

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

Judgment Reserved on: November 01, 2010

% Judgment Pronounced on: November 18, 2010

+ **WP (C) No. 9103 of 2009**

Dewan Singh Petitioner
Through: Mr.I.S. Dahiya, Mr. Naresh Mann, Advs.

versus

Government of NCT of Delhi and others Respondents
Through: Mr. Sanjay Poddar, Adv. for R-1 & R-2.
Mr. Sanjay Jain, Sr. Adv. with
Mr.Digvijay Rai, Mr. Sarfaraz Ahmad
and Ms. Ruchi Jain Advs. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers 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

DIPAK MISRA, CJ

The petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a writ of mandamus commanding the respondents to pay to the petitioner the compensation of the acquired land situate in khasra Nos. 1232/3(0-9), 1242 admeasuring 248 square yards, 1242 admeasuring 640 square yards and 1243

admeasuring 331 square yards to the extent of the share belonging to him and the structures which were standing thereon in the revenue estate of village Nangal Dewat, Delhi as the same had been awarded by the Land Acquisition Officer, the respondent No.2 herein, by award No.16 of 1986-87 along with interest @ 15% per annum for the delayed period.

2. The essential facts which are required to be exposted are that a large tract of land including 287 bighas and 9 biswas of land where the abadi was located was sought to be acquired in village Nangal Dewat for the purpose of expansion of the airport. The owners whose structures were on the abadi land challenged the acquisition proceeding. The Airport Authority of India (in short 'AAI') decided to settle the matter with the persons in the abadi area by formulating a special scheme for them for allotment of developed land in Rangpuri. This statement was recorded in the order dated 2nd August, 2001 in Civil Writ No. 481/1982. There was some delay in development of the land in Rangpuri and the occupants of the abadi land did not want to shift until sufficient time was available with them to construct on the Rangpuri property as they were required to shift their houses. The question of extension of time arose in a writ petition and eventually an order came to be passed on 10th July, 2007 in LPA No. 441/2007 [Ballu Singh and others v. Delhi Development Authority and others] and other connected appeals whereby the directions were issued with regard to period of completion of construction on plots and shifting of the people staying on the abadi land. In the said order,

observations were made to the effect that the owners of the abadi land were in addition to the alternative plots being provided at Rangpuri, entitled to receive compensation in lieu of the land in accordance with the provisions of the Land Acquisition Act, 1894 (for brevity 'the Act').

3. It was contended by the respondents before the writ court that the amount of compensation for acquisition of land in village Nangal Dewat had been deposited with the Land Acquisition Collector before the order dated 2nd August, 2001 was passed in CW No.481/1982 for formulation of the scheme for grant of alternative plots in lieu of compensation. In essence, the abadi people could not have both, plots as well as the compensation as developed plots free of costs have been handed over and the area earmarked for the abadi people were almost the same as the total area from where they were displaced.

4. The Division Bench in the reference order dated 10th February, 2010 has referred to Section 31(3) of the Act and posed the question whether the abadi occupants can get both alternative land and compensation as developed plots free of costs have been handed over and the area earmarked for the abadi people is almost the same as the total area from where they were displaced in view of Section 31(3) of the Act.

5. We have heard Mr. I.S. Dahiya, learned counsel for the petitioner, Mr. Sanjay Poddar, learned counsel for respondent Nos. 1 and 2 and Mr. Sanjay Jain, learned senior counsel appearing for respondent No.3.

6. The fulcrum of the matter is whether a person whose land has been acquired under the Act is entitled to compensation as provided under the Act and the land in lieu of the land that has been acquired. In this context, we may refer to Section 31 of the Act which reads as follows:

“31. Payment of compensation or deposit of same in Court - (1) on making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other

lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

7. On a scrutiny of the anatomy of the aforesaid provision, it is quite clear that the Collector, instead of awarding the money as compensation, may grant land in exchange of the land acquired but he can only do so on certain conditions. Section 31(3) of the Act came to be interpreted in *Shafkat Hussain v. Collector of Amraoti*, AIR 1933 Nagpur 208 and the Bench has held thus:

“S.31 does not exclude operation of S.23, Land Acquisition Act; on the other hand it pre-supposes the determination of the pecuniary value of the right or interest in the land held by the claimant in accordance with the direction contained in S.23. S.31(3) comes into operation only at the time of awarding a money compensation. It only gives an option to the Collector either to pay compensation in cash to the person interested or to grant other land in exchange of the same value, or to make some other arrangement as may be equitable.”

