

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

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Date of decision: 18th September, 2014

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LPA No.417/2013

PREM RAJ

..... Appellant

Through: Mr. N.S. Dalal with Mr. Devesh
Pratap Singh & Mr. Amit Rana, Advs.

Versus

LAND & BUILDING DEPARTMENT & ORS. Respondents

Through: Mr. Sanjay Poddar, Sr. Adv. with Mr.
Yeeshu Jain & Mr. Siddharth Panda,
Advs. for R-1&2.
Ms. Shobhana Takiar, Adv. for DDA.

AND

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LPA No.444/2013

GIRI RAJ

..... Appellant

Through: Mr. N.S. Dalal with Mr. Devesh
Pratap Singh & Mr. Amit Rana, Advs.

Versus

LAND & BUILDING DEPARTMENT & ORS. Respondents

Through: Mr. Sanjay Poddar, Sr. Adv. with Mr.
Yeeshu Jain & Mr. Siddharth Panda,
Advs. for R-1&2.
Ms. Shobhana Takiar, Adv. for DDA.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. These intra-court appeals impugn the common judgment dated 10th May, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.3036/2013 and W.P.(C) No.3058/2013 filed by the appellants respectively.
2. Notices of the appeals were issued and on 27th September, 2013, the appeals were admitted to hearing. A counter affidavit has been filed in LPA No.444/2013 and which has been adopted in the other appeal as well. We have heard the counsel for the parties.
3. The writ petitions from which these appeals arise were filed, a) impugning the two identical letters, both dated 8th April, 2013, of the Land and Building Department of the Government of National Capital Territory of Delhi (GNCTD) issued to the appellants respectively, informing them that their request for separate alternative plots in lieu of acquired land had been rejected on the ground that the acquired land had been purchased by the appellants jointly along with some other persons; and, b) seeking a direction to the respondents to allot separate alternative plots to each of the appellants against the acquired land. It was *inter alia* the case of each of the appellants in the writ petition filed by them:-

- (i) that the appellants who are brothers, along with another brother had purchased the land which was subsequently acquired, vide single Sale Deed executed in their names;
- (ii) that the said land, on the basis of the said Sale Deed, was mutated in the revenue records in the name of the appellants and their another brother;
- (iii) that upon acquisition of the said land under the provisions of the Land Acquisition Act, 1894, each of the two appellants and their another brother was paid compensation of his / her respective share;
- (iv) that each of the appellants separately applied for alternative plot in lieu of acquired land under the Scheme of Delhi Administration of the year 1961 as amended from time to time; and,
- (v) that just like they were separately paid compensation for land acquisition according to their respective shares in the acquired land, the two appellants and their another brother were similarly entitled to separate alternative plots in accordance with their respective shares in the acquired land.

4. The learned Single Judge dismissed the writ petitions, finding/observing/holding:

- (a) that there is absolutely no provision in the Scheme of allotment of alternative plots which entitles the owners of jointly owned land to allotment of individual alternative plots of sizes as per their share in the acquired land;
- (b) logically also if the acquired land was owned by two or more persons, the alternative plot also should be allotted jointly to all of them;
- (c) that in the absence of any provision in the Scheme, entitling the joint owners of acquired land to allotment of individual alternative plots, it cannot be said that all joint owners should get individual alternative plots in accordance with their share in the acquired land; and,
- (d) that the benefit available to the legal heirs of a person who died before the issue of Notification under Section 4 of the Land Acquisition Act cannot be extended to the appellants since that would amount to modification by the Court of the Scheme framed

by the Government and particularly when no challenge to the Scheme had been made in the petitions.

5. The counsel for the appellants has drawn our attention to the relevant provisions of the Scheme which are as under:

“SCHEME

This Department is implementing Scheme of allotment of alternative plots in lieu of acquired land under “Large Scale Acquisition Development & Disposal of Land in Delhi” announced by Govt. of India, Ministry of Home Affairs vide their letter No.37/16/60-Delhi (i) dated 2nd May, 1961.

This scheme is in force with effect from 2.5.61. The department has been inviting applications for grant of alternative plots through press advertisements from time to time. The plots are allotted by the D.D.A. on the recommendation of this department as per policy laid down in this regard by Govt. of Delhi.

WHO IS ELIGIBLE?

