

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

% *Judgment Reserved On: 7th January, 2011*
Judgment Delivered On: 10th January, 2011

+ **LPA 784/2003**

DELHI ADMN. Appellant
Through: Mr.Sanjay Poddar, Advocate

versus

JAI PRAKASH & ANR. Respondents
Through: Mr.S.S.Ray and Mr.Ranjan Tyagi,
Advocates for R-1

None for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

CM No.21870/2010

1. The aforesaid appeal was disposed of vide judgment and order dated 9.11.2009 when none appeared for the contesting respondent i.e. R-1 who has sought modification of the said judgment and order.
2. Land comprised in Khasra No.183 and 207 in the revenue estate of village Bharola was acquired pursuant to a notification dated 13.11.1959 issued under Section 4 of the LA Act 1894 and in respect whereof the award was published on 31.10.1968 and possession taken over on 15.11.1968.
3. Late Sh.Kuria S/o Sh.Shiv Narain was the recorded

bhoomidar of the land in question and thus compensation as per the award was received by him on 21.02.1972. Kuria expired on 28.1.1975 and it is not in dispute that when he died Kuria was an issueless bachelor.

4. Under the Large Scale Acquisition Policy of the Government those whose land were acquired for purposes of planned development of Delhi were eligible to be allotted a residential plot by Delhi Development Authority and for which the necessary recommendation had to be made by the appellant upon an application moved by the person concerned. As per the policy the said residential plot had to be allotted to the person who not only received the compensation for the acquired land but additionally was the recorded bhoomidar of the acquired land when the notification was issued under Section 4 of the LA Act 1894; needless to state if said person had died his legal heir(s) could be substituted for purposes of allotment of a residential plot.

5. Whereas respondent No.1 claims to have filed the necessary application under his signatures on 4.02.1986 and along therewith sought allotment of a residential plot as the legal heir of Late Sh.Kuria on the strength of a will dated 28.2.1974 stated to have been executed by Sh.Kuria in his favour, the appellant claims that no such application was received.

6. The learned Single Judge has adjudicated the claim of respondent No.1 treating an application dated 4.2.1986 filed by Kuria as the source of the claim, a fact which both parties admit to be incorrect. As per respondent No.1 he had filed the said application and as per the appellant no such application was filed.

7. It is not in dispute between the parties that on 5.12.1996, respondent No.1 had filed the necessary affidavits seeking substitution as the legal heir of Late Sh.Kuria and along therewith had filed such other documents as were needed to process a claim for allotment of a residential plot under the Large Scale Acquisition Policy.

8. The appeal was disposed of directing that under the circumstances claim of respondent No.1 would have to be treated as having been made on 5.12.1996 and not on 4.2.1986 because this Bench had treated the application dated 4.2.1986 as being under the signatures of Kuria and hence an invalid document for the reason Kuria had expired on 28.1.1975. It was directed that the mandamus issued by the learned Single Judge would stand substituted as aforesaid.

9. It is urged by learned counsel for the respondent that respondent No.1, under his signatures, had filed the application dated 4.2.1986.

10. Refuting the said submission, learned counsel for the appellant produced the relevant record and with respect thereto we find that there exists no application dated 4.2.1986. An application dated 19.11.1986 (at page 2/C of the departmental file) bearing the signatures of Kuria exists and pursuant thereto the file bearing No.33(2/7/86) L&B/Alt. was opened. A covering letter dated 19.11.1986 registered vide diary No.15363 (at page C/1 of the departmental file) is to be found. The said covering letter bears the signatures of Kuria. Along with the covering letter and the application certain documents including an affidavit purportedly executed by Kuria is to be found.

11. On the strength of the aforesaid application dated

19.11.1986 the claim was processed treating Kuria as the applicant and vide letter dated 22.5.1987 appellant recommended to DDA that an alternative plot ad-measuring 400 square yards be allotted to Kuria and we find that the said letter was posted to Kuria at the address 119-B/U&V, Shalimar Bagh, Delhi.

12. The dispute raised is very narrow. Whereas appellant claims that the case was processed on the basis of an application bearing the forged signatures of Kuria, respondent No.1 states that he had filed an application on 4.2.1986 and wonders as to wherefrom the claim would be processed in the name of Kuria on the basis of the application dated 19.11.1986.

13. The effect of the dispute would be impacting limitation i.e. the period prescribed under the policy for making an application for allotment of a residential plot. Needless to state if respondent No.1 is able to prove that he had filed an application on 4.2.1986 the same would be within limitation and upon proof that respondent No.1 is the legal heir of Kuria would be entitled to a residential plot. If he fails to do so, the effect would be the allotment made being required to be treated as void as it was on the basis of the application dated 19.11.1986, which as noted above is a contrived document.

14. We note that respondent No.1 has furnished no proof to us that he had submitted any application on 4.2.1986 but counsel claim that he could establish said claim with reference to the record of the appellant and since this would require an adjudication on facts, we dispose of the application by directing the appellant to hear respondent No.1 and look

into such record as respondent No.1 desires to determine whether respondent No.1 had filed an application on 4.2.1986. Further, if respondent No.1 establishes having filed an application on 4.2.1986, then admittedly the said application being incomplete would require the same to be treated as a complete application on 5.12.1996 for admittedly on said date respondent No.1 claims to have made good the deficiencies. If respondent No.1 fails to establish having submitted any application on 4.2.1986 then obviously the claim would have to be treated as of 5.12.1996 and in said view of the matter issue of eligibility with reference to limitation would be decided by the appellant. In said situation necessary orders would be passed and needless to state respondent No.1 would be entitled to remedy as per law.

15. The application stands disposed of modifying the judgment and order dated 7.2.2003 and requiring the appeal to be disposed of in terms of para 14 above.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 10, 2011
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