

\$~2

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

% *Date of Decision: January 22, 2014*

+ **LPA 616/2013**

DDA

..... Appellant

Represented by: Ms.Shobhana Takiar, Advocate

versus

SURJIT SINGH & ANR.

..... Respondents

Represented by: Mr.Anil Sapra, Sr.Advocate
instructed by Mr.Sandeep Sharma,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J. (ORAL)

CM No.12958/2013

The application stands disposed of condoning the delay in filing the appeal.

LPA No.616/2013

1. Learned counsel for the appellant states that DDA has taken a decision to allow respondents to continue to occupy Plot No.T-514, Jhandewalan Extension and that the occupation would be regularized. Thus, counsel urges that the appeal should be allowed and the impugned judgment and order dated March 07, 2013 allowing WP(C) No.5885/2012 filed by the respondents should be set aside.

2. We need to go back to the year 1947. On the partition of India large scale migration took place from the territories which became West Pakistan. Few refugees came and squatted on Government land in different parts of Delhi, one of which was Jhandewalan. Temporary tenements were constructed by these refugees.
3. On the Floor of the Parliament the then Union Minister for Urban Development late Sh.V.N.Gadgil made an assurance that the Government of India would formulate a policy to rehabilitate the refugees by either regularizing the existing land occupied by them or by allotting them developed land and only thereafter evict them from the land which they had occupied.
4. Indeed, this was the need of the day because partition brought misery to millions.
5. It is unfortunate that this Court is still dealing with writ petitions concerning the Gadgil Assurance and the Scheme formulated by the Government of India based on the assurance to the citizens of this country who were refugees.
6. Rehabilitation lingered on. With the promulgation of Delhi Development Act, 1957 the Delhi Development Authority was created and the Union of India placed large tracks of land owned by it at the disposal of DDA to develop the same as per a Master Plan to be prepared for Delhi.
7. On October 16, 1970, the DDA resolved vide resolution No.266 that a Committee would be constituted to scrutinize claims of refugees squatters as per the Gadgil Assurance Scheme and either existing squatting regularize or alternative plot allotted. As per the resolution for those who were put in

category-A refugee it was decided that 200 sq.yds occupation would be regularized or alternative plot of said size would be allotted.

8. Late Sh.Harbans Singh, the predecessor in interest of the respondents, applied under the Scheme in question stating that migrating from Pakistan to Delhi he was squatting on 239 sq.yads land in Jhandewalan which was later on given municipal No.T-514. He sought either regularization of his existing possession on Plot No.T-514, Jhandewalan or any other plot being allotted to him as a category-A refugee.

9. On Harbans's Singh death on September 27, 1989 his three sons were recorded as the heirs of the deceased and on September 30, 1993 a mutation was effected stating that eligibility for allotment/regularization of plot against T-514, Jhandewalan under category –A was transferred in their names. Gurbax Singh died on December 03, 1993 leaving behind respondent No.2, his wife, as his legal representative. Satpal Singh died on November 06, 2010 and in this manner the respondents became entitled to the allotment in category-A.

10. Regretfully, in spite of verifying and accepting Harbans's Singh claim as a category-A refugee, DDA did nothing.

11. The respondents were informed by DDA that plot No. T-514, Jhandewalan could not be regularized in their names because the plot falls in the road widening of Jhandewalan road as per the Zonal Development Plan. The request of the respondents to be allotted an alternative 200 sq.yds plot was therefore considered by DDA.

12. The matter lingered on. The family of late Sh.Harbans Singh continued to reside in the makeshift tenement.

13. Since nothing happened, respondents approached the Permanent Lok Adalat established by DDA. The Presiding Judge of the Lok Adalat required DDA to consider the matter and take a reasoned decision. On February 16, 2006 the Deputy Director, DDA penned the following note:

“5. This case which is pending before the Lok Adalat came up for hearing on 14.2.05. The Hon'ble Lok Adalat has directed that as it is a long pending case where a decision is to be taken by DDA, the same may be finalized at the earliest. The complainant has also stated that if his case is not finalized at the earliest he would have no option but to approach the appropriate civil Court. The Learned P.O., Permanent Lok Adalat also preferred to call the Commr. (Plg.) on 14.2.06 to apprise the Lok Adalat about his proposed (sic. proposal) to allot 200 sq. yds. plot to Sh. Surjeet Singh but he could not be called being at Vikas Minar. The PO, Permanent Lok Adalat furious over the delay in this case directed that if the issue is not decided by DDA immediately he shall be constrained to refer the matter to the Hon'ble High Court.”

