

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.08.2013

+ **LPA 12/2009**

SHRI PRABHAT AND OTHERS

.... Appellants

versus

UNION OF INDIA AND OTHERS

.... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Kanwar Udai Bhan.

For the Respondents : Mr Digvijay Rai for R-2/AAI.

Mr Sanjay Kumar Pathak for R-4/Nodal
Officer.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal challenges the order dated 12.02.2008 passed by a learned Single Judge of this Court in W.P.(C) No.1115/2008. The appellants had filed the writ petition challenging the order dated 01.08.2007 passed by the Nodal Officer rejecting the claim of the appellant for allotment of an alternative plot in lieu of the land occupied by them in the village of Nangal Dewat. The learned Single Judge had held that in order to be eligible for allotment of alternative lands, a person must satisfy the two conditions of eligibility as specified in the scheme which was adopted for the purpose of allotment of alternative plots. The two

conditions being that a person should be in physical possession of the land in 2007 and the name of the person must be included in the list of original allottees of 1958. The Committee constituted to look into the issue of allotment of alternative land had not found the appellants to satisfy this eligibility criteria and hence, had rejected their claim for allotment of alternative land. The Nodal Officer (Respondent No. 4 herein) also rejected the claim of the appellants on the same basis. The learned Single Judge having found no infirmity in adopting the eligibility criteria dismissed the writ petition filed by the appellants.

2. The scheme for allotment of alternative plots to persons belonging to the communities to whom the land had been allotted earlier and the eligibility criteria framed thereunder has already been upheld by a Division Bench of this Court in the judgment delivered on 16.04.2013 in the case titled as **Bhoop Singh v. DDA & Ors.**: LPA No.260/2008. It is contended by the learned counsel appearing for the appellants that he is not assailing the scheme but is limiting the challenge in the present appeal to the decision of the Nodal Officer/Committee in finding the appellants not eligible for allotment of an alternative plot. It is contended that the appellants fulfil the specified criteria and, thus, ought to be allotted an alternative plot. Thus, the only question to be considered in the present appeal is whether the appellants are eligible for allotment of alternative land as per the scheme framed by the Committee, constituted for determination of the allotment of plots in lieu of lands recorded in the name of communities, and adopted by the Ministry of Civil Aviation, Union of India.

3. The relevant facts for considering the controversy in the present appeal are as under.

4. A notification under Section 4 of the Land Acquisition Act was issued on 28.04.1972 for acquiring the lands of village Nangal Dewat for the public purpose of expansion of IGI Airport, New Delhi. The notification dated 28.04.1972 was followed by a declaration under Section 6 of the said Act on 22.08.1972. Subsequently, pursuant to the land acquisition proceedings, an award dated 14.08.1986 was passed. The said award was challenged before this Court in W.P.(C) No. 481/1982 titled as “Daryao Singh & Ors. v. Union of India & Ors.”. The said writ petition was disposed of on 02.08.2001 with Airport Authority of India (Respondent no. 2 herein) making a statement that all persons whose names appeared in the award would be allotted alternative lands in terms of the Rehabilitation Scheme which would be framed within a period of six months. On the said statement being recorded, the petitioners therein gave up their challenge to the proceedings. A review application no. 9312/2001 seeking review of the order dated 02.08.2001 was filed by the Harijan and Backward Jan Kalyan Samiti wherein a grievance was raised that names of several persons had not been included in the list of persons to whom alternative lands were proposed to be allotted by the Nodal Officer. In these proceedings, it was explained by the Nodal Officer that certain lands were recorded in the name of four communities i.e. Makbuja Jullahan, Makbuja Chamaran, Makbuja Kumharan and Makbuja Ahle as the said lands were not allotted to any individual but to the said communities. The Court was of the view that alternative plots should be allotted to such communities as a

group and not to individuals comprised in the group. It would be up to the group to divide the alternative land amongst its constituents. The prayer made by Harijan and Backward Jan Kalyan Samiti for allotment of separate individual plots to persons who were in occupation of the community lands was rejected.

