

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

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Date of decision: 20th April, 2012

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LPA No. 18/2008

GOVERNMENT OF NCT OF DELHI & ORS

..... Appellants

Through: Mr. V.K. Tandon, Advocate

Versus

BALBIR SINGH & ORS

..... Respondents

Through: Mr. Himanshu Jawa, Adv for R-1 to 3.
Mr. Madan Lal Sharma, Adv for R- 4
to 6.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 18th April, 2006 of the learned Single Judge allowing WP(C) No. 8620-22/2005 preferred by the respondents 1 to 3 and issuing mandamus to the appellants to give possession of 21 biswas of land comprised in khasra No. 333/3, Village Holambi Khurd, Delhi to the respondents 1 to 3 and to make the necessary mutation entry in the revenue records qua the said land in their favour. The appeal also impugns the order dated 27th July, 2007 of dismissal of the application filed by the appellants for review of the order dated 18th April,

2006. Notice of the application was issued. The respondents 2&3 died during the pendency of the appeal and their legal heirs were substituted. Shri Sultan Singh, Shri Ratan Singh and Shri Amar Singh filed CM.No.14/2010 for impleadment in the present appeal and which was allowed on 6th May, 2011 and they were impleaded as respondents 4 to 6. The counsels have been heard.

2. Gaon Sabha of Village Holambi Khurd passed a resolution dated 20th December, 1976 whereby the land admeasuring 18 biswas in Khasra No.63 of the respondents 1 to 3 and of Shri Mohan Lal (who died leaving behind respondent no.5 Shri Ratan Singh and respondent no. 6 Shri Amar Singh as his sons) and respondent no.4 Shri Sultan Singh was taken by the Gaon Sabha for construction of road from village Holambi Khurd to Puth Khurd. The said resolution recommended allotment of 2 biswas of land adjacent to the village pond to each of the respondents 1 to 4 and the predecessor of the respondent 5 and 6, in lieu the land so taken over. However, the land could not be handed over and the Gaon Sabha again passed a resolution dated 25th October, 1985 recommending allotment of 5 biswas of land to each of the aforesaid persons in Khasra 334/2. The said resolution was also endorsed by

the Village Development Committee, Delhi Administration vide Resolution No. 1 dated 3rd February, 1992. In this manner 18 biswas of land belonging to respondents 1 to 4 and to the predecessor of respondents 5 and 6 in Khasra No.63 was exchanged with 25 biswas i.e. 5 biswas each, of land in Khasra No. 334/2 falling in the extended abadi.

3. The respondents 1 to 3 were, in pursuance to the aforesaid, put into possession of 5 biswas of land each in Khasra No. 334/2.

4. The respondents 1 to 3 however in the year 1993 made a representation to the appellants claiming that they be given further land in lieu of their land in Khasra No. 63 which had been taken over for construction of a road; it was their case that they had been assured allotment of 21 biswas in addition to 15 biswas of land already allotted to them. No action was taken by the appellants on the said representation.

5. The respondents 1 to 3, after remaining quiet for nearly 8 years, filed WP(C) No. 1212/2001 claiming mandamus for allotment of additional 21 biswas of land. The said writ petition was disposed of vide order dated 29th November, 2001; it was observed that the petition was highly belated and

the respondents 1 to 3 were not entitled to any relief because of delay and laches in as much as their land was taken in the year 1976 and the first representation for additional land was made in the year 1993; the counsel for the respondents 1 to 3 then urged that the only relief which he was pressing was for the representation to be decided by the appellants; this Court observed that there could be no objection to the said relief and accordingly directed the appellants to within ten weeks decide the representation made by the respondents 1 to 3 in the year 1993.

6. The respondents 1 to 3 thereafter filed WP(C) No. 8620-22/2005 from orders wherein this appeal has arisen. It was their case in the said writ petition that notwithstanding the direction contained in the order dated 29th November, 2001 (supra) in the earlier writ petition for disposal of their representation within ten weeks thereof, no decision had been taken within the time granted; that on their continuously pursuing the matter, the appellants out of annoyance and to teach the respondents 1 to 3 a lesson had passed an unjust, unfair and unreasonable order in back date of 15th October, 2004 rejecting their representation; however in the prayer clause in the writ petition, the respondents 1 to 3 instead of impugning the said order dated

15th October, 2004 of the appellants, again sought mandamus for allotment of additional 21 biswas of land in Khasra No.333/3 which was stated to be lying vacant.

7. It appears that the appellants did not file response to the WP(C) No. 8620-22/2005 inspite of opportunity. The learned Single Judge accordingly treated the averments made in the writ petition as correct and vide order dated 18th April, 2006 supra and believing that the representation of 1993 had not been decided, allowed the writ petition by directing the appellants to allot 21 biswas of land in Khasra No. 333/3 to the respondents 1 to 3; the plea of the respondents 1 to 3 themselves in the writ petition that the representation stood rejected vide order dated 15th October, 2004 was not noticed. The claim of the respondents 1 to 3 for additional 21 biswas was predicated on the fact that the value of their land, which was taken for road, was ₹1500/- per sq. yd. and that of land in Khasra No.333/3 given to them was ₹700/- per sq. yd., that the said valuations were accepted by the Naib Tehsildar on 14.11.1991; that in pursuance thereto the ADM-cum-Director, Panchayat had on 15.06.1992 recorded that deficiency be made up by allotment of additional 21 biswas in Khasra No.333/3 and the file was

forwarded for approval to the Lieutenant Governor but then the file got lost in the corridors of office of Lieutenant Governor.

