

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

Date of decision: 5th July, 2010.

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SMT. DHANPATI

..... Petitioner

Through: Ms. Geeta Mehrotra, Advocate.

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Rachana Srivastava, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether 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 |

RAJIV SAHAI ENDLAW, J.

1. The petitioner vide this writ petition seeks a direction to the respondent to recommend her name for allotment of a plot in lieu of her land which was acquired. It is *inter alia* the case of the petitioner that her husband was allotted land admeasuring 4 bighas 16 biswas comprised in Khasra 6/6 situated in village Palam, Delhi in the year 1976 as *Asami* for a period of five years in the scheme under Section 74 of the Delhi Land Reforms Act, 1954, r/w Rule 47 of the DLR Rules; that the husband of the petitioner remained in cultivatory possession of the land till his demise on

16th May, 1980 and thereafter the petitioner remained in cultivatory possession of the land; that on 24th January, 1984, a notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of the said land was issued; that upon the failure of the Gaon Sabha, inspite of request by the petitioner, to declare the petitioner as bhumidar of the said land, the petitioner in the year 1984 applied under Section 74(4) of the DLR Act for declaration as bhumidar. Though it is not clear from the writ petition and the respondent has also stated that owing to the records being old and not traceable, it is not able to give the date of institution of the application aforesaid under Section 74(4) but the order thereon bears the case no. 508/1984 and considering that the Notification under Section 4 is of 24th January, 1984, it appears that the application under Section 74(4) was instituted only after the Notification under Section 4 for acquisition of the land.

2. It is further the case of the petitioner that during the pendency of the application under Section 74(4), the possession of the land was taken over by the Land Acquisition Collector from the petitioner and the award in respect of the land was made on 19th September, 1986. The counsel for the petitioner after hearing has handed over a copy of the award and wherein the name of the petitioner, as “interested person” to whom notices under Sections 9 and 10 of the Land Acquisition Act were issued appears at serial no.493. It is further the case of the petitioner that she was paid compensation

with respect to the said land. These facts have not been controverted by the respondent. The application of the petitioner under Section 74(4) was allowed vide order dated 6th January, 1987 of the Revenue Assistant. It is recorded in the said order that the *pradhan* had confirmed that the husband of the petitioner and then the petitioner had been in continuous cultivatory possession of the land and had no objection to the petitioner being declared as the bhumidar of the land.

3. The petitioner armed with the order aforesaid of her declaration as the bhumidar approached the respondent in the year 1987 itself for allotment of an alternative plot in lieu of acquired land. However, the said application of the petitioner was rejected and such rejection communicated to the petitioner vide letter dated 22nd January, 1991. It was stated in the said letter that since the petitioner had been declared bhumidar after the date of the award, she was not found entitled for recommendation of alternative plot.

4. It is the case of the petitioner that being illiterate she kept on requesting the respondent for alternative plot. Copies of the letters dated 23rd April, 1997, 12th December, 2001, 21st March, 2003 and 5th March, 2005 in this regard are annexed to the petition. Ultimately the present petition was filed.

5. Notice of the petition was issued. The respondent filed a counter affidavit averring that the petition was liable to be dismissed on the ground of laches alone, having been preferred after 14 years of the rejection of her claim. It was also reiterated that the petitioner not being a recorded owner of the land at the time of issuance of Notification, was not covered by the Alternative Plot Allotment Policy of the GNCTD.

6. The writ petition was allowed vide order dated 16th March, 2006. The respondent preferred LPA 1215/2006 which was decided on 25th January, 2007. The Division Bench has remanded the matter for the reason of the order dated 16th March, 2006 allowing the writ petition not dealing with the contention of the respondent of the petition being barred by laches and of the petitioner under the Policy aforesaid being not entitled to the alternative plot.

