

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

+ W.P.(C) NO. 5078/2007 and CM 9447/2007

Reserved on: 22nd April, 2008

Date of Decision : 12th May, 2008

Jaipal, S/o Shri Ramphal

R/o Village Kirari Suleman Nagar,

Patti Nithari,

Delhi.

.....**Petitioner**

Through : Mr. S.R. Sharma, Advocate.

versus

1. The Government of NCT of Delhi
through Secretary
Land and Building Department
Vikas Bhawan,
New Delhi.
2. The Land Acquisition Collector (N-W)
office at Kanjhawala,
Delhi.
3. Delhi Development Authority
through its Vice Chairman
Vikas Sadan, INA, New Delhi.
4. Shri. Khushal Singh
s/o Jai Lal
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
5. Sh. Kartar Singh
s/o Late Sh. Chet Ram

R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.

6. Sh. Amar Singh
s/o Late Sh. Chet Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
7. Sh. Bhim Singh
s/o Late Sh. Chet Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
8. Sh. Krishan, S/o Dharam Singh
s/o Late Sh. Chet Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
9. Smt. Rajindari
wd/o Dharam Singh
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
10. Sh. Dilbagh Singh
s/o Sh. Surat Singh
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
11. Sh. Gulab Singh
s/o Sh. Surat Singh
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
12. Sh. Mohinder Singh
s/o Sh. Surat Singh

R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.

13. Sh. Vijay Singh
s/o Sh. Nand Lal
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
14. Sh. Randhir Singh
s/o Sh. Nand Lal
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
15. Sh. Om Prakash
s/o Sh. Paras Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
16. Sh. Ajit Singh
s/o Sh. Paras Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
17. Sh. Sumer Singh
s/o Sh. Paras Ram
R/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.
18. Sh. Rajender Prasad
s/o Sh. Paras Ram
r/o Village Kirari Suleman Nagar Patti Nithari,
Delhi.

..... **Respondents**

Through : Mr. Sanjay Poddar, Adv. for the LAC.
Mr. Kaushal Yadav and
Mr. M.M. Singh, Advocates, for

respondents no.15-18.
Mr. S.S.Sabharwal, Adv.,
for the respondents no.10,11 and 12.
Mr. Ajay Verma, Advocate,
for the DDA.
Mr. Anand Yadav, Advocate,
for the respondents no. 4,13
and 14.

CORAM :

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE V.K. SHALI

1. Whether the 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

% **JUDGMENT**

MUKUL MUDGAL, J.

1. This writ petition has been filed by the Petitioner with the following prayers:-

“a. issue a writ of certiorari or any other appropriate writ or orders or directions calling for the record of the Land Acquisition Collector and declaring the orders dated 24.03.2007, 28.03.2007 and 04.04.2007 as illegal, unfair, unjust, discriminatory and violative of Article 14 of the Constitution of India and quash the same to the extent that it does not award proportionate share of compensation to the Petitioner of the 114 bighas 10

biswas of land of which possession has been taken.

b. direct the Respondent no.2 to award to the Petitioner only his $9/80^{\text{th}}$ proportionate share from the compensation awarded for 114 bighas 10 biswas of land; and direct the Respondent no.2 to refer the dispute regarding apportionment of compensation to the Civil Court for its decision, under the provisions of Section 30/31 of the Land Acquisition Act, 1894.

c. Direct the respondent no.2 to remove the constructions illegally raised after the notification under Section 4 and 6 of the Act on the land measuring 83 bighas 12 biswas.

d. pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice.”

2. The dispute raised by the petitioner essentially relates to the apportionment of the share of the compensation payable to him for the acquisition of acquired land of his family. The petitioner has claimed $9/80^{\text{th}}$ proportionate share on the compensation awarded for 114 bighas 10 biswas of land and has accordingly sought a reference by the respondent no.2 under Section 30-31 of the Land Acquisition Act. This plea has been resisted by the respondent by relying on the order of the Hon'ble Supreme Court dated 18th May, 2006 in Civil Appeal No.7040/2000 which records a settlement between the parties in respect of the

subject matter of the dispute raised in the present writ petition and the order of the

Hon'ble Supreme Court reads as follows: -

“Pursuant to our order dated 16th May, 2006 both the parties after due deliberations and discussion amongst them and with their learned counsel have now agreed to share the compensation amount now available with the Land Acquisition Collector, New Delhi in the following ratio. 65 per cent of the share will go to Smt. Bhagwani's group for the land she inherited from Mr. Pyre Lal, her first husband. Mr. Dil Bahar, Mr. Mohinder Singh and Mr. Gulab Singh, the sons of Smt. Bhagwani through Mr. Surat Singh, will get equal share from and out of 65 per cent since Smt. Bhagwani is dead. The balance 35 per cent will go to the legal heirs of Mr. Jai Ram@ Jas Ram, who was brother of Mr. Pearey Lal, who died on 10.5.1938 issueless. Both the above groups shall also be entitled to further compensation that may be awarded in Reference under Section 18 of the Land Acquisition Act and in other appeals/proceedings that may be taken up subsequently for further enhancement in the above ratio. The parties will have no other claims against each others.

