

\$~R1--R6.

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

% Reserved on: January 31st, 2013
Pronounced on: February 19th, 2013

+ **LPA 429/2007**

AIRPORTS AUTHORITY OF INDIA Appellant

Through: Mr Digvijay Rai, Adv.

Versus

NIRMALA DEVI & ORS. Respondents

Through: Mr. Rajiv Virmani, Sr. Advocate with Mr. Atul Shankar Mathur and Ms. Shruti Verma, Advocates.

Mr Rajiv Bansal and Mr Rahul Bhandari, Adv. for DDA

Mr.Yeeshu Jain, Adv. for Nodal Officer
Mr Milanka Chaudhury and Mr Abhishek Sharma, Adv. for DIAL

Mr. Dipesh Chaudhary and Mr. Kunwar Udai Bhan, Advocates

And

+ **LPA 431/2007**

AIRPORTS AUTHORITY OF INDIA Appellant

Through: Mr Digvijay Rai, Adv.

Versus

DAYA NAND & ORS. Respondents

Through: Mr. Rajiv Virmani, Sr. Adv with Mr Atul Shankar Mathur and Ms Shruti Verma, Adv. for respondent No.1

Mr Rajiv Bansal and Mr Rahul Bhandari, Adv. for DDA

Mr Milanka Chaudhury and Mr Abhishek Sharma, Adv. for DIAL

Mr. Sanjay K. Pathak, Advocate for LAC/Nodal Officer

And

+ **LPA 432/2007**

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through: Mr Digvijay Rai, Adv.

Versus

RANBIR SINGH & ORS

..... Respondents

Through: Mr Rajiv Bansal and Mr Rahul Bhandari,
Advs. for DDA

Mr.Yeeshu Jain, Adv. for Nodal Officer

And

+ **LPA 433/2007**

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through: Mr Digvijay Rai, Adv.

Versus

BALLU SINGH & ORS

..... Respondents

Through: Mr. Rajiv Virmani, Sr. Adv with Mr Atul
Shankar Mathur and Ms Shruti Verma, Advs.
for respondents 1 and 3.

Mr Rajiv Bansal and Mr Rahul Bhandari,
Advs. for DDA

Mr. Sanjay K. Pathak, Advocate for
LAC/Nodal Officer

And

+ **LPA 435/2007**

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through: Mr Digvijay Rai, Adv.

Versus

DAYA CHAND & ORS.

..... Respondents

Through: Mr. Rajiv Virmani, Sr. Adv with Mr Atul
Shankar Mathur and Ms Shruti Verma, Advs
for respondents 1 and 2

Mr.Yeeshu Jain, Adv. for Nodal Officer

And

+ **LPA 436/2007**

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through: Mr Digvijay Rai, Adv.

versus

SARUP SINGH & ORS.

.... Respondents

Through: Mr. Rajiv Virmani, Sr. Adv with Mr Atul
Shankar Mathur and Ms Shruti Verma, Advs
for respondent No. 1 and 3
Mr.Yeeshu Jain, Adv. for Nodal Officer

CORAM :-

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. Village Nangal Dewat consisted of old *abadi* (Lal Dora) as well as extended *abadi*. Though revenue record had been prepared in relation to extended *abadi* area, no such record had been prepared for the old *abadi* (Lal Dora) area. Since the Government intended to issue a notification under Section 4 of the Land Acquisition Act for acquisition of the land comprised in old *abadi* as well, a survey was conducted in the year 1972-1973. Based upon the survey report for old *abadi* area and revenue record for the extended *abadi* area 2 naksha muntazamins were prepared, one for apportionment of compensation for land and the other for apportionment of compensation for the super-structure. A notification under Section 4 of the Land Acquisition Act proposing to acquire the aforesaid land was issued on 28th April, 1972, followed by a declaration under Section 6 of the said Act on 28th August, 1979. The award in respect of the notified lands was passed on 14th August, 1986, determining separate compensation for land, structures and trees. The award came to be challenged before this Court by way of W.P.(C) No.481/1982, titled as **Daryao Singh & Ors. versus Union of India & Ors.**. An order was passed in the said writ petition on 2nd August, 2001 recording the submission of the appellant – Airport Authority of India that all the persons whose names appeared in the award would be allotted alternative land in terms of a Rehabilitation Scheme which

would be framed within six months. In view of the said statement, the petitioners in W.P.(C) No.481/1982 gave up challenge to the acquisition proceedings and the writ petition was disposed of accordingly. One of the petitioners in W.P.(C) No.481/1982 filed a Review Petition, stating therein that the concession made by the counsel in the said writ petition was without his consent and, therefore, the matter should be re-opened. Some contempt petitions also came to be filed in the said matter.

