

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

% **Date of decision: 26<sup>th</sup> November, 2015.**

+ **W.P.(C) No.6313/2010 & CM No.12515/2010 (for stay)**

**MANGE RAM & ANR**

**..... Petitioners**

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.  
Ajay Gulati, Mr. Sachin Jain and Mr.  
Bhoomija Verma, Advs.

Versus

**UNION OF INDIA & ORS**

**..... Respondents**

Through: Mr. Vivek Goyal, CGSC for UOI and  
Mr. Rasheed Ansari, Adv. for R-  
2&3/GNCTD.  
Mr. L.B. Rai and Mr. Mohit Kumar  
Sharma, Advs. for applicant.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The petition seeks mandamus to the Union of India (UOI) as well as Govt. of NCT of Delhi (GNCTD) to make allotment and give possession of 65 bighas and 9 biswas of land to the two petitioners in terms of allotment letter dated 28<sup>th</sup> June, 2005.
2. Notice of the petition was issued and pleadings have been completed.
3. The senior counsel for the petitioners and the counsels for the respondents were heard on 23<sup>rd</sup> November, 2015 as well as today.
4. It is the case of the petitioners:

- (i) that the two petitioners i.e. Sh. Mange Ram and Sh. Ram Mehar are displaced persons and in lieu of their properties / land left behind in Pakistan, the Ministry of Rehabilitation, Govt. of India on 30<sup>th</sup> September, 1966 issued them a '*Sanad*' bearing No.D-914 (Hadbust No.22) with respect to acquired evacuee land admeasuring 71 bighas and 5 biswas in Village Jharoda Mazra, Burari, Delhi;
- (ii) however physical possession of the said land could not be handed over by the respondents to the petitioners since the said land was in illegal unauthorised occupation of others;
- (iii) that the petitioners at that time were given to understand that legal proceedings with regard to the said land were pending and they should await till conclusion of the said proceedings;
- (iv) however, even those proceedings were decided in favour of the occupants who were declared as *Bhumidars* of those lands;
- (v) that vide letter dated 20<sup>th</sup> April, 1989, the work relating to administration, management and disposal of the remaining urban evacuee built up property, urban evacuee plots, rural evacuee agricultural land etc. was transferred by the Govt. of India to the Delhi Administration;

(vi) that from 1974 till 2005, the petitioners kept on visiting the Evacuee Property (EP) Cell for redressal of their grievance and also made written representations for allotment of alternative land somewhere else in Delhi, but to no avail;

(vii) that ultimately vide official note dated 19<sup>th</sup> May, 2005, it was proposed that some other lands in piece-meal, available and belonging to the Custodian of Evacuee Property be allotted to the petitioners;

(viii) that on examination of official records it was found that six parcels of land in revenue Villages Civil Station, Sheikh Sarai, Rithala, Haiderpur and Hameerpur total admeasuring 65.09 bighas were available;

(ix) that vide letters dated 2<sup>nd</sup> May, 2005 and 13<sup>th</sup> June, 2005, the Tehsildar, GNCTD and the Managing Officer, EP Cell sought present status of the said lands from the local Tehsildars and it was found that the said lands belonged to and were in possession of the Government;

(x) that accordingly, vide letter dated 28<sup>th</sup> June, 2005, the Managing Officer, EP Cell, GNCTD informed the petitioners of allotment of six parcels of land aforesaid total admeasuring 65.09 bighas and asked the petitioners to meet the officers in this regard;

- (xi) that the petitioners agreed to accept the aforesaid lands in lieu of 71 bighas and 5 biswas of land earlier allotted to them and requested for a new *Sanad* and physical possession thereof;
- (xii) that though further steps were taken in this respect as evident from the contemporaneous office notings but in the meanwhile, the Displaced Persons Claim and Other Laws Repeal Act, 2005 (Repeal Act) was notified on 6<sup>th</sup> September, 2005 repealing the Displaced Persons (Compensation & Rehabilitation) Act, 1954;
- (xiii) that the petitioners on 22<sup>nd</sup> December, 2006 lodged a complaint with the Public Grievances Commission of not getting formal possession and allotment of the land;
- (xiv) though the Public Grievances Commission also found in favour of the petitioners but observed that since there was no saving clause in the Repeal Act, no direction could be given;
- (xv) thus, the allotment of 65.09 bighas of land made in favour of the petitioners did not fructify.