I WHERE THE ACQUIRED LAND IS ANCESTRAL

- 1. The persons who are RECORDED OWNER prior to issue of notification u/s 4 of Land Acquisition Act.*
- 2. The persons whose lands have been acquired must have received the compensation as rightful owners from the*

LAC / Court and the Govt. has taken the possession of acquired land.

- 3. The applicants should not own a house / residential plot / flat out of village abadi in his / her dependent relation's name including unmarried children, nor he should be a member of any Co-operative Housing Society.*
- 4. For awards announced prior to 3.4.86, the land acquired is not less than 150 sq. yds. and for awards announced post 3.4.86, the land must not be less than one bigha.*

II CASES WHERE LAND PURCHASED THROUGH SALE DEED

The following conditions are also to be fulfilled in addition to above:-

- 1. For awards announced before 3.4.86, land should have been purchased prior to issue of notification u/s 4 of Land Acquisition Act and mutation must have carried out in their names.*
- 2. For awards announced post 3.4.1986 land must have been purchased 5 years earlier from the date of notification u/s 4 of Land Acquisition Act and*

mutation has been carried out in the name of the purchaser.

3. *That where the land was purchased by an auction purchaser from the Ministry of Rehabilitation and the applicant had entered into a written agreement with the auction purchaser to buy the same, after the sale certificate was issued by the Ministry of Rehabilitation, his case would be processed for allotment on the basis of agreement and the compensation awarded by the L.A.C.*

III OTHER CASES

When the recorded owner of the land acquired dies before notification u/s4 of L.A. Act, allotment is to be made separately to all the legal heirs of the deceased, according to their shares recognized by the LAC, but if he dies after the notification u/s 4 of LA Act, all legal heirs are entitled to one plot of the size to which the deceased would have been entitled.

1. *Where the land of an individual is situated in a colony to be regularized by the MCD and if his plot falls in the area reserve for community facilities or for non-residential purpose pending the acquisition of his plot; alternative plot can be allotted to him if he produces a certificate from the MCD confirming that in the revised lay out of the colony, his plot is earmarked for a non-*

resident purpose and that if he gives an undertaking in writing that he would not agitate the acquisition of his old plot and claims no additional plot in lieu thereof.

- 2. Where, as a result of clubbing of the shares of nearest blood relations, the area of the acquired land comes to 150 sq. yds. or more, allotment of one plot can be made in their joint names.*
- 3. Where a property is owned by a firm not being a registered company, the allotment of land would be made to individual partners in accordance with their share defined in the partnership deed subject to their fulfilling the prescribed condition.*
- 4. Where an individual entered into contract for purchase of plots from certain insurance companies (which were subsequently taken over from the (LIC), the affected person would be considered for allotment of alternative plot if:-*
 - Their deeds were registered before the crucial date i.e. u/s 4 Notification.*
 - They had made full payment, they would be considered for allotment, provided LIC certify that the balance was tendered was refused by the LIC due to acquisition of land.*

- *Where in a Hindu joint family, a large area has been purchased before the crucial date by a person for his own accommodation and that of his children, the title over the said land for the purpose of allotment of alternative land will be considered even on the basis of decrees obtained by his children from the Civil Court.”*

6. The counsel for the appellants has argued that when under Clause III(3) (supra) of the Scheme, in the case of ownership of acquired land of a partnership firm, allotment of land is to be made to individual partners in accordance with their shares defined in the Partnership Deed, there is no reason to discriminate against persons jointly owing land and on the parity of a partnership firm, they should also be held entitled to allotment in their separate names as per their shares in the joint ownership. It is yet further argued that the two appellants and their another brother at the time of purchase of the land could have bought the same vide separate Sale Deeds also instead of vide one Sale Deed and in which case, upon acquisition, each of them would have been entitled to apply for allotment of separate alternative plots of land; that there is no reason to deny the same to the appellants merely because they chose to make the purchase through one Sale Deed instead of vide three separate Sale

Deeds. Reference is made to ***Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corporation*** (2013) 1 SCC 353, in para no.9 whereof, it has been held that right to property is not only a Constitutional or a statutory right but also a facet of human rights which are gaining greater multifaceted dimensions. It is contended that depriving the appellants of separate alternative plots in lieu of their acquired land is clearly in violation of Article 21 of the Constitution of India and that the respondents are bound not only to pay adequate compensation but are also obliged to rehabilitate the persons whose land has been acquired and such rehabilitation can only be by allotment of separate alternative plots of land.