7. Pursuant to remand, this Court directed the respondent to file supplementary affidavit disclosing as to how the order dated 22nd January, 1991 rejecting the claim of the petitioner was communicated to the petitioner, when had the petitioner applied to the SDM/RA for declaration of her bhumidari rights and as to how the representations aforesaid of the petitioner even after the order dated 22nd January, 1991 were dealt with. The respondent has filed a supplementary affidavit stating that the petitioner herself has in the petition admitted the receipt of the letter dated 22nd January, 1991 (supra); that the records of the Revenue Assistant declaring

the petitioner as bhumidar are not available and that the subsequent representations of the petitioner were not considered in view of the rejection having been communicated vide letter dated 22nd January, 1991 (supra). The respondent has also filed photocopies of its dispatch register qua dispatch of the letter dated 22nd January, 1991 (supra). Though the counsel for the petitioner had sought time to file reply to the said supplementary affidavit but no reply was filed and subsequently it was stated that no reply was required to be filed.

8. The counsel for the petitioner has contended that, the petitioner/her husband having remained in cultivatory possession of land even after expiry of time for which he was admitted into possession of the land; Gaon Sabha even after the expiry of the said five years having not terminated the lease and/or having not ejected them from the land, became entitled to be admitted as the bhumidar on expiry of five years in or about 1981 itself and was thus the bhumidar of the land as on the date of the Notification dated 24th January, 1984 for acquisition of the land. It is contended that the title of the petitioner as bhumidar of the land was thus not dependent on declaration as bhumidar and that such declaration was necessitated owing to the Revenue Authorities having not performed their statutory functions under the DLR Act. Reliance in this regard is placed on ***Behari Vs. Union of India*** 47 (1992) DLT 300 (DB) holding that if a person is shown to be in cultivatory possession of certain Khasra numbers in the Khasra Girdawari, he is

supposed to have acquired bhumidari rights of the said Khasra numbers and on acquisition he is entitled to compensation. Reference is also made to ***Government of NCT of Delhi Vs. Smt. Poonam Gupta*** 125 (2005) DLT 423 where the Division Bench of this Court held that the person acquires bhumidari rights w.e.f. the date of admission or acquisition of rights and if such rights have been acquired prior to the acquisition Notification under Section 4, such person is bhumidar and entitled to alternative allotment of plot in lieu of acquired land. The counsel has also contended that the petitioner being an illiterate lady and having continued to represent to the respondent, her rights ought not to be denied on the ground of laches.

9. The counsel for the respondent has, at the outset, objected to the reliance placed by the petitioner on the judgment of the Division Bench of this Court in ***Poonam Gupta*** (supra) and contended that the Supreme Court had directed the same to be not treated as a precedent. The counsel for the respondent has in this regard after hearing placed before this Court the order dated 5th May, 2006 of the Supreme Court. However, all that the Supreme Court, while dismissing the SLP has observed is that the question of law has been left open for decision in appropriate proceedings. The same does not tantamount to the Supreme Court over-ruling the judgment of the Division Bench. The Supreme Court has left the question of law open for decision by itself. As far as this Court is concerned, the judgment in ***Poonam Gupta*** holds goods.

10. The counsel for the respondent has also referred to ***Union of India Vs. Shivkumar Bhargava*** (1995) 2 SCC 427 holding that purchasers of land subsequent to Notification of acquisition under Section 4 are not entitled to alternative plot. Attention is also invited to the Full Bench judgment of this court in ***Ramanand Vs. Union of India*** AIR 1994 Delhi 29 holding that the owner of acquired land has no absolute right to allotment but is eligible only to be considered for allotment of an alternative plot for residential purposes and the DDA may allot Nazul land to such an individual, in conformity with the plans and subject to other provisions of the Nazul Rules. The counsel for the respondent has further contended that the petition is liable to be dismissed on the ground of laches alone. Reliance in this regard is placed on ***Larsen & Toubro Ltd. Vs. State of Gujarat*** (1998) 4 SCC 387 holding that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these notifications were published. Reference in this regard is also made to ***Karnataka Power Corporation Ltd. Vs. K. Thangappan*** (2006) 4 SCC 322 holding that mere making of representations cannot justify a belated approach.