2. On 30th September, 2003, the Court was informed that the persons whose lands had been acquired in Village Nangal Dewat would be entitled to allotment of alternative plots in Rangpuri. The following norms for allotment of alternative plots in Village Rangpuri were intimated to the Court:-

S. No.	Landholding in Nangal Dewat (sq. m.)	Size of plot to be allotted in Rangpuri (sq.m.)
1.	32 sq. m and below	26
2.	Above 32 sq. m and upto 48 sq. m.	40
3.	Above 48 sq. m. and upto 80 sq. m.	64
4.	Above 80 sq. m. and upto 100 sq. m.	90
5.	Above 100 sq. m. and upto 140 sq. m.	100
6.	Above 140 sq. m. and upto 180 sq. m.	160
7.	Above 180 sq. m. and upto 250 sq. m.	200
8.	Above 250 sq. m. and upto 350 sq. m.	250
9.	Above 350 sq. m. and upto 550 sq. m.	350
10.	Above 550 sq. m. and upto 800 sq. m.	450
11.	Above 800 sq. m. and upto 1500 sq. m.	550
12.	Above 1500 sq. m.	650

3. On 28th April, 2004, the Court seized all the aforesaid applications appointed Mr. S.S.Kanawat, then Land Acquisition Collector as the Nodal Officer to determine eligibility for allotment of alternative plots in Rangpuri. All 82 applications which had been filed before the Court came to be disposed of by an order dated 18th May, 2005, whereby the Court approved the following guidelines agreed upon by the learned counsel for the parties:-

1. Any person, whose name finds mention either in the Survey Report (which relates to the old Abadi), or the Jamabandi as on 28.4.1972 and the Naksha Muntazamin, would be eligible for allotment of an alternative plot.
2. Persons whose names appear at more than one place either in old/ extended abadi in the individual capacity or as legal heir of any other person and either in the Jamabandi or the survey report, his total holding of land shall be considered for determining size of the plot.
3. If a person has died intestate after 28.4.1972, the legal heirs will be jointly entitled for allotment of a plot only. However, where one or more of the legal heirs have their own separate holding or a plot then the proportionate share in the persons plot shall be added to his/their own holding for determining categorization and size of plot to be allotted.
4. Upon the death of recorded owner after 28.4.1972, leaving a Will and the Revenue Authorities based on the Will have carried out the mutation in the Jamabandi in favour of the LRs, then all the LRs shall be entitled to allotment of a plot jointly. In case, there is a dispute with regard to the Will, allotment shall be kept in abeyance pending determination of title by the court of competent jurisdiction.

Explanatory Note:

1. The above guidelines are to facilitate the decision of cases by the Nodal Officer. The Nodal Officer irrespective of the guidelines would have the inherent power to correct any errors, omissions or additions in the survey report, Jamabandi or naksha muntazamin in accordance with law.

2. The pendency of a claim before the Nodal Officer would not enable any party to assert its right to continue with the occupation/ possession of the acquired land.”

4. Pursuant to the aforesaid guidelines approved by the Court, the Nodal Officer passed orders from time to time on the claims filed by the land owners and the owners of super-structures. Some writ petitions challenging the orders passed by the Nodal Officer came to be filed in this Court. Some civil suits were also filed in civil courts in which interim order was passed for re-survey of land in question. Those orders were challenged by Airport Authority of India as well as by the Nodal Officer by way of Civil Revision Petition.

5. The primary dispute in these appeals pertains to those cases where more than one person built independent super-structures, on the different portions of the land belonging to their father. The contention of the appellants is that since the ownership of the whole of such land vested in their father, they are entitled to joint allotment of an alternative plot, commensurate with the area of the whole of such land. On the other hand, the contention of the respondents is that since the names of such persons appear separately in the survey report and naksha muntazamin and they individually owned independent superstructures, they are entitled to

individual alternative plots, commensurate with the area of the land on which individual super-structures have been raised by them.

6. We find that this issue came to be considered by the Court while passing the order dated 18th May, 2005 and was dealt with as under:-

“(c)Another class of objections sought to be raised on behalf of applicants/objectors, is where the land was owned by the father while independent structures were raised by his sons and legal representatives. The entitlement of alternate plot was being determined on the basis of the extent of land held by the original land holder. Mr.Bhushan submitted that there was distinctiveness of ownership of structures and the land underneath. However, these were not mutated, since mutation was not permissible in the old abadi in the revenue records. As such the legal heirs, who despite owning separate and distinctive structures and even when their names appeared for compensation are deprived of the benefit of individual entitlement of alternative plots based on the proportionate land falling underneath their respective structures. Mr.Ravinder Sethi submitted that the ownership of the land was of the original land holders and the entitlement has to be determined with reference to the extent of land held by them. Joint ownership could be granted to the persons who are shown as owners of the structures in respect of the land underneath. However, it would be a joint allotment of the alternate plot. After hearing the counsel for applicants/ objectors, respondent and Amicus Curiae the consensus which emerged for this class of cases wathat legal heirs/ applicants would be eligible for allotment of individual alternate plots upon the following conditions being satisfied:-

(i) Name of the legal heirs appear separately in

the survey report and Naksha Munta Zamin in respect of distinct holdings;

(ii) Legal heirs who have raised separate structures in separate holdings for which they are given separate compensation in the award.”

