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HIGH COURT OF DELHI AT NEW DELHI

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EX.F.A. 4/2014 & CM APPL. 1882/2014, 1883/2014

Pronounced on: 10th May, 2016

SHRI BALENDU LOHIYA AND ORS

..... Appellants

Through: Ms. Geeta Luthra, Senior Advocate with
Ms. Shivani Luthra Lohiya and Ms.
Shreya Singh, Advocates

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Anjana Gosain & Mr. Vishu
Agrawal, Advocates for R-1
Mr. Ajay Verma, Advocate for DDA
Mr. Anand Yadav and Mr. Ajeet Prasad
Aggarwal, Advocates for respondent
Nos. 5, 8 (i to iii) and 9 (i to iv)

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an execution first appeal filed by the appellants against the order dated 09.12.2013 passed by the learned Additional District Judge-V, Central District, Tis Hazari Courts, Delhi accepting the objections of the DDA and dismissing the Execution Petition No. 22 of 2013 filed by Balendu Lohiya and Another (appellant herein).

2. Before dealing with the submissions made by Ms. Geeta Luthra, the learned senior counsel for the appellants, it would be pertinent here to give the brief background of the case.
3. So far as the appellants are concerned, they along with respondents No.5 to 9 in the suit bearing No.170/2004 titled Balendu Lohiya & Ors. vs. Union of India and Ors. in the first instance filed a writ petition in the Delhi High Court for allotment of an alternative plot of land on account of acquisition of land belonging to one Shri Harish Chand Lohiya, their predecessor-in-interest. The said writ petition was disposed of with the observations that the matter involved appreciation of facts and could not be looked into by the writ court. An SLP against the said order was also taken out which was also disposed of on 27.01.1987 with the direction that the appropriate remedy would lie for the appellants by filing a suit for declaration with consequential relief.
4. In view of the aforesaid observations of the Apex Court, Balendu Lohiya and three others filed the aforementioned suit for declaration with consequential relief of mandatory injunction as against the Union of India, Land & Development Office, Land Acquisition Collector, DDA and the private respondents No.5 to 9. The case which was set up in the suit was that the appellants were the descendants of one Harish Chand Lohiya who owned a parcel of land which was described in the plaint as Plot No.6 and 7, falling in Khasra No.639/446, Factory Road, Delhi. The appellants were the children of said Late Harish Chand Lohiya from the

second wife while as respondents No.5 to 9 were the legal heirs of Harish Chand Lohiya from the first wife. It was alleged that the land owned by Late Shri Harish Chand Lohiya in village Arakpur, Bagh Mochi was acquired by Award No.20-A/74-75, dated 29.03.1975 by respondents No. 1 to 4. It was alleged that the policy of the government was that on account of the acquisition of the aforesaid land belonging to Harish Chand Lohiya every adults lineal descendant were to be allotted 500 sq. mts. of land for their bona fide residential purpose. It was accordingly prayed that since the land belonging to Harish Chand Lohiya was acquired by respondents No.1 to 4, consequently the appellants as well as respondents No.5 to 9 were entitled to a parcel of land measuring 500 sq. mts. to each of the adults lineal descendants.

5. So far as respondents No.1 to 4 are concerned, they contested the claim of the appellants although they are alleged to have admitted that the land in question bearing Plot No.6 & 7, belonged to Harish Chand Lohiya, however, it was stated that the same was validly acquired by them. So far as respondents No.5 to 9 are concerned, they admitted that the land in question originally belonged to Harish Chand Lohiya but stated that on the basis of the family settlement in 1941, the said land was mutated in their favour in the revenue record and in the records of L&DO in principle they did not contest the plea of alternative allotment.
6. The learned trial Court without framing issues and by reference to various other pleadings in the connected matter which were filed

by some other persons of the locality, L&DO/DDA in those cases assumed that there was an admission about the factum of land in question being owned by Harish Chand Lohiya and that the same was acquired and mutated in the records of the Government in the year 1936-37 and further that there was a policy for allotment of a 500 sq. mts. of plot to the adults lineal descendants and passed the judgment in the following terms:-

“A decree of declaration is being passed declaring the lease hold rights to vest with late Sh. Harish Chand Lohia s/o Bengali Mal in respect of plot No.6 and 7 falling in Khasra No.639/446, Village Arakpur Bagh Mochi Factory Road, Delhi acquired vide award No.20A dated 29.3.1975.