This petition was filed contending that notwithstanding the Repeal Act, the petitioners were entitled to be put into possession of the said 65.09 bighas of land and be awarded title with respect thereto.

5. Vide order dated 17<sup>th</sup> September, 2010 in this petition, *status quo* was directed to be maintained with respect to the 65.09 bighas of land which was allotted / proposed to be allotted to the petitioners.

6. One M/s Maha Maya Dwelling Private Limited filed CM No.13471/2011 for impleadment in this petition averring that the petitioners had entered into an agreement with it for transfer of rights in the lands to be allotted to the petitioners. Vide order dated 17<sup>th</sup> November, 2011, though the said M/s Maha Maya Dwelling Private Limited was not impleaded as a party, but permitted to intervene in the matter only by making submissions. The same order also records the denial of the petitioners of having entered into any agreement with the said M/s Maha Maya Dwelling Private Limited.

7. The respondents UOI as well as GNCTD filed counter affidavits and to which rejoinders were filed by the petitioners. Vide order dated 17<sup>th</sup> November, 2011, the respondents were permitted to file sur-rejoinder and which has been filed by GNCTD.

8. The respondent No.1 UOI in its counter affidavit has *inter alia* pleaded that the work regarding administration, management and disposal of evacuee, urban and rural properties and lands situated in Delhi was transferred to Delhi Administration in 1989 and at present GNCTD is

managing all the affairs and that vide Notification dated 6<sup>th</sup> September, 2005. The Administration of Evacuee Property Act, 1950 has been repealed without any saving clause and thus UOI is not a necessary or property party to the present proceedings.

9. GNCTD in its counter affidavit has pleaded:

- (a) that the petitioners have not approached the Court with clean hands and have suppressed material facts and made wrong and misleading statements;
- (b) that the petitioners had taken actual physical possession of 71 bighas and 5 biswas of land allotted to them;
- (c) that the documents show that the petitioners had taken actual physical possession of land about four decades ago and the petitioners have sold the land to the present occupants thereof or their predecessors; particulars of documents of the time of allotment of land are given and it is stated that, the land therein is described as vacant, directions therein are contained for making revenue entries in name of petitioners, the petitioners therein have acknowledged allotment and transfer of land in their favour, the petitioners therein made no grievance of land or any part thereof being encroached, and the

petitioners therein have acknowledged receipt of possession of land and satisfaction of their claims;

(d) that the petitioners, after a gap of about four decades since the last communication with the Office of the Assistant Settlement Commissioner, had stated that there was encroachment on the said 71 bighas and 5 biswas of land and that they could not take possession thereof;

(e) that the petitioners have tried to take the land a second time;

(f) that issue of *Sanad* is the culmination of the entire process beginning from filing of claim for evacuee property;

(g) that after a gap of about 38 years since the last letter to the Managing Officer, Delhi, the petitioners came up with a fresh dispute in 2005 that there were illegal occupants on the land;

(h) that the petitioners, after accepting the *Sanad*, cannot contend so and even if there are any illegal occupants, it is the petitioners who have to take steps for removal thereof;

(i) that the responsibility of the Evacuee Property Cell / Office of the Settlement Commissioner abates on issue of *Sanad*;

- (j) that if the petitioners were dissatisfied, they should have agitated the same before accepting the *Sanad*;
- (k) that in fact the petitioners, prior to accepting the *Sanad*, had made several claims and which were all taken care of;
- (l) that thus the repeal of the Displaced Persons Act is irrelevant;
- (m) that the petitioners took actual physical possession of the land at the site on 8<sup>th</sup> / 9<sup>th</sup> July, 1962;
- (n) that the *Sanad* dated 30<sup>th</sup> September, 1966 implies that the petitioners accepted the land allotted to them and the title of the land is transferred to their names;
- (o) that all the subsequent disputes are extraneous to the issue; the visits of the petitioners from 1974 to 2005 are denied;
- (p) that the letter dated 4<sup>th</sup> May, 2005 is the first communication, after a gap of about 38 years;
- (q) that the case of the petitioners was completed to the satisfaction of the petitioners in or about the year 1966 and the file was consigned to the Record Room;
- (r) that no new rights were created in favour of the petitioners in

the year 2005.

