

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

%

Date of Decision: 06.05.2013

+ WP(C) No. 3354/2012

OM PRAKASH AND ANR

..... Petitioners

Through: Mr Madhusudan Bhyana, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Amit Chadha and Mr R.C. S. Bhadoria,
Adv for Respondent No. 1
Mr Arujn Pant, Adv for R-2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The petitioners before this Court claim to be the grandsons of Shri Baldev and residents of village Todapur, New Delhi. In the year 1911, when Government of India decided to shift its capital from Kolkata to New Delhi, it was decided not to acquire the land comprised in certain villages, provided the occupants of the said land paid Chullah Tax to the Government. According to the petitioners, land in village Todapur was one such land and the Government, while levying Chullah Tax on the residents of the said village, decided not to acquire its land.

2. The issue of grant of leasehold rights to the residents of certain villages, including Todapur had been engaging the attention of the Government of India.

Vide OM dated 18.07.1983, it was decided to grant perpetual lease on rights of the land under occupation of the residents of these villages subject to the following conditions:-

“i) A family may be allotted land lease hold to the extent in occupation of each family, but limited to the 167 sq. metrs. Only, out of the land available after providing for development schemes.

ii) In the case of Nangli Razapur, as the villagers had been originally allotted 267 sq. yeds. plots each. It may be reasonable to allot land up to a maximum extent of 267 sq. yds. per family in that village, after making provision for development schemes.

iii) The eligibility and identification of the original allottees or their descendants, who are in occupation of land in these villages, will be determined by reference to the electoral rolls and the ration cards issued.

iv) it may be equitable to charge in the case of all these villages a rate of Rs 15/- per sq. yd. as premium which represents the current cost of acquisition of underdeveloped land and in addition the development charges already incurred by the DDA in respect of these villages, may be charged together with the usual ground rent @ 2-1/2% of the premises.

v) In cases where the land presently under occupation by the family is more than the limit of 200 sq. yds/167 sq. mets. and the area in excess is desired to be retained, predetermined market rate prevalent in 1995 as decided by Government may be charged for the area of land in excess.

vi) The Balmikis who are the original inhabitants of these villages may be included in the list of inhabitants eligible for the allotment even though they were exempted from payment of Chullah Tax.

vii) It would be one of the conditions of allotment that in the event of sale of plot by the allottees, 75% of the unearned increase in the value of the land will be recovered by Government.

viii) Unauthorized squatters on Government land in these villages may be dealt with according to the existing policy of the Government.

ix) the other usual terms and conditions governing lease hold properties will also be applicable.”

3. The grievance of the petitioners is that despite the fact that their grandfather had been paying Chullah Tax and, therefore, they are eligible for grant of leasehold rights in respect of the land occupied by them in village Todapur, DDA has not granted leasehold right to them in terms of the aforesaid scheme of the Government of India. The petitioners are accordingly seeking a direction to the respondent to grant leasehold rights in respect of the land underneath, i.e., WZ-92-A and WZ-92D of Village Todapur to them. The learned counsel for the petitioner states that the second property has been wrongly mentioned as WZ-D in the prayer clause though the correct property No. is WZ-92-D, as would be evident from the memo of parties.

4. In its counter-affidavit, the respondent-DDA has stated that though the land comprised in certain villages, including Todapur was acquired, it was not utilized though the same remained under acquisition and, therefore, the said land continued to be occupied by the villagers with the condition that they would pay prescribed Chullah Tax to the Government. DDA has also admitted that vide OM dated 18.07.1983, the Government had decided to grant leasehold rights to the residents of certain villages, including village Todapur, who were residing there and were paying Chullah Tax, but, has claimed that the said scheme has not been implemented, except in village Nangli Rajapur. It is further stated in the counter-affidavit of DDA that they had published notice on 31.07.2005, inviting applications from the residents of these villages, along with site plan of their houses and documentary proof of their claim. After receipt of the applications, the Competent Authority constituted a Committee which scrutinized all the applications. Out of the 188 persons, who applied for leasehold rights, no one was found eligible. It is further stated in the reply that the petitioners did not respond to the advertisement issued by DDA.

5. It would thus be seen that the only ground taken by DDA for not considering the request of the petitioners for grant of leasehold rights in respect of their land comprised in village Todapur is that they did not apply within the time stipulated in the public notice dated 31.07.2005, issued by them in this regard. The case of the

petitioners is that they being uneducated persons were not aware of the public notice given by DDA and, therefore could not apply within the time stipulated in the said notice. A perusal of OM dated 18.07.1983, issued by Government of India would show that no outer time limit was fixed by the Government for grant of leasehold rights to the residents of the village mentioned in the said OM. No specific date was fixed by the Government for inviting application from the residents of these villages for grant of leasehold rights to them. It appears that DDA of its own fixed the time limit while inviting applications vide public notice dated 31.07.2005. Considering that DDA was only implementing the scheme framed by the Government vide On dated 18.07.1983, in my view, it was not open to it to fix an outer-time limit for implementation of the said OM, without prior permission of the Government. No such permission is stated to have been sought. In any case, DDA loses nothing by considering the application submitted after the time limit stipulated in the public notice dated 31.07.2005 since the land in question is already occupied by the villagers and if there is any delay on the part of the villagers in seeking leasehold rights in respect of the land occupied by them in the villages in terms of the scheme framed by the Government, it would be justified in asking the applicants to pay the current charges applicable while granting leasehold rights in respect of the land occupied by them in the villages covered by OM dated 18.07.1983.

6. For the reasons stated hereinabove, the writ petition is disposed of with a direction to DDA to consider the application of the petitioners for grant of perpetual leasehold rights as per the Scheme and take appropriate decision thereon within a period of eight weeks from today. The application shall not be rejected on the ground that it was submitted after expiry of the last date stipulated in the public notice dated 31.07.2005. It is, however, made clear that if DDA obtains approval of the Government for fixing an outer time limit for the purpose of implementation of scheme contained in the OM dated 18.07.1983, it shall be open to DDA to notify such outer time limit by way of public notices in leading newspapers and thereafter refuses to consider the applications received after the time notified by way of the said public notices.

The writ petition stands dispose of accordingly.

There shall be no order as to costs.

V.K. JAIN, J

MAY 06, 2013

BG