14. The matter was discussed by officers of DDA with reference to the note dated February 16, 2006 and at a meeting held on March 13, 2006 two options were discussed and minutes were prepared. The first to allot land to the respondents at Jhandewalan itself or alternatively at some other place. At another meeting held on January 16, 2007 it was decided that land could be allotted at Ashok Nagar. The respondents had desired a plot to be allotted at Rajendra Nagar.

15. The Vice-Chairman, DDA saw through the game plan of officers of DDA who were moving in the direction to allot a plot in Ashok Nagar to the respondents by wrongly projecting that the respondents would be put to

undue hardship at Rajendra Nagar. Therefore, on December 10, 2011 the Vice-Chairman, DDA recorded a note in the file as under:-

*“Appropos my response at 138N. The file has come back to me with the same recommendation as at 138N. **I am sure that is no will to solve the issue both in Planning and Land Department.** I don’t know how the planner are recommending carving out a plot of 200 sq meters on a 10 ft road? What is the conscious decision to be taken by the VC, when no alternatives are suggested in the note. The allotment of 200 sq. meter plot on a 10 ft road is inappropriate from the Planning point of view. A plot of 200 mtrs in the same zone, as per eligibility of the applicant be considered out of the available plots.”*

16. Based on the note penned by the Vice-Chairman, DDA, Commissioner Land recorded a decision on the file, which we find is at page No.153/N as under:-

“It was decided that a plot measuring 200 sq. yds. in the same zone as per eligibility of the applicant can be allotted. It is unfortunate that despite clear orders of the Competent Authority, the matter was again referred by the Branch to Planning Wing and they have suggested some other plot in Ashok Nagar and informed that the plot can be carved out after obtaining consent of the applicant and ratification of Screening Committee.

***The present case is pending since last more than 10 years and shuttling between Planning and Land Disposal Wing.** It has already been decided that the applicant may be allotted a plot out of available vacant plots. Thus, to resolve this long pending issue, it would be appropriate to allot a plot out of available plots instead of repeating the same exercise again for carving out another plot and obtaining consent for the same.*

Details of available plots are at page 130/N. Only one plot measuring 196.75 sq. yds. is available. Other plots are either smaller or bigger in size and cannot be allotted as his eligibility is only for allotting a plot measuring 200 sq. yds. The applicant has already given his consent for allotment of this plot.

The file is submitted for approval of Competent Authority for allotment of plot No.R-536, Rajendra Nagar measuring 196.75 sq. yds. As per office report available at page 152/N, this plot is vacant and has not been allotted to anybody. D.L. will be send as per policy.

Submitted for orders.”

17. On February 03, 2012 the Vice-Chairman, DDA approved the allotment of plot No.R-536, Rajendra Nagar in the name of the respondents and based thereon on February 09, 2012 DDA informed the respondents as under:-

“It is to inform you that Competent Authority has approved the allotment of alternative plot bearing No.R-536, area measuring 196.75 sq. yds. situated at Rajendra Nagar, New Delhi in lieu of premises No.T-514, Upper Ridge Road, Jhandewallan, Karol Bagh, New Delhi-55. The demand letter will be issued shortly in due course as per Policy/Rules admissible.”

18. But regretfully the respondents were not in possession of plot No.R-536, Rajendra Nagar because some smart offices in DDA put up a note in the file at page No.156/N as under: -

“May kindly see approval of VC at page 153/N for allotment of plot No. R-536, Rajindra Nagar, measuring 196.75 sq. yds. under the Gadgil Assurance Scheme.

Before sending the file to Finance Department for the purpose of costing, the undersigned went through the whole case again. It is submitted that as per Resolution No.266 dated 16.10.1970 of the Authority (99/Cor.), as far as possible steps to be taken to rehabilitate the persons in the same area where they were squatting. The undersigned inadvertently, may be in rush to settle the long pending case, recommended for allotment of plot No.R-536 at Rajendra Nagar. Since the plot No.R-536 at Rajendra Nagar is a developed plot in residential scheme, having huge market value; it can be allotted only through auction/tender mode as per Nazul Rules. Further, its allotment under Gadgil Assurance Scheme may not be covered within the Resolution No.266 dated 16.10.1970 of the Authority especially when there is a possibility of carving out a plot in the nearby area of Ashok Nagar where other persons of Gadgil Assurance Scheme were squatting. In the past, such a developed plot in residential scheme have been never allotted under Gadgil Assurance Scheme and it may set a bad precedent.