8. The appellants thereafter applied for review of the order, drawing the attention of the learned Single Judge to the order dated 15th October, 2004 rejecting the representation of the respondents 1 to 3. The learned Single Judge however vide order dated 27th July, 2007 (supra) dismissed the said review application observing that the order dated 15.10.2004 rejecting the representation was wrong since the respondents 1 to 3 had not been handed over land of equivalent value in lieu of their land taken over for road.

9. This appeal was partly heard on 03.02.2009. Finding that as per resolution (supra), total of 25 biswas of land was to be given in lieu of land taken for road and further finding that the respondents 1 to 3 had been put into possession of 15 biswas only, time was given to the counsel for the appellants to obtain instructions whether the remaining 10 biswas had been allotted to the “owners”. Vide subsequent order dated 17th February, 2009, the appellants were directed to hand over the remaining 10 biswas of land to the respondents 1 to 3. The appellants thereafter sought clarification of the order dated 17th February, 2009 pleading that 25 biswas of land which was

to be given in lieu of the land taken for road construction, was to be given in the proportion of 5 biswas each to the respondents 1 to 3 and to Shri Sultan Singh (since impleaded as respondent no.4) and Shri Mohan Lal (whose sons have since been impleaded as respondents no. 5 and 6). It was further pleaded that Shri Sultan Singh and Mohan Lal never came forward to take their 5 biswas each of land but that did not entitle the respondents 1 to 3 to the said 10 biswas also, which belonged to Shri Sultan Singh and Shri Mohan Lal. This Bench however vide order dated 28th October, 2009, finding that the names of Shri Mohan Lal and Shri Sultan Singh did not figure in the order of allotment, dismissed the said application for clarification and again directed the appellants to hand over 10 biswas of land to the respondents 1 to 3. The appellants preferred SLP(C) No. 20841/2009 against the said order and in which the direction of this Bench for handing over of 10 biswas of land to the respondents 1 to 3 was stayed. The said SLP was thereafter converted into an Appeal No.36718-36719/2009 and was disposed of vide order dated 6th September, 2010 by directing this appeal to be disposed of expeditiously and staying the operation of the order dated 28.10.2009 in this appeal, till the disposal thereof. Thereafter, as aforesaid the respondents no. 4 to 6 have been impleaded as a party. They assert claim

to remaining 10 biswas of land and controvert the claim of the respondents 1 to 3 thereto.

10. What emerges from the aforesaid factual narration is as under:

- A. that the claim of the respondents 1 to 3 for land, in addition to 15 biswas of which they have already been put in possession of, was vide order dated 29th November, 2001 in the writ petition earlier preferred by them, held to be highly belated and barred by delay and laches;
- B. though the writ petition earlier preferred by the respondents 1 to 3 ought to have been dismissed on this finding but on the argument of their counsels that only a relief of consideration of the representation was sought, direction for disposal of the representation was issued;
- C. the said representation of the respondents 1 to 3 was rejected vide order dated 15th October, 2004 holding that as per the resolution, the entitlement of each of the respondents 1 to 3 was to 5 biswas of land only of which they had already been put into possession of and they were not entitled to any additional land;

- D. The said order dated 15th October, 2004 even though referred to in the subsequent WP(C) No. 8620-22/2005 filed by the respondents 1 to 3 was not challenged therein;
- E. while allowing WP(C) No. 8620-22/2005 on 18th April, 2006 the said order dated 15th October, 2004 was not noticed and the learned Single Judge proceeded on the premise as if the representation had not been decided and direction for allotment of additional 21 biswas of land was issued;
- F. the resolution dated 25.10.1985 for allotment of land in lieu of land taken for construction of road, is for allotment of 5 biswas of land to each of the respondents 1 to 4 and to predecessor of respondents 5&6;
- G. though out of 25 biswas of land which the appellants were to give in accordance with the Resolution dated 25.10.1985, in lieu of 18 biswas of land taken for construction of road, only 15 biswas has been given till date i.e. to the respondents 1 to 3 and the remaining 10 biswas has admittedly not been given and remains with the appellants but as per the said Resolution, the entitlement to the remaining 10 biswas of land is of the

respondent No.4 and the predecessor of the respondents 5 and 6 and not of the respondents 1 to 3;