11. A perusal of the Policy aforesaid, handed over by the counsel for the respondent after the hearing, shows that the persons who are eligible to alternative plot are divided into several categories; those allotted agricultural

land under 20 Point Programme and those allotted land as an *Asami*, it has been provided that they will also be considered for alternative plots, even if the bhumidari rights were confirmed after the issue of Notification under Section 4 of the Land Acquisition Act but before the announcement of award; similarly those who were tenants prior to the promulgation of the DLR Act, are also eligible to be considered for alternative plot. The emphasis, in the Policy for eligibility for consideration for alternative plot, is found to be on the rights with respect to the land and not merely of being entered in the revenue records as a bhumidar. If a person under the law is bhumidar, irrespective of whether he is recorded as such in the revenue records or not, he would be entitled to alternative plot under the Policy. The Policy is a welfare scheme and benefit thereof ought not to be denied to those for whom it is intended. The purport of the Policy is to allot alternative plot to those who were dependent on the land and to prevent such right to speculators. The petitioner by no stretch of imagination can be called a speculator. Had that not been the intent of the Policy, there would have been no need to provide for those who were not recorded bhumidar on the date of Section 4 Notification or those on whom bhumidari rights were conferred under the Act even though not recorded so.

12. Provisions of the DLR Act also show that a duty has been cast under Section 74(4) thereof on the Revenue Assistant to, after the expiry of five years for which the husband of the petitioner was admitted as *Asami* on the

land, if finding that the land had been duly reclaimed direct Gaon Sabha to admit the *Asami* as bhumidar under Section 73. The language does not require such *Asami* to apply for the said purpose; need for the *Asami* applying would arise only when the Revenue Assistant fails to perform his duties. In the circumstances, if an *asami* for the reason of failure of the Revenue Assistant is required to so apply and the application is accepted, the same would necessarily relate back to the date w.e.f. the date on which such right for declaration as a bhumidar had accrued and it cannot be said that the applicant would become the bhumidar on the date of the declaration. It is thus follows that the petitioner not only under the Policy but also under the DLR Act was the bhumidar of the land on the date of the issuance of Section 4 Notification for acquisition and was entitled to the alternative plot of land. An *Asami* in possession after the expiry of the period of lease and who is not threatened with any eviction may not feel the need for approaching the Revenue Assistant for declaration of his rights as such, especially when his possession over the land is being regularly entered in the Khasra Girdawari. Experience shows that such applications under Section 74(4) take the colour and character of a regular legal proceeding and remain pending for years together. An *Asami* in possession under no threat from anyone may not choose to undergo the litigation and may be satisfied merely with having the crops grown by him on the land entered in the Khasra Girdawari. Thus even though the petitioner in the present case appears to have applied for declaration of her rights as a bhumidar after the Notification of acquisition,

but to my mind the same would be irrelevant. That is the dicta of the Division Bench of this Court in *Poonam Gupta* also.

13. I would be however be failing in my duty if not make mention of another Division Bench judgment of this Court in *Gulshan Vs. GNCTD* MANU/DE/0046/2008. Unfortunately the earlier judgment also of Division Bench in *Poonam* was not noticed. In this case, no suit for declaration of bhoomidari rights was filed before Revenue Authorities though there was such declaration from the Civil Court. The Division Bench held the Civil Court to be not competent to make such declaration. It was held that cultivatory possession was not equivalent to bhoomidari. The claimant was thus held to be not “recorded owner” and hence not entitled to alternative plot. It was however clarified that the decision will not be applicable to cases where suits for declaration of bhoomidari rights under the DLR Act were pending at the time of issuance of Notification under Section 4 of Land Acquisition Act.

14. I however choose not to prefer the Division Bench in *Gulshan* for two reasons. Firstly, it does not consider whether the bhoomidari rights accrue by status, irrespective of declaration in suits preferred before Revenue Authorities. Secondly, the view in *Poonam* appears to be the consistent view of this Court. A Single Judge of this Court in *Smt. Renu Gupta Vs. GNCTD* MANU/DE/1175/2003 held that the declaration as bhoomidari relates back

to the date of filing of the petition. Reliance was placed on ***Fateh Singh Vs. Sewaram*** MANU/SC/0357/1983 holding that merely because there was some delay on the part of Revenue Authorities in declaring a tenant as a bhoomidar or because there is no such declaration at all, the tenant entitled to acquire such rights cannot be said to have not acquired these rights. It was also noticed that the DLR Act imposes obligation on the authorities there-under to declare as bhoomidars persons who have become entitled to that right. Another Division Bench of this Court in ***Jai Singh Kanwar Vs. UOI*** MANU/DE/0652/2008, pronounced shortly after the judgment in ***Gulshan*** (supra) and without noticing the same, but referring to ***Poonam*** (supra), held the petitioner therein entitled to alternative plot, even though not recorded owner at the time of acquisition but for the reason of being entitled to the land on the date of acquisition notification.