In the present case, though there was a better option suggested by the Planning Department at page 149/N to carve out a plot in nearby area at Ashok Nagar in accordance with the report of AE (Survey) at page 137/N. It is pertinent to mention here that Ashok Nagar is the nearby area where the applicant is squatting. Also other persons covered under Gadgil Assurance Scheme were residing at Ashok Nagar as specifically mentioned in the Authority Resolution No.27/2001 dated 30.03.2001 (474/cor.).

In view of above, it is suggested that the decision to allot the Plot No.R-536 at Rajendra Nagar may kindly be reviewed and Planning Department may be asked to carve out the proposed plot at Ashok Nagar for this purpose.”

19. But the Vice-Chairman, DDA saw through the note and once again authored a note on the file as under:-

“Perused the Resolution No.266 dated 16.10.1970 regarding rehabilitation of displaced persons under ‘Gadgil Assurance’ and the notes above. Guiding principles regarding allotment of alternate plots to evictees (who were displaced persons also) from public land for their rehabilitation have been laid down in this paper.

2. *Para-6 of the Agenda note detailing the extract from the 7th Report of Parliamentary Committee on Government Assurances relevant to the issue, needs to be looked at, which says:-*

“.....In this connection, the Committee should like to impress upon Government that they should keep the human element involved in uprooting from the existing sites all those displaced persons who had once been uprooted at the time of partition of the country and it is with this end in view, the Committee suggest that if with slight modification the displaced persons could be accommodated in their existing places without any plan, there should be no hesitation on the part of Government for making such modifications in the Master Plan. Only in very extreme and unavoidable situations, the question of shifting the displaced persons from their existing places should be thought of by Government.”

3. *Further in Para-9 Sub Clause (iv), the Parliamentary Committee on Government Assurances had recommended that “.....Subject to this provision, alternative accommodation is to be provided on developed land, and as far as practicable, near the place of the business or employment of the displaced person. Government will have to be requested to allow the Delhi Development Authority to sell Nazul Land at 1952 rates rather than at market price as per Nazul Agreement.”*

4. Based on the above principles, it was resolved by the Authority that “As far as possible steps be taken to rehabilitate the persons in the same area where they were squatting. The cost of land which would be charged from such squatters may be worked out by the Finance Member.”

5. On perusal of the above principles and the Resolution of the Authority, it can be concluded that the main intent of the entire exercise was to provide much needed relief to those displaced persons who had once been uprooted at the time of partition of the country and had faced further evictions from the public land they were squatting on. The Resolution was made way back in 1970 and this case has been lingering on for the one reason or the other without any alternative allotment even though the claimant was eligible. **Though efforts were made to allot plot nearer to his place of squatting but the same could not be finalized either due to the encroachment on the identified plot or the identified land being located on a narrow 10 feet wide road, not fit for planned habitation.**

On receiving a number of representations from the claimant, approval for allotment of a Plot No.R-536, Rajendra Nagar, New Delhi was given which was acceptable to the claimant, but the same is now being objected to on the ground that it is a developed plot in a residential scheme and not located in the area where the claimant was squatting. **But Clause (iv) of Para-9 of the Resolution does not restrict the allotment to the localities in which the displaced persons were squatting; it says that as far as possible steps be taken to allot land to rehabilitate persons in the same area; meaning thereby that in the event of special circumstances where the plot is not available in the same area, the claimant can be given residential plot of size of his entitlement in other areas also. Since, the claimant in this case is entitled to a residential plot of maximum 200 sqm and no such habitable plot could be located in the area of his squatting**

during the last several years, I see no reason in cancelling the allotment which has been made to him in another locality after much wrangling.”

20. Overlooking the categorical decisions of the Vice-Chairman, DDA, junior officers manipulated to issue a letter dated August 06, 2012 to the respondents informing as under:-

“The above decision is taken in view of that the re-allotted plot is in the neighbourhood & the site where the applicant was squatting. Further other persons covered under Gadgil Assurance Scheme are also residing in the same area at Ashok Nagar.