7. Per contra, the senior counsel for the respondent GNCTD has argued that the appellants and their another brother having purchased the land, which was subsequently acquired, vide one Sale Deed and the said land having stood jointly mutated in their name and having not been partitioned, the two appellants and their another brother have to be considered jointly for allotment of alternative land. Attention is invited to ***Ramanand Vs. Union of India*** AIR 1994 Del 29 where the Full Bench of this Court held that an individual whose land has been acquired for planned development of Delhi has no absolute right to allotment of alternative plot and is only eligible to be considered for

allotment of alternative plot for residential purpose, that too subject to certain conditions including payment of premium at pre-determined rates prevailing on the date when the offer of alternative plot is made. Attention is next invited to ***Satluj Jal Vidyut Nigam Ltd. Vs. Dila Ram*** (2005) 2 SCC 122 which, in para no.12 thereof holds, the Scheme for allotment of alternative land in lieu of acquired land subject matter of consideration therein to be applicable to each 'family' which is rendered landless and further holds that the question, whether any member of the family was residing separately is irrelevant as the test to be adopted under the Scheme was whether there was a 'joint holding' and relationship as a 'family'; the judgment of the High Court on the basis that the Scheme was intended to give benefit to each member of the landless family was set aside, holding that if this interpretation were to be accepted then the authorities would have to provide more land, for distribution to each member of the landless family, than perhaps even the total land acquired. Attention is next invited to paras no.59, 93, 94, 96 to 98 of ***State of Madhya Pradesh Vs. Narmada Bachao Andolan*** (2011) 7 SCC 639 and it is argued that the observations in ***Tukaram Kana Joshi*** (supra) relied upon by the counsel for the appellants are on the basis thereof and which judgment is in the context only of acquisition of land and not allotment of alternative plots in lieu thereof. A copy

of the judgment dated 1st October, 1997 of the Division Bench of this Court in Civil Writ No.2788/1993 titled ***Shri Bhagwan Sahai Vs. Union of India***, also holding that in the event of death of the land owner after the Notification under Section 4 of the Land Acquisition Act, as per the Scheme of allotment of alternative land in lieu of acquired land, entitlement will be only for one plot of land and not for separate plots for each heir; the argument that because compensation for acquisition had been separately paid, each heir was also entitled to separate alternative plot, was negated.

8. The counsel for the appellants in rejoinder has argued that the reliance by the senior counsel for the respondents on ***Ramanand*** (supra) is misconceived as the appellants are not claiming contrary thereto and are merely contending that they are entitled to separate allotment of alternative land and their case be considered.

9. The Scheme, as filed before us, while laying down the norms of size of alternative plots to be allotted, provides that where the acquired land is less than one bigha, no alternative plot is to be allotted; where the acquired land ad-measures one bigha, alternative plot of 40 sq. yds. is to be allotted; where the land acquired is above one bigha and upto five bighas, alternative plot ad-measuring 80 sq. yds. is to be allotted; where the land acquired is above five

bighas and upto ten bighas, alternative plot ad-measuring 150 sq. yds. is to be allotted; and, where the land acquired is above ten bighas, alternative plot ad-measuring 250 sq. yds. is to be allotted.

10. We had during the hearing enquired from the counsel for the appellants whether not acceptance of his argument that in the case of joint ownership under one Sale Deed of acquired land, allotment of alternative plots is to be separate to each of the owners, as per their respective shares, in the event of acquired land being of say four bighas jointly owned by five persons each having less than one bigha share, would result in none of the five being entitled to any alternative plot though if considered jointly would have been entitled to alternative plot ad-measuring 80 sq. yds. and whether not the same would result in defeating the provisions of the Scheme which is a beneficial measure.

11. No answer was forthcoming from the counsel for the appellants.

12. The Scheme admittedly does not provide for allotment of separate plots to persons jointly owing the acquired land. The Scheme, as noted by the learned Single Judge also, is not under challenge. The only argument of the appellants is that since under Clause III(3) of the Scheme, in the case of ownership in the name of a partnership firm, partners are entitled to separate

alternative plots, similarly in the case of joint ownership, each of the joint owners is entitled to allotment of separate plots of alternative land and unless it is so done, it will result in discrimination.

13. The senior counsel for the respondents in this regard has stated that the occasion for putting Clause III(3) into use has till date not arisen as no such claim has been made.

14. We may notice that the counsel for the appellants also has not given any instance of allotment of separate alternative plots of land to partners of a firm owning land which was acquired.

