Before K. Kannan, J

ALOK SARWAL,—*Petitioner*

versus

U.T. ADMINISTRATION, CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. No. 3731 of 2008

14th January, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1984—S.23—Allotment of an industrial plot to petitioner by draw of lots—Administration failing to make a correct reckoning of size of plots and inviting consent for lesser size of plots—Some persons including petitioner not consenting for allotment of such plots—Supreme Court ordering Administration for consideration of allotment of a suitable plot to non-consentees in a new industrial zone at prevailing rate on date of fresh allotment—Supreme Court directing for completion of all requisite formalities within a period of 4 months—Administration failing to make plot available for allotment within time as contemplated by Supreme Court—Determination of value of plot at rate at which property was identified with reference to sale deeds of a like extent and quality in proximity—Decision to fix value—Transparent in a participative manner affording an opportunity to petitioner to adduce some proof—Petition allowed, order requiring petitioner to deposit 25% of premium set aside.

Held, that when the Hon'ble Supreme Court directed that the entire process would be completed and the property should be delivered within 4 months and allottee had a reasonable expectation to believe that the price that would be required to be paid would be the price which would be prevailing about the time when the property could be made fit for allotment. If they had over a period of 3 years to drift by and would take their own slackness as a justification, that would be not merely unreasonable and, in my view, it would even impermissible. The rate at which the property is offered should again be transparent. The learned counsel for the petitioner wanted to rely on the information which he had obtained from the State

Information Commission, but in my view, the rate at which the property is to be offered ought to be on a sound legal basis. The determination of price is not too difficult to seek. Various legislations provide for the yardstick for determination of price. The Land Acquisition Act itself provides under Section 23 the method of a determination of a price for payment of compensation. A market price is what a willing purchaser is willing to pay to a willing seller. A seller always looks price. It is between the conflicting interest of a seller and the buyer, there must obtain a median, which would qualify for meeting of minds and arriving at a consensus for a price determined. The demand made in the impugned notice gives out no basis on which the prices were determined at 28,200. The reasonableness of the price must be indicated in the proceedings itself and it cannot be supported through other materials brought at the time of argument or secured through the pleadings of parties. The reasonableness of a decision must be seen through the proceedings themselves and not independently of it.

(Paras 8 & 9)

R. S. Mittal, Senior Advocate with Atul Gaur, Advocate, *for the petitioner.*

Vishal Sodhi, Advocate, *for the respondents.*

K. KANNAN, J. (ORAL)

(1) The writ petition challenges the letter of allotment of an industrial plot in Phase-III, Chandigarh and requiring the petitioner to deposit Rs. 66,74,825 as representing 25% of the premium and giving other directions. The impugned letter stipulates that if the petitioner is not interested in the allotment, the offer already made on 24th August, 2007 would be withdrawn.

(2) The case has a longer history that would require a brief mention. The Chandigarh Administration had invited applications from all the person seeking for allotment of industrial plots in different sizes ranging from 10 marlas to 4 kanals lands in April, 1981 and after receiving the applications, a Screening Committee had determined the plots to be allotted in different sizes. Draw of lots had been made on 30th November, 1982 and the petitioner was one such allottee. But the scheme did not come through, when

the administration found that it had not made a correct reckoning of the sizes of the plot that could be made available to persons, without taking into note certain prohibitions and restrictions under the Forest Act and the Aircraft Act. The size of the plots that could be offered had to be reduced and while some of the original allottees were prepared to consent for plots of lesser sizes, the petitioner and a host of their persons did not consent for allotment of a plot of lesser sizes. There had been litigations when several of the persons, who had been denied the benefit of the offer, filed writ petitions before this Court challenging the decision of the Chandigarh Administration.

(3) The matter was finally adjudicated before the Hon'ble Supreme Court in **Hira Tikkoo** *versus* **Union Territory, Chandigarh and others (1).** The Hon'ble Supreme Court dealt with the several classes of persons namely of persons, who were consenting parties to the altered offers made by the reducing size of the plots and also persons, who were non-consentees of such alternative allocation. The judgment details several directions and to our case, the directions given in paragraph 40(4) becomes relevant, since we are considering the case of the petitioner, who was a non-consentee. The clause is reproduced as under :–

> *"The non-consentees shall be granted by the Administration of UTC, option by asking them to submit their willingness in writing within a period of one month from the date of this order for considering allotment to each of them a suitable plot in the new Industrial Zone Phase III at Mouli Jagran. It is left to the Administration of UTC to evolve a fair and just method of allotment by draw of lots in accordance with the Act and the Rules. It is made clear that the allotment of plots in the new Industrial Area, Phase III i.e. Mouli Jagran would be at the price prevailing on the date of fresh allotments. The price with interest already paid by the non-consentees for their original plots, if so far not refunded to them, shall be adjusted towards the total price payable for the new sites. It is also made clear that in accordance with existing industrial policy and the environmental norms, the*

(1) (2004) 6 S.C.C. 765

allottees will have to submit their project reports for considering viability of their proposed industries by the Administration."