5. Subsequently, Harijan and Backward Jan Kalyan Samiti filed a separate writ petition being Writ Petition (Civil) No. 17778/2006 titled **Harijan and Backward Jan Kalyan Samiti v. Union of India and Ors.** During the pendency of the said petition, a meeting took place in the office of the Joint Secretary (Civil Aviation) on 14.03.2007 wherein it was decided to constitute a Committee to look into the issue of eligibility of alternative plots to persons who are in possession of land recorded in the name of the communities in village Nangal Dewat. During the course of submission before this court on 31.05.2007 in Writ Petition (Civil) No. 17778/2006, the following statement of the learned counsel appearing on behalf of Airport Authority of India was recorded:

“The report of the Committee constituted by the Joint Secretary, Civil Aviation to look into the issue of allotment of alternative plots in respect of the land recorded in the name of Committee in Village Nangal Dewat has been accepted by the Ministry. The residents of land recorded in the names of Communities would be considered for allotment of individual plots and such eligibility would be considered on the basis of the list of 122 persons that was prepared in the course of 1958 consolidation proceedings and this list of 122 persons would be the outer limit for examining the eligibility of alternative plots.

The eligibility would be considered on the basis of the same criteria which has been evolved for considering the eligibility of other persons in the rehabilitation scheme.”

6. The village lands of Nangal Dewat consisted of old *abadi* as well as extended *abadi* area. Whilst, revenue records had been prepared for the extended *abadi* area. No such record had been prepared for the old *abadi* area. In the present case, the appellants occupied lands in the extended *abadi* area of the village.

7. The Committee constituted, pursuant to the decision taken during the meeting held on 14.03.2007, recommended that individual plots be allotted to persons occupying community lands in the old *abadi* area on the basis of the survey conducted in the year 1972-73. However, for the purpose of determining the eligibility of such persons claiming alternative plots on the basis of lands in the extended *abadi* area, the Committee took the view that the records of 1958 may be considered only as a secondary evidence and a fresh survey be undertaken to ascertain the possession of lands in respect of 122 names that appeared in the records of 1958.

8. The Committee constituted by the Ministry of Civil Aviation adopted the following criteria for determining the eligibility of claimants for occupying the community lands for alternative plots:-

“Criteria for determining the eligibility of alternative plots:-

1. The list of 122 persons shall be the outer limit for examining the claims of individual plots (as contained in the order of Hon’ble High Court).

2. The Allottee in the list of 122 persons should also be in possession of the land in community land. In case of his death, his LRs should be in possession of the allotted land. Merely the allotment of land in the year 1958 should not be the sole basis for allotment of alternative plot.
3. The allotment of alternative plot should be considered on the basis of area shown in the record of 1958. However, if he is in actual possession of more/less area, as per verification report, the plot should be considered against the actual area in possession, but this will not be more than the allotted area.
4. The committee was of the view that the other secondary documents proving his possession in community land at village Nangal Dewat, Electricity Bill etc. may also be seen.
5. The Committee decided that the report submitted by the verification team headed by the Tehsildar consisting officials of different department / branches should be the main basis for examining the claims of the individual persons.
6. The Committee noticed that in the earmarking made in the year 1958, the plots were numbered. However, as on date, the position differs due to a gap of approximately 50 years. Therefore, it was considered that a person may not be rejected merely because of reason that he is not occupying the same plot. However, he should be in possession of land in community land only, preferably in the same Khasra Number.

9. In order to verify the claims for alternative plots in lieu of land occupied by various claimants, a verification team consisting of seven officials including representatives of Airport Authority of India and the

DDA and headed by the Tehsildar was constituted. The said team visited the village Nangal Dewat from 29.06.2007 to 04.07.2007 to verify the land in possession of the residents of village Nangal Dewat including the land in possession of the claimants.

10. The Committee examined the claims on the basis of the eligibility criteria adopted and submitted a report. Annexure-B to the report of the said Committee constituted to examine the eligibility of 122 persons for allotment of alternative land contains the list of claimants who were found to be ineligible for allotment of alternative land. The relevant extract of the said Annexure which relates to the claim of the appellants is extracted below:-

S.No. of the list of 122 persons	Name of the Original Allottee	Khasra No.	Area in Sq. Yards	Area in Biswa	Name of the claimant	Name of the persons found in possession by the Verification Team	Relationship	AREA	Khasra No.	Build Up/ Vacant
19	Surta S/o Thoi	1232/5	101	2	Prabhat, Rajinder, Ishwar S/o Surta	Raj Pal, Mahender, Vijay, Sanjay, SS/o Banarsi	Exchange	101	1232/5	Built Up
20	Mawashi S/o Maman	1232/5	101	2	Prabhat Singh S/o Surta S/o Thoi	Prabhat Singh, Rajender SS/o Surta	Purchase	175	1232/5	Built Up

11. The appellants are sons of one Surta whose name admittedly appears in the list of 122 persons as per the records of 1958. Surta is recorded as occupying an area of 101 sq. yards in Khasra No. 1232/5. The name of