(Emphasis supplied)

8. In *12, I.C. Bose Road Tenants’ Association v. Collector of Howrah*, 1977 82 CWN 33, the High Court of Calcutta has observed thus:

“9. Lastly, it is contended on behalf of the appellant that the respondents are to provide the, members of the appellant with alternative

accommodation. We are afraid, there is no provision in the Land Acquisition Act in regard to alternative accommodation. Reliance has been placed on behalf of the appellant on Section 31(3) of the Land Acquisition Act and Rule 18 of the Rules framed thereunder in support of its contention for alternative accommodation. In our opinion, neither Section 31(3) nor Rule 18 can, by any stretch of imagination, be said to provide for alternative accommodation in cases of acquisitions under the Land Acquisition Act as contended on behalf of the appellant. No other point has been urged on behalf of the appellant.”

(Underlining is ours)

9. In *Lt. K. Padmadas v. State of Kerala and others*, AIR 1992

Kerala 158, it has been held thus:

“24. There was a faint submission made by counsel that the appellant was entitled to be given alternate land, for which he relied on Section 31(3) of the Act. What the section provides is only that the Collector may with the sanction of the appropriate government make any arrangement with a person having a limited interest in the land, either by the grant of other land in exchange, or otherwise, instead of awarding money compensation. We do not find anything in the section obliging grant of alternate land, instead of compensation. The discretion is in the Collector and he may in appropriate cases allot alternate lands instead of awarding compensation. There is nothing to indicate that the Collector is obliged to give alternate land instead of giving compensation or that the acquisition is vitiated in any manner for that reason.”

(Emphasis supplied)

10. In *Ramanand v. Union of India and others*, AIR 1994 Delhi 29, a full bench of this Court was dealing with two issues and the first issue which is relevant for the present purpose reads as follows: -

“Whether a person whose land has been acquired for planned development of Delhi has got a vested right to the allotment of alternative plot of land for residential purposes?”

11. After posing the question the Full Bench referred to provisions of Delhi Development Act, 1957, Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 and answered the issue raised as follows:

“13. The right to allotment is asserted firstly, on the basis of Section 21 of the Act and clause 8 of the 1981 scheme. In the alternative, it is contended that such a right would flow from Section 22 of the Act, and rules 4 and 6 of the Nazul Rules.”

Thereafter, the Bench analyzed the various provisions of the enactments in paras 27 and 28 and held thus:

“27. Lastly, on the basis of certain observations made in a Full Bench decision of this Court in *Shiv Devi v. Lt. Governor, Delhi*, 1986 R.L.R.557: (AIR 1987 Delhi 46), it was contended that it is in public interest that individuals who have lost their land as a result of acquisition should be given alternative accommodation, and that it is the duty of the State to give the same. In our opinion, observations to this effect were made, in paras 20 and 21 of the judgment, for explaining the beneficial object of the scheme for allotment of alternative plots, in a different context. In that case, reference to the Full Bench was made on the question as to who is entitled to the benefit of

allotment of a plot on the acquisition of land. This question had arisen in the light of three phases of acquisition proceedings envisaged under the Land Acquisition Act, namely, when the notification under Section 4 is issued, when the declaration under Section 6 is made, and when the land is actually acquired by making an award. Earlier, the view taken by various Benches was that individuals whose land has been acquired would be considered for allotment of an alternative plot for residential purpose in certain circumstances. Then, in *Krishan Kumar Manik v. Union of India*, it was held that the person who owned the land at the time when the notification under Section 4 was issued, and not the subsequent transferees, would be entitled to apply for an alternative plot. The Full Bench disagreed with the view taken in *Krishan Kumar Manik's* case confirmed the view taken earlier that individuals whose land had been acquired would be “entitled to be considered” for allotment of a plot “in certain circumstances”. It was further held that any one whose land has been acquired “is entitled to apply” for allotment of an alternative plot. The observations made in this judgment really go against the proposition sought to be advanced on behalf of the petitioner.

28. As a result of the above discussion, we find that an individual whose land has been acquired for planned development of Delhi, has no absolute right to allotment, but, he is eligible to be considered for allotment of an alternative plot for residential purposes; and that the DDA may allot Nazul land to such an individual, in conformity with the plans and subject to other provisions of the Nazul Rules.” (Emphasis added)

12. On a perusal of the aforesaid decision, it is clear as crystal that the Full Bench has categorically laid down that an individual has no vested right for allotment of an alternative plot for residential purposes.