It is further directed that the plaintiffs No.1 to 4 and defendant No.5 to 9 are entitled to the benefits of policy of the Government for allotment of residential plots being the first adult lineal descendants of late Sh. Harish Chand Lohia. There is no order as to costs.”

7. It may be pertinent here to mention that the relief which was claimed by the appellants in the Execution Petition as under:-

“A) Allotment of residential plots measuring 500 sq. meters each to Plaintiffs 1 to 4 and Defendants 5 to 9 in terms of Judgment Decree dated 11/4/05.

B) An ad-interim injunction may be granted restraining the respondents from auctioning/selling/allotting 9 x 500 sq. meteres of land in Jasola/Dwarka/some other South Delhi Colony.

C) Pass such order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

8. A perusal of the record reveals the following points:-
- (i) That the Court passed the aforesaid judgment under Order 12 Rule 6 CPC.
 - (ii) That the Court observed that the land bearing No.6 & 7, Factory Road, village Arakpur, Bagh Mochi belonged to one Harish Chand Lohiya predecessor-in-interest of the appellants.
 - (iii) That the appellants and respondents No.5 to 9 are entitled to benefit of policy of the Government for allotment of a residential plot being first adults lineal descendants of Late Harish Chand Lohiya.
 - (iv) That no specific direction was given to allot a particular plot of land by respondents No.1 to 4. On the contrary, it was simply stated that the appellants were entitled to benefit of the policy of the government for allotment of an alternative plot of land measuring 500 sq. mts.
9. The aforesaid direction passed by the learned trial court clearly envisaged that the appellants were required to do something more before filing an execution application. They were required to apply to the Government for allotment of an alternative plot of 500 sq. mts, subject to their establishing their eligibility and then their cases would have been recommended to the DDA for allotment on *nazul* land by the L&DO or by the Central Govt.

10. On the contrary, the appellants who were originally four in number but only two of them Balendu Lohiya (since deceased) and Daksh Lohiya filed an execution petition before the learned ADJ for allotment of an alternative plot of land of 500 sq. mts. out of plot No.6 & 7, contending that they were entitled to a parcel of land as directed by the learned ADJ.
11. Curiously enough in the execution petition not only the appellants claimed allotment of plot for two of them but also claimed plot of land of 500 sq. mts. for the other two plaintiffs who had not filed execution petition as well as for respondents No.5 to 9 to the suit.
12. The respondent/DDA filed objections to the execution petition raising the objection to its maintainability of the execution petition on the following grounds:-
 - (i) That the DDA and the Government has already filed an appeal against the judgment and the decree and although there was no stay in the same but till the time the appeal is decided, the appellants are not entitled to the execution of the decree.
 - (ii) No recommendation for the allotment has been made in favour of the decree-holder. The allotment is governed by the procedure laid down by the Hon'ble High Court in the matter of *Ramanand vs. Union of India*, AIR 1994 Delhi 29.
 - (iii) DDA has no role to play in the allotment of plot of land. It only makes a plot of land available on the basis of the recommendation received from the government.