15. A reading of Clause III(3) however does not unequivocally support the contention of the counsel for the appellants that in the case of acquired land being owned by a partnership firm, allotment of alternative plots of land is to be made separately to each of the partners thereof. All that Clause III(3) provides is that the allotment of land in such case would not be in the firm's name but would be in the name of individual partners in accordance with their share defined in the Partnership Deed. From a bare reading of Clause III(3) we are unable to interpret the same as entitling the partners of a firm to allotment

of separate alternative plots. We however refrain from rendering any final opinion on this aspect so as not to prejudice any claim made thereon.

16. Though the counsel for the appellants has not argued but we drew the attention of the counsels to Clause III (supra) of the Scheme which provides for “allotment to be made separately to all the legal heirs” in the event of the recorded owner of the acquired land dying before the Notification under Section 4 of the Land Acquisition Act; however if the demise is after the Notification all legal heirs are entitled to one plot of the size to which the deceased would have been entitled to. The language thereof vis-à-vis two situations is clearly suggestive of the allotment of alternative land in the event of demise prior to the Notification being separately to each of the legal heirs and in the event of demise after the Notification jointly to all the legal heirs. We have enquired from the senior counsel for the respondents, the reason for providing for separate allotment of alternative plot in the event of demise before the Notification. We have further put to the senior counsel that as far as we know, there is no provision for automatic partition of the land on demise of the owner thereof and thus the legal heirs cannot be construed to be owners of separate portions of the land.

17. The senior counsel stated that he has no instructions on the said aspect and which has not been urged / pleaded.

18. We have also drawn the attention of the counsels to the concept of 'holding' applicable to agricultural land, with respect to acquisition whereof we are dealing in these appeals. We have enquired, whether not the reference in the Scheme to the size of the acquired land is in the context of 'holding', whether in the name of one or more person and not in the context of respective shares in the holding. Agricultural land, insofar as the State of Delhi is concerned, is generally governed by the provisions of the Delhi Land Reforms Act, 1954 (Reforms Act). The Delhi Land Revenue Act, 1954 (Revenue Act) lays down the law relating to land revenue and jurisdiction of Revenue Officers in the State of Delhi. The former, in Section 3(11a) thereof defines 'holding' as a parcel or parcels of land held under one tenure, lease, engagement or grant and in Section 3(22) defines 'uneconomic holding' as a holding of less than eight standard acres, which according to local conditions, is not sufficient to maintain a family unit consisting of a person, his minor children, his wife or her husband. There is no prohibition in law to more than one person having rights in one holding. Section 33 of the Reforms Act dealing with 'restrictions on transfers by a bhumidhar', prohibits transfer as a result whereof the transferor

shall be left with less than eight standard acres of land in the Union Territory of Delhi but further provides that a bhumidhar holding less than eight standard acres of land is entitled to transfer the same provided such transfer is of the entire land held by him. Section 55 of the Reforms Act enables a bhumidhar to sue for partition of his holding and which is again suggestive of one holding of land being owned by more than one person. To the same effect are the proviso to Section 10(2), the proviso to Section 36(1) and Section 42(1) of the said Act. Section 123 of the Reforms Act provides that the land which shall be assessed to land revenue shall be the aggregate holding area of bhumidhars in a village in the year of record and Section 124 of the Reforms Act provides for assessment of land revenue payable for a holding and Section 136 providing for the 'procedure for the recovery of an arrear of land revenue' also *inter alia* provides for by attachment and sale of the holding in respect of which the arrear is due. A further analysis of the two Acts and the Rules framed thereunder shows that just like in urban municipal areas where the properties are identified by a municipal number with a property having one municipal number being a distinct identifiable unit, the 'holding' is a unit of agricultural land in village with the only difference being that while generally all municipalities prohibit division of one property, size of a holding is variable.

19. Unfortunately, inspite of our prodding, neither counsels addressed on the said aspect.

20. We have wondered whether on the basis of Clause III of the Scheme (supra) providing for allotment to be made separately to all the legal heirs in the event of recorded owner of the acquired land dying before the Notification for acquisition, it can similarly be said that the joint owners also would similarly be entitled to separate alternative lands or whether for the reason of joint owners being discriminated against, the action of the respondents of refusing to allot separate alternative plots to the appellants can be set aside. In this context, we have further wondered whether the provisions of the Scheme (supra) are to be interpreted on the same principles as a statute.