13. In this context we may profitably refer to the decision in *Ravi Khullar and Anr. v. Union of India and others*, AIR 2007 SC 2334, a two-judge bench of the Apex Court has opined thus –

“Learned counsel for the appellants strenuously urged before us that the land in village Rangpuri is still available and even if the three industries with which we are concerned in the instant batch of appeals are allotted land to the extent of 25,000 sq. yards each, as recommended in the Joint Survey Report, their purpose will be served. We are afraid we cannot accede to the request because that is a matter of policy and it is for the government to take appropriate decision in that regard. In law we find no justification for the claim that even in the absence of a scheme for rehabilitation of displaced industries alternative sites should be allotted to them for relocating the industrial units. It is no doubt true that the acquisition of land in village Rangpuri by issuance of Notification under Section 4 of the Act on December 23, 1986 was for the public purpose, namely for rehabilitation of the persons displaced or affected due to the expansion/development of the Palam Airport. Learned counsel appearing for the State contended that this public purpose has been achieved and the persons who were displaced from village Nangal Dewat in view of the acquisition of their lands for the development of Palam Airport have been allotted plots in village Rangpuri for their residence. There is nothing in the Notification which obliges the State to provide equal alternative site to the industries for their rehabilitation.

We find substance in the stand of respondents.”
(Emphasis supplied)

14. At this juncture, it is absolutely necessary to state that what was the lis before the Division Bench in LPA No.441/2007 [Ballu Singh and others v. Delhi Development Authority and others] as the observations made therein had created a doubt in the mind of the

Division Bench which has referred the matter to the larger Bench. The Division Bench in LPA No.441/2007 [Ballu Singh and others v. Delhi Development Authority and others] was considering cases of the appellants therein whereby the order dated 2nd August, 2001 passed by the learned Single Judge in WP(C) No.481/1982 was considered. In the said order, the learned Single Judge had noted that the writ petitioners had abandoned the challenge to acquisition proceedings of their land and instead pressed only for the relief of rehabilitation by allotment of alternative land. The writ petition was disposed of with a direction that the petitioner therein would be allotted alternative land in accordance with the terms of the scheme which was then being framed. Thereafter, the Division Bench in LPA No.441/2007 analyzed the order of the learned Single Judge and opined thus:

“4. By virtue of the aforesaid order passed by the learned Single Judge, the appellants herein have become entitled to allotment of alternative land. The allotment of alternative land is being made free of cost to the appellants and others, and the entire cost is being paid by Delhi International Airport Pvt. Ltd. and DDA. In addition the appellants and others are entitled to the compensation in accordance with the provisions of the Land Acquisition Act. To the aforesaid extent of making available alternative land to the appellants in addition to the compensation, there is no dispute raised by any of the parties. In that view of the matter, it is established that the appellants would not only receive compensation in accordance with the provisions of the Land Acquisition Act, but would also get alternative land for construction of residential houses. Alternative plots of sizes

between 26 sq. mtrs. to 650 sq. mtrs. are being allotted.”

(Emphasis supplied)

Thereafter the Division Bench observed as follows:

8. The specific directions have been issued by the learned Single Judge in his order which are summarised in paragraph No.36 of the judgment. We have perused the said directions in the light of the records of the case and also given our thoughtful consideration to the submissions of the counsel appearing for the parties. The principal challenge of the appellants in respect of the impugned judgment and order is on the ground that the eviction of the appellants has been given priority over the rehabilitation of the appellants, which, according to the counsel for the appellants, should have been given preference and importance in view of the decision of the Supreme Court in N.D. Jayal and another v. Union of India and others reported in 2004 (9) SCC 362. It was also submitted before us that the appellants are being evicted from their land and homes to which the appellants have agreed, provided they are rehabilitated by providing them alternative land wherein they can construct their residential houses, and that till such residential houses are constructed, possession of the land which was acquired should not be taken by evicting the appellants. It was also brought to our notice that the basic amenities like water supply and electricity are still not available and that in view of said position, construction of houses by them within the stipulated six months would not be a reasonable period and that minimum of two years period should have been granted to the appellants to construct their residential houses in the said plots. It was also submitted before us that although a Committee has been constituted by the learned Single Judge, no effective sitting of the said Committee nor any effective decision has taken place and, therefore, the impugned order is required to be set aside and quashed.