Elsewhere in the same judgment at para 38, while considering the submissions made on behalf of the Chandigarh Administration, the Hon'ble Supreme court had observed that the property which was being offered in Industrial Area, Phase-III had been purchased at a higher price, and the cost of acquisition and development, having become higher and calculated at Rs. 2,892 per square yard. The Hon'ble Supreme Court adverted to the affidavit filed on behalf of the administration and observed that the only relief that could be granted to the non-consentees would be to permit them to submit their willingness within a period of one month from the date of the order in writing to the administration to be considered for allotment of a suitable plot of land in a new industrial zone but at the price prevailing on the date of such fresh allotment. The reference to the cost of acquisition and development is not without significance for that alone would have made possible for a person to either consent to a fresh allotment or not. An offer could not have been made in the air with no particulars available from the administration.

(4) The petitioner had given such a consent to a fresh allotment is not in dispute. Sub-para (7) of para 40 of the judgment also provides that the administration should complete the requisite formalities and carry out the directions made in accordance with law within a period of 4 months from the date of the order and hand over the possession of the plot to the successful allottees. The judgment of the Hon'ble Supreme Court was delivered on 13th April, 2004 and the 4 months that the Hon'ble Supreme Court contemplated have long since come and gone.

(5) The first act of identifying the property as fit for allotment for the petitioner came through a letter dated 7th January, 2005 and the petitioner had been advised that Plot No. 86 would be offered for allotment to him. The petitioner consented to the same but the price had not been fixed. The administration had its own reasons as to why it was

not able to carry out the directions of the Hon'ble Supreme Court for allotment. They had to obtain statutory clearances and had serveral other clearances to be obtained from various State machineries for making the plots available for industrial development. The memo was issued on 24th August, 2007 to the petitioner making the allotment and offering it at a price of 28,200 per square yard. The letter itself contained no details as to how the amount had been arrived at, but this letter was resisted through a reply by the petitioner on 27th August, 2007 contending that the market rate that should have dictated the consideration of administration's offer could be no more than 2875 per square yard which was still reasonable, though it was more than the price at which the property had been allotted to the consentees of lesser extent. The impugned notice is the final letter of the administration when they said through a communication dated 26th February, 2008 that the price that they had determined and the amount that had to be given was to be done within a period of 30 days failing which the offer would be withdrawn.

(6) The judgment of the Hon'ble Supreme Court is indeed the starting point from where the answer to the dispute raised in the writ petition could be obtained. On an affidavit filed by the administration that the cost of acquisition and development had been higher which was Rs. 2892 per square yard, the Hon'ble Supreme Court held that the price at which the property will be offered will be at the prevailing rate on the date of fresh allotment. The date of fresh allotment and the price which the Hon'ble Supreme Court set, would also have to be read in the context of when the Hon'ble Supreme Court directed that the allotment should be made. The answer to it obtains through yet another direction found in the same judgment when the Hon'ble Supreme Court held that the requisite formalities should be completed and all the directions should be carried out within a period of 4 months. The cost of the property stated in the affidavit to the administration, the market rate that it had stipulated that should be levied and the time within which the directions were to be given effect to, all must be seen conjointly so that the stand of the administration could be seen as whether fair and proper.

(7) If the administration had its own reasons why it could not make the property available for allotment within the time as contemplated by the Hon'ble Supreme Court, it was bound to approach the Hon'ble Supreme Court to seek for extension of time from various departments had delayed the ability to make the allotment. Learned counsel would submit that such extension was sought from the Hon'ble Supreme Court, but the counsel for the petitioner submits that even an extension which was sought for was declined by the Hon'ble Supreme Court. This I have stated only to show that the price fixation of the plot must have a bearing to how the directions from the Hon'ble Supreme Court came about and cannot be fixed at a time and at a rate whimsically that had no sound legal basis.