10. The petitioners have filed a rejoinder:

(I) denying having taken physical possession of the land in the year 1962;

(II) pleading that the office notings of the respondents show that possession of the land had not been taken; reliance in this regard is placed on documents received through the medium of Right to Information Act, 2005 (RTI Act);

(III) that though a decision had been taken in the year 2005 to allot alternate land to the petitioners but the same could not be fructified owing to the repeal aforesaid;

(IV) that after the filing of the petition, vide Notification dated 19<sup>th</sup> August, 2010, powers have been delegated for disposal of pending claims under the Displaced Persons Act, notwithstanding repeal thereof;

(V) denying that the grant of *Sanad* is the culmination of the process;

(VI) pleading that the petitioners were serving in the Indian Army

and posted outside Delhi since 1965 till January, 2002 when they retired and hence could not take any steps, though kept on corresponding during that time also;

(VII) relying on the office notings of the respondents of the year 2005.

11. The respondents GNCTD in the sur-rejoinder has pleaded:

(A) that though the petitioners along with the writ petition had only placed the documents pertaining to the year 2005 and thereafter on record, the petitioners along with the rejoinder had brought documents of prior to the year 2005 on record and of which no mention was made in the petition;

(B) that all the letters of different dates ranging from 1967 onwards filed with the rejoinder had been submitted by the petitioners to the respondents together, in or about the year 2004-2005, and the petitioners later on, by an RTI application, had taken copies thereof;

(C) that none of the said letters bear any acknowledgement in receipt thereof from the respondents;

(D) denying that the said letters / representations of the year 1967

onwards were received in the office of the respondents at the contemporaneous time;

(E) that even if it were to be believed that the petitioners were making representations from time to time, the petition is still highly belated;

(F) that mere making of the representations does not extend the period of limitation; reliance in this regard is placed on ***C. Jacob Vs. Director of Geology and Mining Indus. Est.*** (2008) 10 SCC 115, ***Naresh Kumar Vs. Department of Atomic Energy*** (2010) 7 SCC 525, ***Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar*** (2011) 5 SCC 607, ***Karnataka Power Corporation Ltd. Vs. K. Thangappan*** (2006) 4 SCC 322 and ***M/s Samant Vs. Bombay Stock Exchange*** (2001) 5 SCC 323;

(G) that the office notings of the year 2005 relied upon by the petitioners are merely indicative of the process undertaken on the basis of the representations then received from the petitioners; some of the observations made by some of the officers are without any basis and no rights can accrue to the petitioners on the basis thereof; reliance is placed on ***Jasbir Singh Chhabra Vs. State of Punjab*** (2010) 4 SCC

192 in this regard.

(H) that the repeal of the Displaced Persons Act and the modification thereof by Notification dated 19<sup>th</sup> August, 2010 only applies to cases which were pending finality;

(I) that Section 22 of the Displaced Persons Act provides appeal to the Settlement Commissioner; the said statutory remedy has not been availed of by the petitioners;

(J) that the petitioners on 30<sup>th</sup> September, 1980 wrote to the Deputy Commissioner, Delhi Administration for correction of revenue records and in which the petitioners referred to the occupants of the land as their tenants;

(K) that the petitioners were therefore earning the fruits of the land which was allotted to them and with respect whereof *Sanad* has been executed in favour of the petitioners.

12. The senior counsel for the petitioners:

(i) drew attention to the letter dated 28<sup>th</sup> June, 2005 of the Land & Building Department of the respondent GNCTD to the petitioners on the subject of “Allotment of alternative land in respect of land already

allotted in Jharoda Mazra Burari vide *Sanad* No.D-914 (Hadbust No.22)” and informing that the matter was being processed for allotment of 65.09 bighas of land in the Villages aforesaid;

(ii) drew attention to the file noting dated 18<sup>th</sup> August, 2005 of the Tehsildar, EP Cell observing that the claim of the petitioners was quite genuine, though “bluntly delayed”;

(iii) drew attention to the file notings dated 13<sup>th</sup> September, 2005 to the effect that though possession of the land of which the *Sanad* was executed was delivered to the petitioners on paper but no actual physical possession of the allotted land could be given either because the land was encroached by other persons or because the land had been given to other persons or due to conferment of Bhumidari Rights by the Revenue Officers;