- H. that the respondents 4 to 6 are now staking their claim to the said 10 biswas of land;
- I. the respondents 4 to 6 claim to be illiterate, belonging to the Schedule Caste, ignorant of their rights and thus having been unsuccessful till now in taking possession of the land of their entitlement; they further claim that the respondents 1 to 3 have obtained order from the learned Single Judge and in this appeal (which was set aside by the Supreme Court) qua the said 10 biswas of land fraudulently; they seek a direction for being put into possession of the said land;
- J. the respondents 1 to 3 in response to the aforesaid stand of the respondents 4 to 6 deny that the 18 biswas of land in Khasra No.63 taken over for construction of road belonged to the respondent No.4 and the predecessor of the respondents 5&6 also; they claim that the entire 18 biswas belonged to them i.e. respondents 1 to 3 only;

11. We are unable to agree with the reasoning given by the learned Single Judge for issuing mandamus for giving additional 21 bighas of land to the respondents 1 to 3, for the following reasons:

- (i) the learned Single Judge did not consider that in order dated 29.11.2001 in W.P.(C) No.1212/2001 earlier preferred by the respondents 1 to 3, it had already been held that their claim for additional land was belated and they were not entitled to any relief because of delay and laches; the said order had attained finality;
- (ii) though in the aforesaid order a direction was given for deciding the representation of the respondents 1 to 3 but the same could not revive the claim to which the respondents 1 to 3 had been held to be not entitled because of delay and laches;
- (iii) the subsequent writ petition from which this appeal arises was initially allowed vide order dated 18.04.2006, virtually *ex parte* and believing the version of the respondents 1 to 3 and without noticing that the representation had been rejected vide order dated 15.10.2004;

- (iv) that though on review, in order dated 27.07.2007 the rejection of the representation was noticed but the same was held to be not good for the reason of the claim of the respondents 1 to 3 of the 15 biswas of land allotted to them in lieu of land taken over from them being not of equivalent value and relying on the affirmation of the said decision by the Naib Tehsildar and the ADM-cum-Director, Panchayat;
- (v) the learned Single Judge did not consider that vide resolution dated 20.12.1976, the respondents 1 to 3 had been found entitled only to 2 biswas of land each near pond in lieu of land taken over for construction of road;
- (vi) the learned Single Judge also did not notice that vide subsequent resolution dated 25.10.1985, land admeasuring 5 biswas each in Khasra No.334/2 only had been agreed to be given to the respondents 1 to 3 in lieu of their land which was taken over;
- (vii) the learned Single Judge also did not consider that the respondents 1 to 3 at no time challenged the resolution dated 25.10.1985 finding them entitled only to 5 biswas of land each

in Khasra No.334/2 and at that time did not contend that the same was not of equivalent value;

- (viii) the respondents 1 to 3 were thus bound by the resolution dated 25.10.1985 and could not claim anything in addition thereto;
- (ix) that their claim for additional land had already been held to be belated and barred by delay and laches in order dated 29.11.2001 in W.P.(C) No.1212/2001;
- (x) that the affirmation by the Naib Tehsildar and the ADM-cum-Director, Panchayat of the claim of the respondents 1 to 3 of the land allotted to them being not of value equivalent to their land taken over, and the proposal to make up the deficiency by allotment of additional 21 biswas of land to them was but a proposal and was subject to the approval of the Lieutenant Governor and which approval was never granted;
- (xi) The Supreme Court in *Bachhittar Singh Vs. State of Punjab* 1962 (Suppl.) 3 SCR 713, *State of Bihar Vs. Kripalu Shankar* (1987) 3 SCC 34, *Laxminarayan R. Bhattad Vs. State of Maharashtra* (2003) 5 SCC 413 and *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia* (2004) 2 SCC 65 has held

that notings on an official file do not create any right and are merely a stage in the decision making process and till a formal order is passed by the Competent Authority and communicated to the concerned party, no right accrues;

(xii) that the question of equivalence could not have been gone into after the resolution dated 25.10.1985 had attained finality.

12. That though of the 25 bighas of land agreed to be given vide Resolution dated 25.10.1985, in lieu of 18 biswas taken for construction of road, 10 biswas still remains with the appellants and further though the respondents 1 to 3 on the one hand and the respondents 4 to 6 on the other hand claim adversarially thereto but the said disputes cannot be adjudicated in these proceedings. It cannot also be lost sight of that such was not the basis of the claim of the respondents 1 to 3 in the writ petition from which this appeal arises.

13. Though the respondents 4 to 6 seek a direction for being put into possession of the said 10 biswas of land but neither can such a direction be given in this appeal arising from a writ petition filed by the respondents 1 to 3 nor can such a direction be given in view of the adversarial claim of the

respondents 1 to 3 on the one hand and the respondents 4 to 6 on the other hand. It cannot also be lost sight of that the respondents 4 to 6 are making such claim after long delay. Such disputes are best left to be adjudicated in a properly constituted proceeding, if any maintainable.

14. We therefore allow this appeal and set aside the orders dated 18.04.2006 and 27.07.2007 of the learned Single Judge and dismiss W.P.(C) No.8620-22/2005 preferred by the respondents 1 to 3.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 20, 2012

‘M/gsr’