(8) If the Hon'ble Supreme Court had directed that the price would be offered at the prevailing market rate, it should be understood that the prevailing market rate as the date which the Hon'ble Supreme Court directed that the property should be offered for allotment and when the property should be delivered. If the property could not be allotted and still could not be delivered and the decision to deliver and collect the price was taken only 3 years later, the administration cannot insist that the rate would be taken only on the day when they founded appropriate to offer the property for allotment. If such a contention were to be accepted, it would amount to granting a premium on their own laxity and enable them to chose their own date for allotment of what is appropriate going by the market forces. The administration is not a private vendor trying to sell a property for a profit. On the other hand, it is a public body that must allow public interest and what is more a national interest to govern its decisions. Development of industrial plot is not a method of allowing for personal aggrandizement. It is, on the other hand, an instrument to make way for a national development to increase productivity and generate employment. The allotment of a plot and the price that it determined ought to therefore be reasonable and fair. If the property had been identified as fit for allotment on 7th January, 2005, it shall be taken to be that day when the price shall be determined. At some point of time before this Court, there had been even a direction that the Estate Officer must file the entire record which would show the basis for determination of its price. In response to the same,

the administration has produced the proceedings taken on 16th August, 2007 when it had decided that the Collector's rate in the industrial area shall be the rate at which the property would be given, that was on 14th August, 2007. The higher sale considerations that had been recorded was Rs. 28,146 per square yard and therefore, 28,200 was proposed to be the market rate. The market rate for the year 2007 ought not to have been taken at the rate at which the property was offered. I have already observed that at the time when the affidavit was filed before the Hon'ble Supreme Court, they had satated the cost of acquisition was in the range of 2,800 per square yard and that itself was stated to be a high price. If a direction had been given by the Hon'ble Supreme Court for the non-consentees to express their willingness, it should have been only on the basis of an information disclosed before the Court. In this case, if such a consent had been given, it should be assumed that the allotees should have been guided by the information supplied to the Court. Again when the Hon'ble Supreme Court directed that the entire process would be completed and the property should be delivered within 4 months and allottee had a reasonable expectation to believe that the price that would be required to be paid would be the price which would be prevailing about the time when the property could be made fit for allotement. If they had over a period of time allowed 3 years to drift by and would take their own slackness as a justification, that would be not merely unreasonable and in my view, would be even impermissible.

(9) The rate at which the property is offered should again be transparent. The learned counsel for the petitioner wanted to reply on the information which he had obtained from the State Information Commission, but in my view, the rate at which the property is to be offered ought to be on a sound legal basis. The determination of price is not too different to seek. Various Legislations provides for the yardstick for determination of price. The Land Acquisition Act itself provides under Section 23 the method of a determination of a price for payment of compensation. A market price is what a willing purchaser is willing to pay to a willing seller. A seller always looks for a higher price and a buyer always looks for a lower price. It is between the conflicting interest of a seller and the buyer, there must obtain a median, which would qualify for meeting of minds and arriving at a consensus for a price determined. The demand made in the impugned notice gives out no basis on which the prices were determined at 28,200. The reasonableness of the price must be indicated in the proceedings itself

and it cannot be supported through other materials brought at the time of argument or secured through the pleadings of parties. The reasonableness of a decision must be seen through the proceedings themselves and not independently of it. This position has been adverted to by the Hon'ble Supreme Court in **Mohinder Singh Gill** *versus* **The Election Commissioner (2).** The impugned letter demanding a price of 28,200 per square yard is unreasonable and set aside.

(10) The price of the industrial plot which is offered to the petitioner for allotment shall be determined at the rate at which the property was identified. By such a direction, I do not propose to deviate from the direction given by the Hon'ble Supreme Court already. I am only attempting to accommodate the direction to what the Hon'ble Supreme Court conceded, when it said that the property should be delivered possession within 4 months from the date of its order. The offer was made on 7th January, 2005 even beyond a period of 4 months from the date when the judgment was pronounced by the Hon'ble Supreme Court. That shall be the date which should be taken as when the property value must be taken. The value shall again be determined with reference to sale deed of a like extent and quality in the proximity and the petitioner shall also be at liberty to produce any evidence of proof of such value through registered documents which could reflect the appropriate market valuation. The decision to fix the value shall be transparent in a participative manner affording an opportunity to the petitioner to adduce some proof within a period of 15 days and a decision should be taken within a period of 30 days from the date of passing of the order. On the price as determined by such a process, the administration shall be at liberty to call upon the petitioner to pay the price and make a due adjustment which has already been paid when the previous offer was made. The administration shall also be justified to stipulate a period within which the payment shall be made, which shall not be less than one month and if the petitioner fails to pay the same, it shall forfeit its right to obtain an allotment.

(11) The impugned order is, under the circumstances, set aside and the writ petition is allowed on the above terms.

R.N.R.

(2) (1978) 1 S.C.C. 405