(iv) contended that the process aforesaid was however held up owing to the Repeal Act which did not contain any saving clause;

(v) drew attention to the file noting dated 16<sup>th</sup> December, 2005 of the Tehsildar, EP Cell to the effect that the claims of the petitioners remained unsatisfied and that it is the duty of the Government Department to hand over actual physical possession of the allotted

land to the petitioners;

(vi) drew attention to Section 20 of the Displaced Persons Act and Rules 34-G, 10-A and 58 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 framed thereunder;

(vii) contended that the respondents have not shown anything to the effect that the petitioners accepted the *Sanad*;

(viii) contended that since inspite of file notings aforesaid, the final decision remained to be taken owing to the intervention of the Repeal Act and which was modified in 2010 during the pendency of this petition, the matter should be remanded to the respondents for taking a final decision;

(ix) contended that there is no delay, since the respondents from 2005 to 2010 were considering the claim of the petitioners.

13. The counsel for the respondents GNCTD, besides the arguments / contentions already noted above, drew attention to the letter dated 30<sup>th</sup> September, 1980 of the petitioner No.1 to the Deputy Commissioner, Delhi Administration to the effect that he was the owner of the land mentioned therein and owing to his employment with the Army at different places had assigned the work of cultivation thereof to tenants on yearly basis and had

learnt that the tenants had got the said land mutated in their names and asking for appropriate orders to be passed in that respect and clearance of unauthorised structure over his land. It was argued that the claim in the present petition is directly contradictory thereto.

14. The senior counsel for the petitioners does not controvert the letter dated 30<sup>th</sup> September, 1980 *supra* but contends that part of the land mentioned therein is not the land subject matter of the *Sanad* of the year 1966.

15. The counsel for the applicant M/s Maha Maya Dwelling Private Limited adopted the arguments of the senior counsel for the petitioners.

16. I have during the hearing of the petition repeatedly enquired from the senior counsel for the petitioners, whether not the plea of the petitioners that the possession of the land with respect whereto *Sanad* of the year 1966 was admittedly executed in favour of the petitioners was not given to the petitioners and the contention of the respondents that the possession was so delivered, raises a disputed question of fact which cannot be conveniently adjudicated in writ jurisdiction and whether not the petitioners had invoked wrong remedy.

17. However the senior counsel for the petitioners contends that the file

notings of the year 2005 show that the respondents have admitted the factum of possession having not been so delivered. It is further argued that the respondents have been unable to show that the possession was delivered in the year 1962 and without which it follows that the claim of the petitioners as displaced persons remains unsatisfied.

18. The counsel for the respondents GNCTD, though without any pleading, also suggested that the petitioners, in the year 2005, were in collusion with some of the officials of the Land & Building Department of the GNCTD and had devised the present scheme to grab valuable land of GNCTD. It was also suggested that the petitioners had by devising such means already taken possession of another 71 bighas and 5 biswas of land. However, the said contentions being without any basis and pleadings, cannot be considered.

19. I am however unable to find the petitioners entitled to relief.

20. It cannot be lost sight of that the plea raised by the petitioners before this Court for the first time in the year 2010 by way of this writ petition, of, notwithstanding the transfer of title in the land to them in the year 1966, they had not been delivered possession of the land, is by its inherent nature a factual plea and adjudication whereof cannot be in exercise of powers under

Article 226 of the Constitution of India.

21. My this opinion is enforced in view of the admission by the senior counsel for the petitioners, under instructions, during the hearing also of the petitioner No.1 having written the letter dated 30<sup>th</sup> September, 1980 *supra*. Even if it were to be believed and held that only a part of the land referred to therein is the land with respect to which *Sanad* of the year 1966 was executed (though the petitioners have not filed any documents to show ownership / title to the other land which they claim to be not part of the *Sanad* and more so in view of the Khasra numbers changing from time to time), the fact still remains that the petitioners in the year 1980 were admitting having been put into possession of the land of which the *Sanad* was executed in their favour in the year 1966 and were further admitting that they had allowed their said land to be cultivated by tenants on yearly basis. The claim of the petitioners in the writ petition is of having not been put into possession of any part of the land with respect to which the *Sanad* was executed in their favour. The letter dated 30<sup>th</sup> September, 1980 clearly falsifies the stand of the petitioners in the writ petition, disentitling the petitioners from any equitable relief under Article 226 of the Constitution of India.