Whereas the earlier Plot No. R-536, at Rajendra Nagar is a developed plot in Residential Scheme having huge market value. It can be allotted through auction/tender mode as per Rules. Further Plot No. R-536, Rajendra Nagar is far away from the area where the applicant was squatting and its allotment may set an unfair precedent under Gadgil Assurance Scheme.

The demand letter will be issued in due course as per policy and rules.

This issues with prior approval of Vice-Chairman, DDA.”

21. At that stage the respondents filed the writ petition drawing attention of the learned Single Judge to aforementioned noting.

22. The learned Single Judge has noted para 9(iv) of Policy Resolution No.266 which reads as under:-

“.....displaced person should be given option to purchase the site occupied by him. Subject to this provision, alternative accommodation is to be provided on developed

land, and as far as practicable near the place of the business or employment of the displaced person. Government will have to be requested to allow the Delhi Development Authority to sell Nazul land at 1952 rates rather than at market price as per Nazul Agreement.”

23. The learned Single Judge has further noted the Government assurance made in the Parliament as under:-

“.....in this connection, the committee should like to impress upon government that they should keep the human element involved in uprooting from the existing sites all those displaced persons who had once been uprooted at the time of partition of the country and it is with this end in view, the committee suggest that if with slight modification the displaced persons could be accommodated in their existing places without any way impinging on the general scheme of the Master Plan, these should be no hesitation on the part of Government for making such modification in the Master Plan. Only in very extreme and unavoidable situations, the question of shifting the displaced persons from their existing places should be thought of by government.”

24. Noting that the existing land occupied by the respondents was to be used for road widening, entitlement of the respondents to be allotted an alternative site has been affirmed by the learned Single Judge.

25. We agree with the said finding for the reason undisputedly under the Gadgil Assurance the respondents would be entitled to either have the existing possession regularized or an alternative site to be allotted. The existing land is required for road widening and thus the respondents are not being permitted to reconstruct on the land. We note that lands abutting have been taken possession of for road widening. We would only highlight that while sanctioning building plans, for purposes of FAR it assumes

importance to consider what is the prescribed land use as per the Zonal Development Plan. If respondents were to apply to the Municipal Corporation for a building plan to be sanctioned as per which the respondents could reconstruct on the plot, the plans would be rejected because land use as per Zonal Development Plan is a road.

26. Thus, the respondents would be entitled to be allotted an alternative plot.

27. Counsel for DDA urges that why not a plot of land at Ashok Nagar.

28. The various decisions taken by the Vice-Chairman, DDA would show that a conscious decision was taken to allot the plot at Rajendra Nagar to the respondents and the officers of DDA kept on manipulating the file.

29. We would put the question : What matters to DDA if the alternative land allotted is at Rajendra Nagar and not Ashok Nagar, as per the choice of the respondents? DDA has no answer.

30. We have perused the file of DDA after the impugned decision was pronounced on March 07, 2013. A note has been penned on the file on November 18, 2013 at page No.182/N. It, inter-alia stands recorded in the note as under:-

“Subsequently the Planning Deptt. Has also mentioned in their note at P-15/N in which there is no comments about the road widening of the road on which plot No.T-514 is exist. In the comments of Jt.Director (AP) I dated 25.8.1999 (P-49/N) it is mentioned that in absence of approved layout plan property in question cannot be processed/regularized. Further the property falls in road widening/parking. Which was also noted by OSD (AP) dated 31.8.99 (P-49/N) with remarks that this is an isolated case of property marked on the copy of the draft Zonal development plan of Jhandewalan (P-233/C)”

31. The note brings out that the existing site occupied by the respondents is useless and sterile for them. DDA itself accepts the fact that in the absence of an approved lay out plan the existing site cannot be processed for regularization and that the site falls in the road widening scheme.

32. We concur with the view taken by the learned Single Judge that decision taken on the file and approved by the Vice-Chairman, DDA to allot plot No.536, Rajendra Nagar to the respondents must be honoured.

33. We dismiss the appeal imposing cost in sum of ₹25,000/- (Rupees Twenty Five Thousand only) against DDA which shall be adjusted by DDA from such amount, if any, to be paid by the respondents when the plot of land at R-536, Rajendra Naga would be formally allotted and conveyance deed executed in the names of the respondents.

CM No.12957/2013

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

JANUARY 22, 2014

skb