9. The aforesaid submissions have been considered by us. The land of the appellants was

acquired by the competent authority under the provisions of the Land Acquisition Act in public interest i.e. for the development, modernisation and expansion of Indira Gandhi International Airport. The aforesaid purpose as it appears has acquired urgency in view of the upcoming Common Wealth Games in 2010. The infrastructure at the Indira Gandhi International Airport is inadequate to meet even the present demand. Expansion has to be immediately undertaken, if India is to hold the prestigious sporting event. It was pointed out to us during the course of arguments that the respondent No.3 is required to construct and complete a new runway of 4400 metres length, 60 metres width, 1 metre depth, which is incidentally going to be the longest runway in Asia and would be able to accommodate new generation aircrafts as well as Taxiways, which is to be made ready and available for landing and takeoff by 31st March, 2008. The respondent No.3 has also proposed to start the construction of the new Integrated Terminal Building which is targeted to be completed by 28th February, 2010 leaving some time to integrate the new Integrated Terminal Building with the existing terminal building and to make the same operational by October 2010, when the Commonwealth Games are scheduled to start. The aforesaid purposes for which the land is required are definitely public purposes. Since larger public interest is involved, any delay can result in triste consequences which can cause damage to prestige and reputation of the nation. The aforesaid land which is acquired must be made available to the respondent No.3 as expeditiously as possible so as to enable them to meet the targets as proposed. At the same time, the interest of the appellants has also to be considered and kept in mind. It is agreed that they have to be rehabilitated by providing them suitable alternative land so that they are able to construct their residential houses and live in them. A balancing act has, therefore, to be made to see that the interest of both the parties is safeguarded and looked after. Keeping this aspect in view, the learned Single Judge considered the matter and has done a balancing act to protect the interest of both

the parties by persuading the DDA to change the terms and conditions of the allotment and giving various directions as summed up in paragraph 36 of the judgment. The respondent No.3 has agreed to pay to the appellants and others rent for a period of six months depending upon the area of the land allotted to them. A rental scheme offered by the respondent No.3 for Nangal Dewat Villagers who are eligible for alternative plots at Rangpuri was placed before us during the course of arguments.”

After so observing the Bench expressed the view as follows:

“10. It is, therefore, established that the appellants, whose land stands acquired for the aforesaid public purpose, are entitled to receive compensation in lieu of their land in terms of the provisions of the Land Acquisition Act. In addition, they are also provided with alternative plot of land at Rangpuri, which is near to Vasant Kunj in South Delhi and also rental amount for a period of six months so as to enable them to complete construction of their residential houses.”

15. The Division Bench in the order dated 10th February, 2010 while referring the matter felt that the observations in LPA No.441/2007 have been made in the context of extension of time for vacating the abadi land in village Nangal Dewat and shifting to Rangpuri but keeping in view the concept of judicial discipline thought it apt to refer the matter to the larger Bench.

16. If the law in the field relating to Section 31(3) of the Act is understood in proper perspective there can be no iota of doubt that claim for alternative accommodation is not a vested right in a person whose land is acquired. The language of the section only gives an option to the Collector. It does not really make a provision for grant

of alternative accommodation. As the Full Bench of this Court in ***Ramanand*** (supra) has stated that a person has no absolute right to allotment but is eligible for consideration subject to other provisions of the rules in question. Their Lordships in ***Ravi Khullar*** (supra) have held that unless there is a scheme for rehabilitation of displaced industries alternative site cannot be claimed for relocation. Thus, there is no obligation in law on the part of the State to provide equal alternative site. It will depend upon the rules and the scheme, if framed by the State. In the absence of any rule or scheme for consideration of allotment; no claimant could put forth a claim as a matter of right. What the Division Bench has stated in LPA No. 441/2007 was on the basis of an arrangement made by the learned Single Judge and has to be understood and restricted to the lis and controversy before the Division Bench in LPA No.441/2007. We say so because the Division Bench has stated that the appellants had established that they were entitled to receive compensation in lieu of the land in terms of the provisions of the Act. Reading the paragraph in the context of earlier paragraphs, we are of the considered opinion that the said direction was issued in the context of the case in question and it cannot be said to have laid down the law that in every case of acquisition under the Act the land oustee or the person whose land has been acquired is entitled to compensation as well as alternative accommodation / land.

17. In the ultimate analysis, we conclude and hold that the observations made in LPA No. 441/2007 [Ballu Singh and others v. Delhi Development Authority and others] was on the facts of the case and does not state the law that a person whose land is acquired is entitled to alternate accommodation or site as a matter of right under the Act. It would depend upon the language employed under any rule or scheme if framed by the State Government. The reference is answered accordingly.

18. Let the writ petition be listed before the appropriate Division Bench.

CHIEF JUSTICE

SANJIV KHANNA, J

NOVEMBER 18, 2010
Kapil/dk

MANMOHAN, J