22. Supreme Court recently in *State of Assam Vs. Bhaskar Jyoti Sarma* (2015) 5 SCC 321 also observed that “the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the Constitution of India. ....Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution”.

23. Not only so, even if it were to be believed that the petitioners were not put into possession of the land of which the *Sanad* was executed in their favour in 1966, the claim of the petitioners for the first time in 2005 i.e. after nearly 30 years, for land in lieu thereof was also highly belated. Anyone not delivered possession of land inspite of being conferred with title thereof is expected to act with promptitude. The contention of the petitioners, of having made representations therefor, from 1967 till 2005 also, is highly suspect and at best also raises disputed question of fact. The senior counsel for the petitioners has been unable to meet the contentions of the respondents, of the representations even if made by the petitioners from 1967 onwards, being not capable of keeping the said claim alive.

24. I am of the view that the file notings and / or the letter dated 31<sup>st</sup>

August, 2005 could not have ignited a claim which was already dead. The petitioners, independently of their claims as displaced persons and which stood satisfied on execution of *Sanad* in the year 1966, had no new right to allotment of any land in the year 2005 and which claim can be agitated by way of this writ petition filed in the year 2010. Also, even if it were to be believed that the petitioners could not pursue their claim owing to the Repeal Act of the year 2005, the petition filed in the year 2010 i.e. after five years therefrom would also be barred by time, delay and laches. Any officer of the Government, even if makes admission of a claim against the Government and which claim is otherwise barred by law / limitation and thus not valid, cannot bind the Government therewith. I am, from a reading of the file notings of the year 2005 relied upon by the petitioners, indeed surprised; they undoubtedly are without regard to protecting the interest of the State / Government, which its' officers are expected to, and are intended to part with valuable land worth hundreds of crores of rupees, obviously detrimental to public interest and by way of enriching the petitioners. The principle enshrined in Section 18 of the Limitation Act, 1963, of the acknowledgement in writing of liability or right extending the period of limitation, can be invoked only if such acknowledgment is made prior to expiry of period of

limitation. It is not the case of petitioners that there was any such acknowledgement of liability towards the petitioners or of right of petitioners at any time prior to the year 2005.

25. I have in this context examined the provisions of the Displaced Persons Act to gauge whether the provisions thereof permitted the *Sanad* aforesaid to be executed without delivery of possession and if so to what effect and what was the remedy of petitioners thereagainst and what was the limitation provided for availing thereof.

26. The *Sanad* dated 30<sup>th</sup> September, 1966 is titled “Permanent Allotment of Acquired Evacuee Property in Rural Areas”. It provides, (a) that the evacuee land subject matter thereof was acquired vide Notification under Section 12 of the Displaced Persons Act; (b) that the said property was being transferred to the petitioners for the purpose of compensation payable to petitioners under the Displaced Persons Act; (c) “The President is hereby pleased to transfer the right, title and interest acquired by Central Government in the said property” to the petitioners. A reading thereof, which as a government grant is to be interpreted as per its terms, does not show that after the execution thereof there was any obligation remaining of the grantor thereof to put the petitioners into vacant peaceful possession of

the land with respect whereto it was granted. The whole claim of the petitioners in this petition is premised on the respondents being under an obligation to put the petitioners into vacant, physical possession of the land and having not fulfilled the said obligation. However, on a reading of the *Sanad*, no such obligation is made out.

27. The said *Sanad* is preceded by (i) a document dated 9<sup>th</sup> July, 1962 of handing over of possession of total land admeasuring 71.5 bighas to allottee i.e. petitioners herein recording that the petitioners were present on the spot, that demarcation had been done in presence of petitioners, that with respect to a part of land there was a stay granted by the Court, that on another part two persons were doing cultivation and there were illegal occupants who had no right for compensation and that acknowledgement had been done on the spot; (ii) a document dated 16<sup>th</sup> July, 1962 of the Court of Allotment cum Managing Officer, Delhi recording handing over possession of land to petitioners on the spot on 8<sup>th</sup> July, 1962 and directing sending of records to Tehsildar for declaring the petitioners as owners of the allotted 71.5 bighas of land; (iii) order dated 30<sup>th</sup> September, 1966 of the Court of Managing Officer / Settlement Officer Delhi recording that the petitioners were allotted 71.5 bighas of land on 4<sup>th</sup> May, 1961 in satisfaction of their remaining land

claim, that possession of the land was delivered to them on 8<sup>th</sup> July, 1962, that no rent was due from them and directing execution of *Sanad* of permanent allotment of said land in favour of petitioners and forwarding copy of order to Tehsildar for incorporation in Revenue Records.