We also make it clear that Mr. Chet Ram will get his share from his father Mr. Surat Singh's share. We also make it clear that Mr. Chet Ram will not have any share in the 65 and 35 ratio of Mr. Pearey Lal's land.

We, therefore, direct learned counsel appearing for both the parties to prepare Compromise Memo as indicated in this order and as agreed to by all the parties who are present in the court and place the same before this Court for further orders on 19.5.2006.”

On 19th May 2006 the Hon'ble Supreme Court disposed of the civil Appeal

No.7040/2000 in terms of the above agreement between the parties.

3. Relying upon the aforesaid order, the learned counsel for the respondent has stated that the extent of the shares between the parties, on the basis of the percentage of the compensation was clearly decided by the Hon'ble Supreme Court . The order of the Hon'ble Supreme Court also recorded it clearly that the parties will have no other claims against each other and the petitioner has, subsequent to the order of the Hon'ble Supreme court dated 18th May, 2006, attempted to raise further disputes by filing the present writ petition on 10th July, 2007 on the basis of an unfair demarcation of land. It has been submitted that the present proceedings are nothing but an attempt to reopen the question settled by the Hon'ble Supreme Court by its above order dated 18th May, 2006.

4. The principal plea of the petitioner which has given rise to the present writ petition is that the partition had not taken place and the petitioner was now being saddled with the compensation for the inferior land and/or the land under unauthorized occupation.

5. In order to consider the plea of the petitioner, it is necessary to peruse besides the order of the Hon'ble Supreme Court, the application recording the compromise between the parties that was placed before the Hon'ble Supreme

Court.

6. A perusal of the said application supported by affidavit of all parties including the petitioner shows that the controversy between the parties related to the land of late Smt. Bhagwani W/o late Sh. Surat Singh which was measured at approximately 33 bighas 9 biswas of land, being 1/6th share of the land holding in the family of the parties measuring 198 Bighas and 2 Biswas. Smt. Bhagwani had expired during the pendency of the appeal before this Court and original respondents no.2,3 and 4 (now respondents no.1,2 and 3) had been recorded as her heirs being her sons. Late Smt. Bhagwani had also executed a gift deed dated 16.7.1984 in favour of her sons namely respondents no.1 to 3.

7. The material terms of the settlement are as follows: -

“4. That the land in the family of the parties situated in village Kirari Suleman Nagar, Patti Nithari, Tehsil Mehrauli, Delhi has since been acquired and the 33 Bighas and 9 Biswas of land, which was subject matter of gift deed dated 16.7.1984 executed by late Smt. Bhagwani, has also been acquired. The Land Acquisition Collector has ascertained the amount of compensation to be paid for acquisition of the said land. The same is presently lying deposited with the Land Acquisition Collector. Respondents no.1 to 3 have already moved for reference under S.18 of the Land Acquisition Act and the same is presently under process.

5. That as per the mutual settlement arrived at

between the parties to the present appeal; they have settled amongst themselves that out of the compensation amount awarded for 33 Bighas and 9 Biswas of land of Smt. Bhagwani, subject matter of the present dispute 65% shall go in equal shares to respondents no.1,2 and 3 namely S/Sh.

1. Dil Bahar
2. Mohinder Singh and
3. Gulab Singh

While the remaining 35% of the compensation amount shall be shared by appellant no.1 to 4 and respondent no.6 now respondent no.5 namely S/Sh.

1. Om Prakash
2. Ajit Singh
3. Sumer Singh
4. Rajinder Prashad and
5. Jai Pal (The present petitioner)

That 50% of 35% shall go to appellant no.1 to 4 and remaining 50% will go to respondent no.5 Jai Pal alone as heirs of late Sh. Paras Ram and Sh. Ram Phal. The amount shall be paid to the above noted persons in terms of the present compromise.