The abovereferred discussion in the order dated 18th May, 2005, read with guideline No.1 contained in Schedule-I to the said order clearly shows that the suggestion of Mr.Ravinder Sethi, Senior Advocate, for joint ownership of the alternative plot to such persons was not accepted by the Court and the consensus amongst the parties before the Court was that such persons should be allotted individual alternative plots, provided their names appeared separately in the survey report and naksha muntazamins in respect of distinct holdings and such persons had been given separate compensation in the award.

7. The guidelines framed by the Court on 18th May, 2005 were not challenged by any party to the said order. The guidelines are, therefore, binding on all the parties including the appellant before this Court, particularly, when the guidelines/criteria laid down by the Court was based upon the consensus which emerged amongst the parties to the order, including the appellant – Airport Authority of India. Justification of otherwise of the said order and guidelines could not be questioned at a later date, when no review of the order or guidelines was sought by any party. Therefore, in our opinion, wherever more than one persons had raised different individual super-structures on the land belonging to their father, they are entitled to individual alternative plots, commensurate with their individual land holding, i.e., the land underneath the super-structure erected by them, provided their names appeared separately in the survey report and

naksha muntazamins and they were given separate compensation in the award, in respect of the land, in lieu of which individual alternative plots were sought by them.

8. During the course of arguments, the learned counsel for the appellant referred to the decision of the Supreme Court in **State of Madhya Pradesh vs. Narmada Bachao Andolan and another** [(2011) 7 SCC 639], where the Court was considering a scheme for rehabilitation of the oustees of Narmada Dam. Considering the fact that the order dated 18.5.2005 and the guidelines framed thereunder were the result of a consensus amongst the parties to the said order, including the appellant Airport Authority of India and the said order and guidelines having not been challenged became final and binding on all the parties, the reliance upon this judgment is wholly misplaced.

9. It was contended by the learned counsel for the appellant that initially the appellant wanted to carve out smaller plots which would have taken care of all those persons whose name appeared in the survey report and naksha muntazamins but on a specific request made by the land owners, the sizes of the alternative plots were increased and, therefore, they cannot now seek allotment of independent alternative plots. We, however, find no merit in the contention. The order dated 18th May, 2005 and guidelines framed thereunder having been accepted by the parties and become final, it is not open to the appellant to say that such persons are entitled to joint allotment and not individual allotments of the alternative plots. Of course, the size of the alternative plot also would get reduced, based since it would be open the area of the land under the independent super-structure erected by such persons. For this purpose, the jointly allotted alternative plots will have to be surrendered back to the appellant which will then allot individual

alternative plots to such persons in terms of their entitlement under the Rehabilitation Scheme. We make it clear that in such cases, the land of the father on which independent super-structures were raised by his sons would not be taken into account for the purpose of any other allotment of alternative plot. This is necessary to ensure that more than one person do not get benefit of allotment of alternative plot against the same land. We also make it clear that no such person shall get more than one alternative plot from the appellant and in case he owned any land other than the land of the father on which independent super-structure was raised by him, both such lands would be clubbed together for the purpose of determining the size of the alternative plot to be allotted to him but in no case one person would get more than two alternative plots.

10. During the course of arguments, we were informed that in one case, the name of the wife appeared in the survey report though the land in question belonged to her husband, who was allotted an independent alternative plot in lieu of his land including that part of the land on which super-structure is alleged to have been raised by the wife. We make it clear that in such a case if the wife had herself raised super-structure on the land which she received from her husband, she would be entitled to allotment of an alternative plot on account of her name appearing in the survey report provided her name also appeared in the naksha muntazamin and she was awarded separate compensation in the award, in respect of the land on which super-structure was raised by her. In such a case, the land on which independent super-structure was raised by the wife, shall not be taken into consideration for the purpose of determining the size of alternative plot to be allotted to the husband, and if the area of such land has already been taken into consideration for allotment of alternative plot to the husband, such

allotment shall be reviewed and a fresh allotment, after excluding the land on which superstructure was raised by the wife, shall be made. The husband will surrender the allotment already made to him and will be entitled to a fresh allotment, commensurate with the area of the land, arrived at, after excluding the land on which superstructure was raised by the wife. The purpose, again, is to ensure that more than one person do not get benefit of alternative allotment against the same piece of land.

11. We make it quite clear that if the name of a person appears separately in the survey report and naksha muntazamin but he has not been given separate compensation in the award, in respect of the land underneath the super-structure raised by him, he shall not be entitled to allotment of an individual alternative plot merely on the strength of his name appearing in the survey report and naksha muntazamin.

12. All the appeals stand disposed of in terms of this order. The allotments affected by this order shall be reviewed and fresh allotments shall be made, within a period of three months from today. The vacant possession of plots which would be affected by this order, shall be handed over to the Nodal Officer, within four weeks from today. Since previous Nodal Officer is no more available, the exercise in terms of this order shall be carried out by Additional District Magistrate (Revenue), New Delhi, on receipt of a copy of this order.

V.K. JAIN, J.

CHIEF JUSTICE

FEBRUARY 19, 2013/
'sn'/rd