21. We find the Supreme Court, in *Secretary, Ministry of Chemicals & Fertilizers, Government of India Vs. Cipla Ltd.* (2003) 7 SCC 1 dealing with the drug policy, to have held that the contents of a policy document cannot be read and interpreted as statutory provisions and that too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations. Similarly it has been laid down in *Desh Bandhu Gupta and Co. Vs. Delhi Stock Exchange Association Ltd.* (1979) 4 SCC 565 that *contemporanea expositio* i.e. the construction placed by the

administrative or executive officers charged with executing a statute, generally should be clearly wrong before it is overturned. It has been further held that such construction commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. The said principle was recently reiterated in ***Manohar Lal Sharma Vs. The Principal Secretary*** MANU/SC/0727/2014 (commonly known as Coal Block Allocation Scam case). Applying the said principle also, we are of the view that the Scheme aforesaid should be interpreted in consonance with the understanding thereof by the respondents who have made the said Scheme and are responsible for implementation thereof. We may also add that we do not find any case of discrimination also to have been made out on the basis of Clause III (supra) of the Scheme. Clause III of the Scheme deals with a clearly distinct situation. The heirs of a deceased become joint owners not by choice but by inheritance. On the contrary, joint owners are joint, of their own volition, having opted to hold a parcel of agricultural land jointly and to continue to hold it jointly till the date of acquisition thereof though they had a choice of suing for partition thereof.

22. We thus hold that the appellants' interpretation of the Scheme is not acceptable.

23. We further find the question to be no longer *res integra*. We find a reference, in the judgment of a Division Bench of this Court in ***Rajinder Kumar Vs. Union of India*** 57 (1995) DLT 271 also dealing with the said Scheme, to a judgment dated 27th January, 1994 of the Supreme court in Civil Appeals No.97 & 98 of 1992 titled ***Shiv Nath Sharma Vs. Union of India***, as laying down that when there were several claimants to a plot, one of the co-sharers alone could not be held entitled to the plot in the absence of the other co-sharers and that the Scheme did not envisage allotment of plots to each one *prorata* of the land acquired and that the Scheme contemplates only one allotment of plot to the owner whose land was acquired. We were however unable to find the said judgment either on the website of the Supreme Court or in any of the law journals. We finally requisitioned the file of ***Rajinder Kumar*** (supra) which has since been digitized and therein found a copy of the judgment in ***Shiv Nath Sharma*** (supra) and find the same to be concerned with a case, where a father having only 1/10th share equivalent to 2400 sq. yds. in undivided 24 bighas of land which was acquired, having sold by a registered Sale Deed, post the Notification for acquisition, to his son (appellant in the said judgment) who applied for allotment of alternative land. The Supreme Court held:

“..... the government sold the property in public auction where at along with the father of the appellant, others jointly purchased the land for a sum of Rs.98,000/-. Under the Scheme only a plot is to be allotted to the owner. In view of the fact that there are 10 sharers entitled to claim a single plot and as we do not have any definite evidence on record whether others have laid any claim for their share in the plot, it is difficult to countenance the contention that one of the sharers alone is entitled to the allotment of plot. The Scheme does not envisage allotment of any plots pro rata of the land acquired to each one. It contemplates only allotment of one plot to the owner whose land was acquired. In this view, we find that though the appellant’s entitlement to receive compensation was recognized by paying compensation to him, pursuant to the sale made by his father, he is not entitled to any allotment of the plot under the Scheme. the entitlement to the compensation for the bundle of rights of the owner in the land is distinct from the entitlement to the benefit of a Scheme formulated by the government. If the owner himself continued to remain to be the owner and if he is not already possessed of any land building or plot for his residential or industrial purpose, he alone is entitled to be considered for the benefit. Take an instance that knowing that a land has been proposed for acquisition, the owner, with a view to get some extra consideration towards the proposed entitlement for allotment of the plots, may enter into different sale transactions

with the third parties alienating his rights in the land. It is settled law that no owner can create any encumbrance on the land, after the Notification under Section 4(1) was published in the Gazette as the publication of the Notification is a notice to the public that the land is proposed to be acquired by the Government for a public purpose and that, therefore, any encumbrance created thereafter does not bind the Government. When such is the law, the subsequent purchaser would not stand on a higher footing, to get an interest in a beneficial policy unrelatable to the payment of compensation for the acquired land. In determining the compensation or the market value under Section 11, allotment of a plot is not one of the components. The Collector has no jurisdiction or authority in that behalf. His power is to determine the extent of the land, fix the market value and to apportion among the claimants, if more than one exist and offer the same to him / them. As stated earlier, it is only an enabling scheme to relieve the owner from hardship of displacement from his residential house or land due to acquisition. The Policy was envisaged to allot a suitable plot for rehabilitation.”

