

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

**Date of decision: 6<sup>th</sup> September, 2011**

+ **W.P.(C) 6343/2011**

% **SURESH KUMAR** **.....Petitioner**

Through: Mr. S.D. Singh & Mr. Rahul Kumar  
Singh, Advs.

Versus

**GNCT OF DELHI & ORS.** **..... Respondents**

Through: Mr. Sanjay Kumar Pathak, Adv. for  
R-1&2.  
Mr. A.S. Chandhiok, ASG with Mr.  
Sandeep Bajaj, Mr. B.V. Niren & Mr.  
Gurpreet S. Parwanda, Advs. for R-  
3/UOI.

**CORAM :-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

- |    |                                                                       |               |
|----|-----------------------------------------------------------------------|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not?                                | Not necessary |
| 3. | Whether the judgment should be reported in the Digest?                | Not necessary |

**RAJIV SAHAI ENDLAW, J.**

1. The petition seeks mandamus to the respondents to allot to the petitioner, "alternative land" admeasuring 45 Bighas 1 Biswa at Mehrauli,

Hauz Khas and particulars whereof are given in para 22 of the petition and to put the petitioner into vacant, peaceful, physical possession thereof and alternatively any other land at similar location.

2. It is the case of the petitioner that his grandfather had migrated from Pakistan to India in the year 1947; that as per the policy, he was entitled to get land in India in lieu of land left by him in Pakistan and had made an application dated 11.08.1948 in this regard; that though the grandfather of the petitioner had been informed that certain land situated at village Masjid Moth had been allotted to him but the final action of completing the allotment and handing over possession was not taken and as such the claim of the grandfather of the petitioner remained unsettled; that the grandfather of the petitioner expired on 29.12.1962 and thereafter his sons including the father of the petitioner continued to pursue the said application and the land aforesaid in village Mehrauli, Hauz Khas, New Delhi was allotted vide allotment letter dated 06.08.1963 and directions were issued to the Patwari to take appropriate steps; however possession of the land was not delivered; that the Land Claims Officer, Department of Rehabilitation continued to

examine the entitlement of the predecessors of the petitioner. Reliance is placed on letteres dated 09.05.1967, 22.05.1967 and 22.07.1967 in this regard. The petitioner also relies on a letter dated 21.05.1975 of the Department of Rehabilitation to the Revenue Assistant enquiring whether the possession of the land had been delivered to the predecessors of the petitioner. Though in the pleadings of the petitioner nothing is stated with respect to the period from 21.05.1975 till 08.07.2011, the counsel for the petitioner contends that the predecessors of the petitioner and the petitioner continued to correspond and states that the said record would be available with the respondents and the notice of the petition should be issued and the respondents be directed to produce the said records.

3. The letter dated 08.07.2011 of the Evacuee Property Cell of the Government of NCT of Delhi to the Tehsildar, Civil Lines suggests that the land which had been allotted to the petitioner was in illegal occupation of other persons. The petitioner also relies upon the letter dated 26.07.2011 of the Tehsildar to the Assistant Settlement Commissioner to the effect that the land which was allotted to the petitioner was near the Yamuna and at present

there is over flow of water and identification demarcation of this land is not possible.

4. The aforesaid would show that the claim of the petitioner is for land stated to have been allotted as far back as in the year 1963 i.e. nearly half a century prior to the present petition. It has been enquired from the counsel for the petitioner as to why the petition should not be dismissed on the ground of delay, laches, acquiescence and waiver, even if the petitioner can be said to be having any right. The petitioner has clearly slept over his rights if any and cannot after 50 years seek the land and in which 50 years, rivers also have changed their course. The Supreme Court recently in ***Shankara Cooperative Housing Society Ltd. Vs. M. Prabhakar*** (2011) 5 SCC 607 also relating to Displaced Persons (Compensation & Rehabilitation) Act, 1954 and Administration of Evacuee Property Act, 1950 set aside the writ issued by the High Court holding that inordinate and unexplained delay in approaching the Court in a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioners therein; the delay in the said case was much less than the delay in the present case; it

was held that delay affects the rights created in the interregnum in the third parties.

5. The counsel for the petitioner has contended that the cause of action has accrued to the petitioner now only when the respondents have taken a stand that the land allotted to the petitioner stands encroached and possession thereof cannot be delivered to the petitioner. It is further contended that there has in the past never been any denial of the claim of the petitioner and there was thus no occasion for the petitioner to approach this Court.

6. I am not willing to accept the aforesaid contentions. The non-delivery of possession of the land was sufficient for the petitioner / his predecessors if felt aggrieved to have approached the Courts. It thus cannot be said that the cause of action had not accrued earlier. The petitioner / his predecessors appear to have been content with the situation as prevailing then and cannot now after such long lapse of time and in which time not only persons but records also disappear, seek remedy.

7. Moreover, while the petitioner claims that the land was allotted in 1963, the documents filed show that in the year 1967 the verification of the entitlement was still under process. Also, there is absolute quietus between the years 1975 and 2011. Merely because the petitioner has been successful in, now having made the Tehsildar and the Assistant Settlement Commissioner write some letters, cannot revive the rights if any of the petitioner which have long since become barred.

8. The petitioner has to himself make out a case and cannot seek a direction for summoning of the records to enable him to make out a case, without even making out a case for summoning of records. The petitioner cannot make this Court commence a roving and fishing enquiry. The Full Bench of this Court in ***Prakash Vir Shastri v. UOI*** AIR 1974 Delhi 1 refused an application seeking production of documents to find out if there had been any violation of Article 14 and held that the petition should be decided on the material on record and under Article 226 of the Constitution, the Court should not embark upon a roving enquiry. The Division Bench of this Court recently also in ***A.G.R. Investment Ltd. v. Additional***

***Commissioner of Income Tax*** 176 (2011) DLT 703 held that to make a roving enquiry does not come within the ambit and sweep of exercise of power under Article 226. The Apex Court also in ***A. Hamsaveni v. State of T.N.***(1994) 6 SCC 51 held that the petition can succeed only if the petitioners make out a case but not to give a chance to establish a claim. Similarly, in ***N.K. Singh v. UOI*** (1994) 6 SCC 98 it was held that no roving enquiry is called for or justified within the scope of judicial review with reference to the private rights of an individual. Yet again in ***Sadananda Halo v. Momtaz Ali Sheikh*** (2008) 4 SCC 619 the Apex Court held that it is not for the High Court to, at the instance of unsuccessful candidates, place itself into a position of fact finding commission and to commence a roving enquiry. Reference may also be made to ***Ratan Chandra Sammanta Vs. UOI*** 1993 Supp (4) SCC 67 reiterating that a writ is issued in favour of a person who has some right and not for the sake of roving enquiry leaving scope for maneuvering; it was further held that where neither steps to enforce claim are taken except sending vague representations nor any material produced before the Court, it would be too dangerous to accept a

plea, as here, to call upon the respondents to produce their records.

9. The counsel for the petitioner has referred to para 28 in *Tasnemul Haq Vs. Union of India* 141 (2007) DLT 647. However, the said writ petition was of the year 1984 and the process of allotment in that case was shown to be alive till the year 1982. So is not the case here.

10. There is thus no merit in the petition. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**SEPTEMBER 06, 2011**  
'gsr'