15. That brings me to the aspect of limitation. The petitioner has in the writ petition itself admitted the receipt of the communication dated 22nd January, 1991 (supra) and has further stated that even thereafter she kept on requesting the respondent to allot the alternative plot. The facts are thus not in dispute. The petitioner did file this petition fourteen years after the rejection of her request for alternative plot and the first representation thereafter was also after six years. The second representation was again after a gap of four years. The petitioner waited for another one year before making another representation and for approximately another two years

before making the last representation preceding the filing of this writ petition. The question which arises is whether owing to such delays, the petitioner should be deprived of her right to be considered for allotment of an alternative plot under the welfare Policy aforesaid.

16. The aspect of delay has to be seen in the factual context in each case. The petitioner in the present case made application for alternative plot in the year 1987. The respondent itself took about four years to reject the said request. The delay by the petitioner in approaching this Court has not affected the respondent in any manner whatsoever. The delay if at all is to the detriment of the petitioner. If the petitioner had approached this Court immediately, she would have got the plot at the rates then applicable. However, the petitioner if now found entitled to a plot would be required to pay the rates of today, the delay being attributable to her only. It is not as if the respondent would suffer in any manner or has changed its position and the petitioner is barred on grounds of estoppel.

17. The Court cannot also lose sight of the fact that the petitioner is a widow and illiterate (and which fact has not been controverted by the respondent in the counter affidavit) and the claim which she is agitating is a claim in lieu of acquisition of her land. The acquisition of land itself is something which is done by the State in exercise of its sovereign powers. The acquisition at least in the year 1987 was to the detriment of the land

owner. Finding that the compensation was not enough, the Scheme for alternative plot was introduced. The rejection of the claim of the petitioner has been found contrary to the legal position and which legal position has been reiterated in the judgments aforesaid of this Court. Notwithstanding the said legal position, the respondent rejected the claim of the petitioner. Such rejection has resulted in the petitioner being deprived of being considered for alternative plot which is her right under the Scheme aforesaid.

18. A Division Bench of this Court in ***Smt. Kalawati Lal Chand Gupta Vs. UOI*** MANU/DE/0217/2004 has held that in compulsory acquisition of land against will of the owner and in exercise of power of eminent domain, the person who is so deprived of his land is to be compensated by giving him market value of the land so acquired. The earlier Full Bench of this Court in ***Shiv Devi Virley Vs. Lt. Governor of Delhi*** AIR 1987 Delhi 46 held that it is not in violation of the Scheme aforesaid that plots are allotted to persons who have lost their land as a result of acquisition proceedings. Another Division Bench in ***Rajinder Kumar Vs. UOI*** MANU/DE/0904/1995 held that the Scheme is only a measure to relieve the owner of hardship resulting from acquisition and is rehabilitative and not intended to confer extra gains. The Division Bench in ***Jai Singh Kanwar*** (supra) noticed that the Scheme of allotment of alternative plots acquired a statutory character under the

provisions of Delhi Development Act 1957 read with DDA (Disposal of Nazul Land) Rules 1981.

19. It is also common knowledge that litigation for an illiterate widow residing in the rural areas of the city is tedious. The Chinese proverb “may you be caught in a litigation, where you are in the right” is apposite in this regard. A person such as the petitioner is not trigger happy to jump to the courts immediately on rights being denied. Further, cases are also not unknown where such representations have yielded results.

20. The petitioner thus cannot be non-suited on the ground of laches; however with the condition that if on consideration the petitioner is found entitled to recommendation for an alternative plot, will have to pay rates therefor as prevailing now. The petition is accordingly allowed. The respondent is directed to consider the case of the petitioner for recommendation for allotment of alternative plot in lieu of acquired land. However, in the facts no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th July, 2010

M (corrected and released on 7th August, 2010)