24. The judgment of the Supreme Court in ***Shiv Nath Sharma*** (supra) arises out of the judgment dated 28th November, 1984 of the Division Bench of this Court in W.P.(C) No.532/1983. However a perusal thereof showed the same to

have merely relied upon the judgment of the same date in ***Krishan Kumar Malik Vs. UOI*** reported as AIR 1985 Delhi 225, the challenge wherein was to the rejection of the request for alternative plot on the ground of the petitioner therein having purchased the land which was already notified under Section 4 of the Land Acquisition Act, 1894. While dismissing the petition and disagreeing with the judgment dated 22nd April, 1983 of a Division Bench of this Court in W.P.(C) No.591/1982 titled ***Udai Raj Giri Vs. UOI***, it was reasoned as under:

“..... Here Damomal the original vendor was the owner of 62 bighas of land. In terms of the Scheme if he had continued to be the owner till the land was acquired, he would have been entitled to alternative land to the extent of anything between 200 to 800 sq. yds. of land. Now the petitioner and a number of others have purchased part of the share i.e. 1/8th share each from the said Damomal. Each one of these vendees is now claiming the right to an alternative accommodation which at the minimum would total to anything between 2000 to 4000 sq. yds. To take another illustration Damomal was the owner of 62 bighas which means about 62000 sq. yds. he could have sold 1000 yds. pieces of land to 62 persons. In such a case if the argument of the petitioner was to be accepted, it would be that there would be 62 claimants entitled for alternative accommodation. The result would be that

whereas if Damomal continued to remain the owner till the land was acquired, he would have been entitled at a maximum of 800 sq. yds. of land but by the device of the land having been sold prior to the final acquisition, the authorities will have now to give land to each of the 62 claimants which even at a minimum of 200 sq. yds. each would work out over 12000 sq. yds. i.e. at least 15 times more than what would have been the entitlement of the original owner Damomal. Surely such an absurd result could never have been contemplated by the framers of the Scheme. If this interpretation was to be given the whole of the land would be exhausted amongst the few such land owners thus destroying the very object of the Scheme and making a mockery of it. This is another reason why we feel that the ratio of the Udai Raj Giri's case is not applicable to the facts of the case."

25. We may clarify that the conflicting opinion of the Division Benches in *Udai Raj Giri* and in *Krishan Kumar Malik* (supra) on the aspect of whether persons who have purchased the land after the Notification under Section 4 of the Land Acquisition Act, 1894 was resolved by the judgment of the Full Bench of this Court in *Shiv Devi Vs. Lt. Governor* AIR 1987 Delhi 46 in which it was held that such purchasers also are entitled to apply for alternative plot. However the subsequent Division Bench of this Court in judgment dated 24th August, 1990 in W.P.(C) No.2720/1990 titled *Kulwant*

Kaur Vs. UOI, dealing with a challenge to the modifications made in the Scheme (supra) in the year 1989 entitling only those who were the recorded owners on the date when Section 4 Notification was issued, negated the said challenge holding that the judgment of the Full Bench in ***Shiv Devi*** (supra) did not prevent the Government from varying the earlier Scheme which was non-statutory. However another Division Bench of this Court in ***Jaswant Kaur Vs. Lt. Governor*** 65 (1997) DLT 512 referring to ***U.P. Jal Nigam Lucknow Vs. Kalra Properties (P) Ltd., Lucknow*** (1996) 3 SCC 124, ***Yudu Nandan Garg Vs. State of Rajasthan*** (1996) 1 SCC 334, ***Sneh Prabha Vs. State of U.P.*** (1996) 7 SCC 426 and ***Union of India Vs. Shivkumar Bhargava*** (1995) 2 SCC 427 held the judgment of the Full Bench of this Court in ***Shiv Devi*** (supra) even in respect of the Scheme as stood prior to the modification in the year 1989 to be not good law; resultantly, it was held that persons who have purchased the land after the Section 4 Notification have no right to apply for alternative land.