28. I have next examined the provisions of the Displaced Persons Act and the Displaced Persons Rules. Section 12 of the Act empowers the Central Government to acquire any evacuee property for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons. Vide sub-section (2) thereof, on publication of Notification thereunder, the right, title and interest of any evacuee in the property specified in the Notification stands extinguished and the evacuee property vests absolutely in the Central Government free from all encumbrances. Vide sub-section (4), all evacuee property acquired thereunder was to form part of the compensation pool. Section 15 of the Act exempts property forming part of compensation pool from being proceeded against for any claim in any manner whatsoever in execution of any decree or by other process of any Court or authority. Finally, Section 20 of the Act empowers the Managing Officer to transfer any property out of the compensation pool *inter alia* by allotment of such property to a displaced person.

29. The Displaced Persons Rules, in Chapter II lays down the procedure for submission of compensation application, in Chapter III lays down the procedure to be followed by the Settlement Commissioner on receipt of compensation application, in Chapter IV deals with determination of compensation and in Chapter V deals with payment of compensation and transfer of acquired evacuee property. Chapter V(A) deals with allotment of evacuee agricultural lands situated in urban areas; Chapter VI deals with payment of compensation by transfer of Government built property; Chapter VII deals with payment of compensation for rural houses and the shops left in West Pakistan and finally Chapter VIII deals with compensation in respect of verified claim for agricultural land situated in rural areas. The *Sanad* in favour of the petitioners being titled “Permanent Allotment of Acquired Evacuee Property in Rural Areas”, the Chapter of the Displaced Persons Rules applicable to the petitioners would be Chapter VIII, Rule 49 whereunder provides that a displaced person having verified claim in respect of agricultural land shall as far as possible be paid compensation by allotment of agricultural land. The other Chapters as aforesaid deal with agricultural land in urban areas, government built up property, etc. Chapter V, vide Rule 22 thereunder provides for allotment of residential properties in

occupation of displaced persons, shops in occupation of displaced person and industrial concerns in occupation of displaced person and would also have no application to the allotment in favour of the petitioners. Rule 34G to which reference was made by the senior counsel for the petitioners, is under Chapter V(A) dealing with allotment of evacuee agricultural lands in urban areas and would also have no application.

30. Rule 50 under Chapter VIII which as aforesaid is applicable, provides for the Settlement Commissioner to fix the value of any agricultural land intended for allotment. Thereafter, Rule 58 to which also reference was made by the senior counsel for the petitioners provides that where any person is allotted agricultural land under the Rules, he shall be granted vacant possession of such land. Rule 60 provides that where any person is offered allotment of agricultural land under the Rules, he shall communicate his acceptance of the allotment to the Settlement Commissioner and if no reply is received within the period fixed, the allotment shall be deemed to have been accepted. Rule 61 provides that where any person refuses to accept the allotment of any agricultural land offered to him, the claim for compensation shall be deemed to have been satisfied to the extent the value of the allotted land and such allotted land shall be available for allotment to

any other claimant. Thereafter, Rule 68 provides for execution of the *Sanad* in favour of the allottee.

31. From the scheme of the Rules aforesaid, it is borne out that the allotment of agricultural land and delivery of possession thereof precede the execution of *Sanad*. That is also how the documents relied upon by the petitioners show the transaction to have taken place. In the light of the scheme of the Rules, the suggestion of the senior counsel for the petitioners that there was nothing to show that the petitioners had accepted the *Sanad* inasmuch as the same is not signed by them, is of no avail. Under the Rules, if the petitioners had not accepted the land allotted to them and / or had refused the same, their claim for compensation would have stood extinguished. The petitioners after more than 35 years cannot contend that they had not accepted the *Sanad*. The said stand is also falsified from the letter dated 30<sup>th</sup> September, 1980 supra admittedly written by the petitioner No.1.

