to each of the appellants allotting a plot measuring 209 sq.m. (250 sq.yd.) at a cost of Rs.280,478/- which works out to Rs.1342/- per sq.m. (Rs.1122/- per sq.yd.). In view of the said allotments, the contempt petitions were disposed of recording the submission that all the appellants have been allotted plots.

5. The appellants again approached the High Court by filing a writ petition (CWP No.12240/1993) contending that the allotments should be made at cost plus development charges basis and not at market price. The appellants also sought quashing of the demand for payment of a price of Rs.280,478/- for each of the plots allotted to the appellants. A learned Single Judge of the High Court by order dated 10.11.2008 dismissed the writ petition on the ground that the matter was governed by the policy dated 10.9.1987; that under that policy, the oustees - allottees were liable to pay the normal allotment rate, which

meant the prevailing rate that was being charged from any ordinary allottee to whom plots were allotted in that sector; and that as the allotment rates charged to the appellants were the same as the allotment rates charged to other alltotees, there was nothing irregular or illegal in the demand for payment of Rs.280,474/- as cost of each plot.

6. Feeling aggrieved, the appellants filed an appeal (Letters Patent Appeal No.220/2009) contending that having regard to the terms of the Scheme, even if the allotment rate had to be paid, that should have been at Rs.863/- per sq.yd. which was the rate of allotment under the HUDA Advertisement dated 9.9.1991. They also contended that HUDA deliberately delayed the allotment of plots to appellants and then charged them a higher allotment rate which came into effect subsequently. A Division Bench of the High Court by impugned judgment dated 20.5.2009 dismissed the appeal. The said judgment is challenged in this appeal by special leave.

7. There is no doubt that the appellants were entitled to allotment of plots. In fact, each of them has been allotted a plots (that is plots bearing Nos.63, 62, 61, 64, 54 and 53 in sector No.4, Part-II), each measuring 209 sq.m. or 250 sq.yd. The only issue that arises for consideration in this appeal is about the rate to be charged in regard to such allotment. On the contentions urged the following questions arise for our consideration :

(i) Whether HUDA should charge only the actual land cost plus development charges for the plots allotted to oustees/ land losers, and not the market price/normal allotment price?

(ii) What is the meaning of the words 'normal allotment rate' used in the scheme for allotment to oustees?

Re : Question (i)

8. It is submitted by the appellants that the Scheme for

A allotment of developed plots was made recognizing the fact that the oustees lose their lands, and many of them also lose their place of residence. The appellants therefore contend that the oustees/land losers whose lands were acquired and who claimed allotment of plots under the HUDA's Scheme for
B allotment of plots to oustees, stand on a different footing when compared to normal applicants for allotment. They relied upon the observations of this Court in *Hansraj H. Jain v. State of Maharashtra* [1993 (3) SCC 634] in support of their contentions that the allotments to land losers should be at cost of land plus
C development charges. In that case the government of Maharashtra had evolved a policy to offer alternative plots/sites to affected land owners. The policy did not however contain any specific provision relating to price to be charged. This Court noticed the following arguments addressed on behalf of the
D State and the land losers :

> "On the question of price of the alternative site, the learned Solicitor has submitted that after acquisition the lands in New Bombay have been vested in CIDCO for development and disposal. All the costs incurred on the
> E development are to be met by disposing the saleable land. In the process, the Corporation has to spend huge amounts on development of infrastructure in the form of roads, water supply, sewerage, electricity, transport etc. For the purpose of disposal of saleable land, certain lands
> F are required to be provided to the social institutions, project affected persons, economically weaker sections and lower income group at nominal and subsidized rate and the shortfall accruing from such subsidized disposal has to be recovered by the sale of other lands. The
> G commercial areas are sold by the Corporation by tender system and such areas draw much higher rate. The learned Solicitor has submitted before us that unfortunately the ratio of such disposal at higher rate in the entire process is around 1% only. He has, however, submitted that the
> H concerned authorities are keen to give relief to the affected

land owners by charging reasonable price as far as practicable. The learned counsel for the appellants have, however, submitted that although the award for acquiring land was made at rs.4 per sq. mtr., the developed lands for alternative sites for building houses for the affected land owners are being offered @ Rs. 13,200 per sq. mtr."