26. In ***Rajinder Kumar*** (supra) also, though finding that as per the size of the acquired land, alternative plot ad-measuring 400 sq. yds. was to be allotted but further finding that the applicant was of one of the two

successors of the owner of the acquired land, he was held entitled to a plot size of 200 sq. yds. only.

27. The consistent view thus has been that persons who own a holding of agricultural land which has been acquired, being together entitled to an alternative plot and being not entitled to separate allotments of alternative land.

28. We may however notice a judgment of the Single Judge of this Court in *Jagdish Vs. Government of NCT of Delhi* MANU/DE/4550/2009 where a holding of agricultural land admeasuring 7 bighas 3 biswas was acquired. Seven persons having $1/7^{\text{th}}$ share each i.e. equivalent to 1.0003 bigha each were the recorded owners thereof. Each of them was offered alternative plot ad-measuring 40 sq. yds. As per the applicable norms, alternative plot ad-measuring, 40 sq. yds. for a holding of one bigha, 80 sq. yds. for a holding above one bigha upto five bighas, 150 sq. yds. for a holding above five bighas upto ten bighas, and of 250 sq. yds. for a holding of above ten bighas was to be allotted. The petitioners in that case contended that since the share of each was in excess of one bigha and since for a holding ad-measuring one bigha to five bighas, the entitlement was 80 sq. yds., each of them was entitled to alternative plot ad-measuring 80 sq. yds. It was held “that the

entitlements were based on the acquired land rather than who held it”. It was reasoned that if each of them was offered 40 sq. yds. of alternative plot, the total land allotted to them would be 280 sq. yds. while on the other hand for the holding of 7 bighas 3 biswas, they were jointly entitled to 150 sq. yds. Thus, the claim of the petitioners for 80 sq. yds. was rejected. Though the said judgment does not deal with the issue whether allotment of alternative land in such case is to be made jointly or separately but the same nevertheless shows that the Government itself at least in the said case offered separate allotments of alternative land even though the total land allotted in such case exceeded the entitlement against the joint holding.

29. We, from *Airports Authority of India Vs. Nirmala Devi* 199 (2013) DLT 373 also find that with respect to the acquisition of land in village Nangal Dewat, the Airports Authority of India agreed to allotment of separate alternative plots to legal heirs if their names appeared separately in the survey report and *naksha muntazamin* in respect of distinct holdings and if they had raised separate structures in separate holdings for which they were given separate compensation.

30. It thus appears that the respondents, from time to time have been making separate allotments to joint owners.

31. Though neither from the pleadings in the present case can the extent of the joint holding or the status in the revenue records be known nor could the counsels during the hearing inform categorically in that respect, however it appeared during the hearing that if each of the appellants and their another brother are made separate allotments of alternative land, the total size thereof would be less than the size of alternative land to which the appellants together would be entitled. We had for this reason only during the hearing enquired from the senior counsel for the respondents as to why the respondents could not accede to the request of the appellants for separate allotments. However the senior counsel informed that the respondents, besides the size of the alternative land are also concerned with the number of plots of land which are available for alternative allotment and separate alternative plots even if total admeasuring less than in the case of joint allotment, may not be available.

32. Though we find the aforesaid explanation to be reasonable but are of the view that the respondents, in the matter of consideration for allotment of alternative plots of land in lieu of acquired land ought not to adopt a very rigid stand. After all, the nature and character of alternative land allotted in urban limits for residential purpose is entirely different from agricultural or

village land which is acquired. Compelling jointness in such urban residential properties may have consequences on family ties. We are therefore of the opinion that subject to the availability of requisite number of plots for separate allotment and further subject to the total size thereof not exceeding the entitlement against the joint holder, the respondents should, wherever the joint owners so opt, consider the same.

33. Accordingly, we dispose of these appeals by holding that more than one recorded owner of each parcel / holding of acquired land, under the Scheme aforesaid, are not entitled to as a matter of right, separately apply for allotment of alternative land and are entitled to joint allotment only. We however further hold that if such joint owners are desirous of separate allotments, they would be entitled to, in alternative to their application for joint allotment, apply so and if the respondents find that the total land to be so allotted in the case of separate allotments is not more than the alternative land to which they would be jointly entitled to and further find that plots of smaller sizes for separate allotments are available, the respondents would consider the said request.

34. With the aforesaid observations, the appeals are disposed of.
No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

SEPTEMBER 18, 2014
'gsr'