Surta (Surta son of Thoi) is placed at serial no. 19 of the list of 122 persons listed as original allottees. The name of one Mawashi is listed at serial no. 20 of the same list. The appellants are claiming an alternative plot of land on the basis of the land originally recorded in the name of their father (Surta) being his legal heirs and also on the basis of the plot of land acquired by their father Surta from Mawashi who is recorded at serial no. 20 of the said list. The claim of the appellants has been denied as the list annexed as Annexure-B to the aforementioned report of the Committee indicates that some persons other than appellants are in possession of the land which was originally recorded in the name of Surta. Thus, as per the respondents, while the first condition that the appellant's predecessor appears in the list of 122 persons as per record on 1958 is satisfied, the second condition that the said person/his heirs should be in possession of the land is not satisfied with respect to the land originally recorded in the name of Surta. It is relevant to note that the area recorded in the name of Surta in the 1958 list is 101 Sq. yards. The appellants have also been denied an alternative plot in respect of the lands acquired by their father Surta from Mawashi as Annexure-B to the aforesaid report indicates that while the appellants are in possession of the said land neither they nor their father were the original allottee(s) of the said land. It is further indicated in Annexure-B that the area of the land recorded in the name of Mawashi in 1958 was 101 sq. yards in Khasra No. 1232/5. The area of land found to be in possession of the appellants is 175 sq. yards in Khasra No. 1232/5.

12. The appellants have contended that their father was the owner and in possession of 252 sq. yards in Khasra No. 1232/5. Admittedly, the father of

the appellants was recorded as the original allottee of a plot of land and it is contended that in addition he had acquired the adjacent plot measuring 126 sq. yards from one Mawashi (who was an original allottee) by a sale deed in 1966. It is submitted by the appellants that they/their father continued to be in possession of the land originally recorded in the name of their father and their father further added to his existing holding by acquiring the adjacent plot in 1966 and thus their right to an alternative plot of land with respect to the original holding as recorded in the 1958 list cannot be denied.

13. In our view, the controversy whether the appellants have fulfilled the eligibility criteria has to be resolved in favour of the appellants for the following reasons:

13.1 It is not in dispute that the name of the father of the appellants appears in the list of 122 persons, who were original allottees in the record of 1958, at serial no. 19. It is also not in dispute that the appellants were in possession of lands in the same Khasra (i.e Khasra no. 1232/5) in June-July 2007 at the time when physical verification was undertaken by the Verification team. Thus on a strict reading, the eligibility criteria is satisfied. The appellants have been denied allotment of alternative lands because they have been found to be in possession of property which was earlier recorded in the name of Mawashi and was purchased by their father from Mawashi in 1966 and the plot of land which was recorded in the name of Surta in 1958 has been found to be in possession of some other persons. It is relevant to note that the property in possession of the appellants in June-July 2007 was a built up property and the area of the property admittedly exceeded the area recorded in the name of Mawashi (the area in

possession of the appellants is found to be 175 sq. yards while the area originally recorded in the name of Mawashi is 101 sq. yards). Thus, indisputably, the appellants were in possession of lands in Khasra No. 1232/5 other than the land standing in the name of Mawashi in the 1958 list. While, the appellants have contended that they not only continued to be in possession of the land standing in the name of Surta (serial no. 19) but also the additional land subsequently purchased from Mawashi (serial no. 20). Both these lands are adjoining and are in the same Khasra namely Khasra No. 1232/5. It is further noteworthy that whereas the properties were described as vacant earlier, the same have been built up and to that extent the character of the property has also changed. If it is accepted that entire land allotted to Surta has been disposed of by him, there is no explanation as to how the appellants are in possession of land which is significantly more than that originally recorded in occupation of Mawashi and subsequently purchased from him. This aspect of the matter has not been considered by the Nodal Officer. The order passed by the Nodal Officer only records that the Committee had not found the appellants eligible for allotment of alternative plots in lieu of land recorded in the name of communities as the appellants did not fulfil the laid down eligibility criteria.

13.2 The Committee was conscious of the fact that the possession on ground would differ from records and had thus expressly provided for this contingency in paragraph 6 of the criteria for determining the eligibility for alternative plots. The Committee had noticed that in the earmarking made in the year 1958, the plots were numbered. However, the possession as on

ground differed due to a gap of approximately 50 years and therefore, the eligibility of a person was not be rejected merely because of the reason that he was not occupying the same plot. However, it was specified that he should be in possession of the land preferably in the same Khasra number. The case of the appellants clearly falls within this contingency as the appellants have been found to be in possession of the lands (which is admittedly larger than that purchased from Mawashi) in the same Khasra number as originally recorded and also the name of their father appears in the list of 122 persons.