This Court on considering the contentions, held that on the special facts and circumstances, allotments should be made to the land losers by charging the cost of acquisition plus actual cost of development. The relevant observations are extracted below :

"We, therefore, direct the concerned authorities to offer the alternative site as per the scheme framed in 1976 referred to hereinbefore to the affected land owners on the basis of the actual cost of development by charging the cost of the acquisition and the development charges and no more. Such direction, we feel, is required to be made particularly *in view of the fact that acquisition proceedings had been pending for a number of years, as a result of which the amount of compensation for the acquisition being referable to the period when notices under Section 4 of the Land Acquisition Act were issued, became insignificant and it is reasonably apprehended that unless the land by way of alternative site as per the scheme is offered to the affected land owners at a subsidized rate as indicated hereinbefore, it will not be possible for the land owners to take such allotment by paying usual prices* intended to be changed from them and the offer of alternative site will for all practical purposes be illusory."

(emphasis supplied)

9. Placing strong reliance on the said observations in *Hansraj H. Jain*, the appellants contended that the price of plots allotted was almost as much as the compensation that was

given to them for the entire acquired area. According to them, an extent of 3836 sq. yds. of land was acquired from each of appellants 1 to 5 and the compensation awarded to each of them was Rs.302,473/- (slightly more was acquired from sixth appellant). As against it, each was required to pay Rs.280,478/- for a plot of 250 sq.yds which was almost the entire compensation they got. They submitted that the compensation awarded for the acquired land (of about an acre) was less than the price that was demanded by HUDA for each plot that was allotted to them; and that if the compensation paid to a land loser for an acre of land (less legal and other expenses) would be insufficient to buy even a small plot, let alone construct a house therein, even a scheme for allotment will only be a mirage for most of the small land holders. They also submitted that as the allotment of a plot is a part of the resettlement and rehabilitation package given to the land losers, as an incentive to accept the acquisition without protest and co-operate with the State Government, the allotment should be at a realistically reasonable cost, that is actual cost of land plus development charges.

10. No doubt, the contention that allotment of plots to land losers should be at actual cost (acquisition cost of land plus development cost), appears to be reasonable and attractive. That should be the ultimate goal in a changing scenario favouring acquisitions which are land loser-friendly. The arguments of the appellants do certainly make out a case for such a scheme to create a better settlement and rehabilitation policy in regard to land acquisitions. If there was any statutory provision in the Land Acquisition Act, 1894 ('Act' for short) or other scheme, providing for allotment at cost price, a land loser could certainly claim allotment in terms of the scheme. But the Statute contemplates only benefits like solatium, additional amount and higher rate of interest to the land losers and not allotment of plots at cost price. Nor does the State Government or HUDA have any scheme providing for allotment of plots at

actual cost to land losers. We are informed that State of Haryana is now proposing to introduce a more attractive and land-loser friendly rehabilitation and resettlement policy, which contemplates allotment of bigger residential/commercial/ industrial plots to land losers and oustees. But that is for the future.

