

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

Decided on: 08.10.2013

+ LPA 1006/2005

UOI & ANR.

..... Appellants

Through: Mr.B.V.Niren, Advocate

versus

GUNWATI DEVI(DECD.)THR.LR'S & ORS Respondents

Through: Ms.Anjali Chauhan, Advocate for
AIIMS.

Mr.Arun Birbal, Advocate for R-2/DDA

Counsel for the LR's of respondent no.1
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S.RAVINDRA BHAT(Open Court)**
CM 14768/2013(for recall of the order dated 20.5.13)

1. This is an application seeking review of the judgment and order dated 20th May, 2013 of this Court whereby LPA of the Union of India was allowed.

2. The impugned judgment of the learned Single Judge had directed that a letter/communication dated 22nd/23rd October, 1984, to the extent it alluded or referred to release for allotment of 500 sq. meter plot to the writ petitioner (Gunwanti Devi), had to be complied with.

3. The Union of India had contended that no enforceable right could flow in favour of the land owner/ Gunwanti Devi; since the land originally in her possession was acquired by an award announced on 29th March, 1975; prior to that the predecessor's leasehold rights were taken over or re-entered on 3.6.74.

4. The petitioner submits that the judgment requires to be reviewed. Reliance was placed upon the averments made by the Central Government in its counter affidavit in WP(C) No.590/86, writ proceedings initiated under Article 226 of the Constitution of India by Mr. B.K.Gupta, like Gunwanti Devi, who was also the occupant of an adjacent plot, (which were acquired in the same acquisition proceedings.) It was argued that the Union of India's contention before this Court as well as before the Division Bench about the absence of a policy stood belied by the averments made in the counter affidavit to Mr. B.K.Gupta's writ petition. Reliance is placed on certain inter-departmental communications dated 3rd September, 1986 and 4th September, 1989 which were annexed along with the said counter affidavit.

5. The learned senior counsel Shri A.K.Ganguli urged that these

clearly established that the Union of India suppressed material circumstances which went to the root of the matter and thus requires re-examination of the entire appeal by setting aside/recall of the judgment.

6. This Court has considered the submissions. The circumstance to the allotment of land to other parties, such as Bal Krishna Dang, S. Gurbachan Singh and Praveer Ukil were noticed in para 9 of the judgment. The judgment noticed that “all except the petitioner Gunwanti Devi were handed over the property”. The judgment thereafter proceeds to record the appellant’s contention that, there could under the circumstances, be no question about the existence of any policy. It is, therefore, incorrect to state that the policy or its existence was not urged by the applicants or not taken into account.

7. The applicants are right in contending that the letters dated 3rd September, 1986 and 4th September, 1989 as well as the reply of the Central Government in the writ petition of Sh. B.K.Gupta were not placed on record. The question however, is whether that omission by the UOI amounts to such a fatality to its case as to warrant the recall of the entire judgment. In the opinion of the Court it does not.

8. The reasoning given by the Court is contained in para 10 onwards of the judgment, where the judgment in *Shanti Sports Club & Anr. Vs. Union of India & Ors. (2009) 15 SCC 705* has been discussed and relied upon. The operative portion of the judgment with respect to withdrawal from acquisition, would indeed have been to that effect if contention of the petitioner urged today also were to be accepted. Since there is no dispute that the acquisition stood complete with the taking over the possession on 29th January, 1986, in this Court's opinion, to allot the land or release the land as is sought by the writ petitioners would amount to a direction to issue a Notification under Section 48.

9. In para 13, the Court recorded its finding that the Union was not estopped from resiling on whatever representations made, as is alleged to have made.

10. Apart from the above, the letters dated 3rd September, 1986 and 4th September, 1989 do not assure any release of any land which were acquired and had vested in the State. They refer to a proposal to release some lands in favour of four parties. That circumstance alone, in the opinion of the Court cannot lead to inference that a general

policy in regard to this acquisition existed; that three other landowners were the beneficiaries to such a proposal does not necessarily lead to the conclusion that Section 48 was resorted to.

11. In view of the above discussion, this Court is of the opinion that the application cannot be accepted and the same is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

OCTOBER 08, 2013
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