13.3 We must also add that the rationale of evolving the twin criteria cannot be lost sight of. The purpose of adopting the twin criteria was to ensure that those persons who had been in continuous possession since 1958 ought to be given alternative plots, since they had been living on the land for over 50 years, which was required for the expansion of IGI Airport, and were required to be rehabilitated. Thus, those persons whose name appeared in the list of 122 persons but had subsequently sold or exchanged their lands and moved out of the area would not be eligible for claiming an alternative plot of land. Similarly, persons who had acquired property in the community lands after 1958 would also not be eligible since they could not be stated to be in possession as original allottees of the community land. This rationale has been explained in the report of the Committee constituted to examine the eligibility of the 122 persons recorded in the list of 1958 as under:-

**“Cases of Purchase / Exchange / Sale / Allottee / His LRs
Not in possession of Community Land:-**

While examining the claims of the affected persons, it has been noticed that many of the claimants are in possession of community land but their names do not figure in the allotment list of year 1958. Such persons are in possession of land on the basis of purchase of such land or having exchanged their lands. Some of the claimants submitted the claims for alternative plots merely on the basis of the name of their Father/Grand Father etc. were figuring in the list of 122 persons but they are not found in actual possession in community land at the time of verification. The Committee is of the view that these persons do not fulfil the **two fold criteria i.e. names in the allotment list of 1958 and possession of community land.** Unless the claimant qualifies both conditions, he cannot be considered eligible for allotment of alternative plot.”

The purpose of the scheme has also been explained by a Division Bench of this Court in the case of ***Bhoop Singh*** (*supra*) as under:-

“9. The scheme framed by the Government, in the year 2007, to allot alternative plots to the persons who satisfied the twin requirements of being in possession at the time of preparation of the list of 1958 as well as at the time of inspection in June-July, 2007, was not challenged in the writ petition filed by the appellants. Though the appellant challenged the communication dated 1.8.2007, sent to them by the Nodal Officer, they chose to challenge the scheme on the basis of which their claim was examined and rejected by the Nodal Officer.

Even if we proceed on the basis that challenge to the communication dated 1.8.2007 could also be construed as challenge to the scheme on the basis of which the claim of the appellants was rejected by the Nodal Officer, we find no merit in the challenge to the scheme. In the absence of any legal right vested in the appellants to claim alternative plots from the respondents, it was for the government to decide to what extent and on that basis it wanted to rehabilitate those persons whose

names appear in the list of 1958, despite the fact that they had no legal right to obtain alternative plots from the Government by way of their rehabilitation. Unless it is shown that the criteria laid down by the government was irrational, arbitrary or discriminatory, the Court would not be justified in interfering with the decision taken by the government in this regard. We find nothing arbitrary or discriminatory in the government deciding to rehabilitate only those persons who were occupying the community land not only in the year 1958 but also in the year 2007, the purpose being to rehabilitate only those who continued to occupy the aforesaid land throughout since the time it was divided amongst the members of the community. The Government of India, in our view, was not unjustified in deciding not to allot alternative plots to those who had already parted with possession of the community land to others by way of sale, transfer or in some other manner. Having already taken advantage of the community land by selling or transferring it to outsiders, these persons cannot be allowed to derive yet another advantage from the same community land by way of allotment of alternative plots to them. As regards those whose names did not appear in the list of 1958, we are of the opinion that since these persons did not possess the community land at the time it was divided amongst its members, they cannot claim allotment of alternative plots on the strength of acquisition of the community land from those who were occupying the said land in the year 1958.”

Now, examining the case of the appellants from this standpoint, i.e. the purpose for which the twin criteria had been adopted, we find that the case of the appellants falls within the criteria adopted to examine the eligibility of the persons for allotment of alternative lands. Indisputably, the appellants have been living on the community lands since over 50 years and, thus, the appellants cannot be held to be ineligible on account of any

discrepancy between the land records and the land physically occupied by them.

14. We accordingly, allow the present appeal and set aside the impugned order dated 12.02.2008 passed by the learned Single Judge and also the order dated 01.08.2007 passed by the Nodal Officer/Additional District Magistrate (South-West). We further remand the matter to the Nodal Officer (respondent no. 4) to consider the allotment of alternative lands to the appellants. However, we clarify that respondent no. 4 will determine the entitlement of the appellants on the basis of only two biswas of land which originally stood recorded in the name of the father of the appellants (i.e. Surta S/o Thoi). We further direct the respondents to allot an alternative plot of land to the appellants as per their entitlement.

15. Parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

AUGUST 30, 2013
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