11. Where there is a scheme but it does not regulate the allotment price, it may be possible for the court to direct the State Government/Development Authority to allot plots to land losers at a reasonable cost, and in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment, its terms cannot be ignored. If any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot ask the court to ignore the terms of an existing or prevailing scheme and demand allotment at cost price. The scheme of HUDA contemplates allotment of plots only in terms of the scheme, that is at normal allotment rates. This benefit is extended in addition to the benefits under sections 23(1A), 23(2) and 28 of the Act, and therefore the scheme provides for allotment at normal allotment rate. Necessarily, the allotment and the price to be charged, will have to be strictly in accordance with such HUDA Scheme. In this case the HUDA scheme requires the land loser-allottee to pay the normal allotment rates for the plots to be allotted to them under the scheme. Therefore, a land loser cannot claim allotment of a plot at acquisition cost of land plus development cost or at any other lesser price. The decision in *Hansraj H. Jain* was a case where the scheme did not provide for any allotment price, and the price demanded was Rs.13,200/- per sq.m. as against the compensation of Rs.4 per sq.m. which in effect was 3300 times the acquisition price. It was on those peculiar facts and circumstances, this court thought it fit to direct the respondents therein to adopt the

A acquisition cost plus development cost as the allotment price. That principle will not apply where there is a specific scheme which provides the rate of allotment.

Re : Question (ii)

B 11. As noticed above, the scheme requires the allottees under the scheme for land-losers/oustees, to pay the *normal allotment rates* for the allotted plots. The question is what is the meaning of the term 'the normal allotment rate'. No doubt, the term would ordinarily refer to the allotment rate prevailing C at the time of allotment. If an acquisition is made in 1985 and the developed layout in the acquired lands is ready for allotment of plots in 1990, and allotments are made in the years 1990, 1991, 1992, 1993, 1994 and 1995 at annually increasing rates, a land- loser who is allotted a plot in 1990 will naturally be D charged a lesser price. But if his application is kept pending by the Development Authority for whatsoever reason and if the allotment is made in 1992, he may have to pay a higher price; and if the allotment is made in 1995 he may have to pay a much higher price. The question is whether any discrimination should E be permitted depending upon the whims, fancies and delays on the part of the authority in making allotments. To take this case itself, the application for allotment was made in 1990. On 9.9.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the F allotment rate was shown as Rs.1032 per sq.m. (Rs.863/- per sq.yd) for plots of 300 sq. m. In the year 1993, the allotment price was increased to Rs.1342/- per sq.m. (Rs.1122/- per sq.yd.) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready G for allotment. Should the land loser who promptly made the application in 1990 be made to suffer, because of the inaction on the part of HUDA in making the allotment? We get the answer in the HUDA scheme itself.

12. The policy clearly states that "claims of the oustees H

shall be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19.3.1992 which provides that "claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, HUDA concerned, before the sector is floated for sale". It is therefore evident that the land loser-applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged will be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In this case, it is not in doubt that when the sector was floated for sale, the rate that was fixed in regard to plots of 300 sq.m. or less, was Rs.1032/- per sq. m. (Rs.863/- per sq.yd). The appellants had made the applications in 1990 and approached the High Court in 1992. There was even a direction by the High Court to consider their applications within a fixed time. The appellants should therefore be allotted plots under the scheme at the initial price at which the Layout/Sector plots were first offered for sale after the acquisition. Merely because HUDA delayed the allotment in spite of the applications of the appellants and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the appellants become liable to pay the allotment price prevailing as on the date of allotment. Having regard to the terms of the scheme which clearly requires that the land losers shall be invited to apply for allotment before the sector is floated for sale, it is clear that the initial price alone should be applied provided the land losers had applied for allotment at that time. In this case such applications were in fact made by the appellants. We are therefore of the view that the respondents could charge for the allotted plots only the rate of Rs.1032/- per sq.m. (or Rs.863/- per sq.yd.), and not the rate as revised in 1993 namely Rs.1122/- per sq.yd.

13. We therefore allow this appeal in part and set aside the orders of the division bench and the learned Single Judge

A of the High Court and direct the respondents to charge for the six plots allotted to the appellants at a price of Rs.1032/- per sq.m. (or Rs.863/- per sq.yd) instead of Rs. 1342/- per sq.m. Each of the appellants will be entitled to costs of Rs.2500/- from HUDA.

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N.J. Appeal partly allowed.