32. What also emerges from the Act and the Rules is that the acquisition under Section 12 of the evacuee property is free from all encumbrances. Thus, upon the lands which were allotted and with respect whereto *Sanad* was executed in favour of the petitioners being acquired, no right or claim of

any person with respect thereto persists or survives for the petitioners to say that others had claimed as *Bhumidhars* with respect to the said lands.

33. Coming back to the aspect of limitation, even if the petitioners were aggrieved from the allotment by the Settlement Officer of the land to them on which others had possession, the remedy of the petitioners was to appeal to the Chief Settlement Commissioner under Section 22 of the Act and the limitation whereof was of 30 days. The petitioners admittedly did not appeal. The only inference can be that either they had no grievance or the grievance urged after decades is an afterthought and *mala fide* or even if had a grievance, the limitation for agitating the same has expired. Reference in this regard also can be made to *Shankara Co-op Housing Society Ltd.* *supra*.

34. In this context I have also wondered, whether after the petitioners had accepted the *Sanad* which is a document of transfer of title of the land to the petitioners, the petitioners under the Civil Law can have a claim for alternative land on the ground that the possession of the land of which *Sanad* was granted in their favour was not delivered to them.

35. I am unable to find any such proposition in law.

36. Though the *Sanad* is a Government grant and the Transfer of Property

Act, 1882 is not applicable thereto and is governed by its own terms but I have, as a proposition of law, wondered the remedy of a purchaser of immovable property who is not delivered the possession of the property sold. It is found that delivery of possession is not essential to complete a sale. Section 55 of the Transfer of Property Act laying down the rights and liability of buyer and seller of immovable property, in the absence of a contract to the contrary, *inter alia* provides that the seller is bound to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits. Therefrom, it is evident that delivery of possession is not essential for completion of transfer and there can be situations where transfer is complete without delivery of possession. Following this logic also, the remedy of the petitioners, even if were not put in possession of the land inspite of conveyance of title thereof in their favour, cannot be to seek alternate land but can only be to recover possession of the same land or seek compensation.

37. A Division Bench of this Court as far back as in ***Hari Chand Vs. Gordhan Das*** AIR 1957 P&H 238 (Circuit Bench at Delhi) held that mere non-delivery of possession or stipulation to delivery of possession at a later date does not prevent the sale from being complete. The High Court of

Madhya Pradesh also in *Sayyed Ibne Hasan Mazhar Husain Vs. Mst. Mehtab Latafat Husain* AIR 1960 MP 237 held that the only three requisites to complete transfer by sale are (i) an agreement to transfer; (ii) price; and, (iii) the competency to contract and further held that the requirement in delivery of possession is a procedural matter.

38. Even if it were to be believed that though by the *Sanad* of the year 1966, the land admeasuring 71 bighas and 5 biswas stood transferred to the petitioners but the possession thereof was not delivered by the Government of India to the petitioners, the senior counsel for the petitioners was unable to explain, as to how the same would entitle the petitioners to claim alternative land. The remedy, if any of the petitioners for such a situation was to claim against the Government of India as the transferor to deliver possession and which claim could have been made within the period of limitation provided therefor and/or to have the transfer annulled or to claim back the sale consideration i.e. compensation in lieu of which the land was given to the petitioners. The petitioners cannot after 36 years, without having annulled the transfer, claim another plot of land in lieu thereof. Supreme Court, in *Vimal Chand Ghevarchand Jain Vs. Ramakant Eknath Jajoo* (2009) 5 SCC 713 held that right of possession over a property is a facet of title; as

soon as a deed of sale is registered, the title passes to the vendee; the vendor, in terms of the stipulations made in the deed of sale, is bound to deliver possession of the property sold; if he does not do so, he makes himself liable for damages. Here, not only is there no stipulation in the *Sanad* that the grantor thereof will deliver vacant, physical possession of the land with respect whereto it was executed, to the petitioners but on the contrary the reading thereof shows that the transfer was complete, with the right, title and interest acquired by the Central Government in the property being transferred to the petitioners, thereby also vesting in the petitioners the right to recover possession from whosoever may have been in possession of the land.

39. There is thus no merit in the petition, whichever way it may be examined.

40. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**NOVEMBER 26, 2015/bs**  
*(corrected & released on 25<sup>th</sup> May, 2016)*

*PS: Since there has been a long delay in correcting and releasing this judgment, the Court Master to inform the counsels.*