6. That as and when compensation amount for the aforesaid 33 Bighas and 9 Biswas of land is enhanced as a result of the reference and/or subsequent proceedings the enhanced amount shall also be divided in the ratio of 65% to be shared by respondents no.1 to 3 equally and remaining 35% to be shared by the appellants no.1 to 4 and respondent no.6 now respondent no.5 as indicated in para 5. This compromise has been entered into by the parties of their own sweet will and volition and shall be binding on all concerned.”

8. Thus, it is evident that the compensation of the land was agreed to be divided in specified shares and the petitioner Jai Pal was to receive the share specified in paragraph 5. Even the enhancement, if any, granted for the said 33 Bighas was to be divided in the ratio specified in paragraph 6. Thus, it is evident that the share of the parties having been determined by the Hon'ble Supreme Court in a specified ratio there could be no question of any demarcation of individual portion of land qua the compensation awarded. In our view, the petitioner never raised the issue of the quality of the land on the basis of which the shares were demarcated in the Hon'ble Supreme Court and it is apparent that if any relief is granted to the petitioner in these proceedings, the terms recorded by the Hon'ble Supreme Court on 18th May, 2006, would stand altered. Such an option is neither feasible, desirable nor legal and the facts in the present case do not also justify such an alteration.

9. Furthermore, we have noticed that the SDM under Section 55 of the Delhi Land Reforms Act, partitioned the land in question which was a joint holding of the petitioner's predecessors and the predecessors of the other family members in the family of the petitioner and held as follows in respect of the 57 bighas, 15 biswas which is the subject matter of this writ petition:-

“On the basis of above discussion and material available on record I am of the considered view that the agricultural land measuring 198 bighas 02 biswas situated in village, Kirari Suleman Nagar, Patti Nithari, Delhi is ordered to be partitioned in the following manner:

(1) Plaintiff – 1/4th share in entire holding, i.e., 49 bighas 10 biswas comprised in Khasra Nos.1/23, min (South) (1-14), 5/4 Min (East (2-8), 5(4-10) 9/24 (5-14), 10/23 (4-16), 17/4/1 (1-14), 18/17 (4-18), 18(4-16), 21/21 (4-16), 36/22 (4-16), 41/2 (4-16) and 9/1(4-12).

(2) Defendant No1 to 10 are entitled to 41 bighas 12 biswas comprised in Khasra Nos.1/23 min (North) (2-12), 4/1(4-16), 16 min (0-14), 17 (4-16), 18 (4-16), 18/14/1 (2-18), 23 (4-12), 20/24 (2-0), 36/25 (4-16) and 41/3 (4-16).

(3) Defendant NO.11 to 13 are entitled to 57 bighas 15 biswas comprised in Khasra No.4/10 (4-16), 5/6 (4-10), 9/7 (4-16), 16 min (3-7), 25 (3-14), 17/5 (4-6), 21/22 (4-16), 36/24 (4-16), 37/2 (2-0), 3/1 (2-0), 41/4 (4-16), 7 (4-16), 8 (4-16) and 13/3/1 (1-14).

(4) Defendant No.14 and 15 are entitled to 49 bighas 05 biswas comprised in Khasra Nos.5/3(4-16), 4 min (West) (2-8), 9/13 (4-16), 23 (4-16), 10/21 (4-16), 22(4-16), 17/4/2 (2-15), 20/25 (4-16), 36/21 (4-10) 23 (4-16) 41/1/2 min (4-13) and 10.1.1 (1-7).” *(emphasis supplied)*

10. The said competent authority by its order dated 19th November, 2001 partitioned the land which was the joint holding of the predecessors of the petitioners as follows:

“Part I comprising 49.10 bighas

Part II comprising 41.12 bighas

Part III comprising 57.15 bighas

Part IV comprising 49.5 bighas”

11. The petitioner's claim only comprises of his share in 33 bighas out of Part III i.e. From 57.15 bighas. The order of the competent authority had clearly demarcated the Khasra numbers falling to each lot and while calculating the petitioner's share in the compensation in respect of the part III land, no alteration could be made in respect of already delineated land with identified khasra numbers comprised in Part III.

12. In this view of the matter, we are satisfied that no cause is made out for sustaining any of the pleas raised by the petitioner in this writ petition as doing so would tantamount to our altering the terms of the settlement recorded by the Hon'ble Supreme Court. Accordingly, the writ petition is dismissed. No order as to costs.

MUKUL MUDGAL,J

May 12, 2008
dr

V.K. SHALI,J