- (iv) That the decree-holder, namely, the appellants are not entitled to stay against the auction of the plot of land at Jasola, which has been obtained by the appellants, as the execution has to be in terms of the decree and the same does not talk about the plots of land at Jasola or any other place.
13. The aforesaid objections of the respondent/DDA were accepted by the learned trial Court and accordingly, the execution petition was dismissed.
14. The appellants feeling aggrieved by the aforesaid dismissal of the execution petition has filed the above mentioned execution appeal.
15. Ms. Luthra, the learned senior counsel for the appellants has contended that the learned executing court has fallen into serious error by going behind the decree and commenting on the judgment and the decree by relying upon the judgment of a Division Bench passed in *LPA No.1106-07/2005*, titled *Union of India & Ors. vs. Smt. Gunwati Devi (deceased) through LRs and Others*.
16. It may be pertinent here to mention that the letter No.14/33/67-L1 which was relied upon by the executing court is a letter allegedly containing the policy of the Government of India for allotment of a plot of land measuring 500 sq. mts. to such of the oustee whose land has been acquired was held to be constituting the policy in the suit. This letter was written to the L&DO by the Ministry of Works & Housing, Govt. of India and in *Gunwanti's* case only it was not accepted to be constituting a policy by the Division Bench which set aside the order of the learned Single Judge. Then how

could such a letter be treated to be as a policy letter for conferring benefit on the applicant decree holder in the present case.

17. It was contended by Ms. Luthra that based on such judgment of the Division Bench, the trial court could not have dismissed the execution petition.
18. I do not agree with the submissions made by Ms. Luthra that the Division Bench judgment which declared that letter dated 22/23.10.1984 did not constitute the policy could be ignored by the executing court and the observations passed by the learned Judge that too without going into the merits of the matter. Obviously, the High Court Division Bench order being superior and the doctrine of precedent being in place the judgment and the decree passed by the trial Court cannot be given effect to. Moreover, the High Court being a court of records, its judgments are binding so far as its subordinate courts are concerned. Therefore, I do not agree with the contention of the learned senior counsel that the letter by virtue of which the learned ADJ has directed for allotment of land measuring 500 sq. mts. to the appellants could be construed to be a policy much less they are entitled to any parcel of land as alleged by them.
19. The second submission made by the learned senior counsel that by doing so, the learned trial Court has gone behind the decree is not at all correct proposition and the executing court is well within its right to take cognizance of the pronouncement passed by the Division Bench of its own State and to see if the trial Court

judgment is contrary to the Division Bench judgment and therefore it cannot be permitted to hold sway in favour of the plaintiff. I feel that it cannot be said that the learned ADJ has gone behind the decree in order to reject the execution petition of the appellants on this ground.

20. The next contention of Ms. Luthra is that the decree has to be interpreted in the light of the plaint and from the circumstances and as far as possible the decree has to be given effect to in order to bring to its logical conclusion. This has been said so, on account of the fact that the operative portion of the judgment does not specifically show that any particular plot should be allotted to the appellants. The contention of Ms. Luthra has been that the predecessor-in-interest of the appellant Harish Chand Lohiya was the owner of parcel of land, bearing Plot No.6 and 7 which was agreed to be released by the Union of India in terms of the letter in question to be made available to the appellants to be allotted of 500 sq. mts. to the adults lineal descendants. These plots which were released are shown in the plan attached to the suit as Plot No.6 and 7 and they are deemed to have been released under Section 31(3) of the Land Acquisition Act, 1894 and cannot be treated to be the release of the land which is passed under Section 48 of the Act.
21. Ms. Luthra tried to bring out the distinction between the release of the land under Section 31(3) of the Act in comparison to Section 48 of the Land Acquisition Act. It was contended that although in Section 31 (3) an oustee would not be entitled to any compensation

and the allotment would made of an alternative plot of land to him in lieu of the compensation while as under Section 48 of the Act the land is deemed to have been acquired and thereafter the land is de-notified by the Govt. It has been contended that this distinction has been recognized by the Apex Court in number of judgments including the judgment of our High Court in *Diwan Singh vs. Govt. of NCT of Delhi*, (2011) 121 DRJ 148 (DB); *Sri Veerabhadreshwara Industrial Training College vs. State of Karnataka*, MANU/KA/1610/2001; and *Abhinanda Housing Pvt. Ltd. vs. P.S. Govt. of A.P.A.*, MANU/AP/0858/2006. It has been contended that the 500 sq. mts. plots have to be allotted to the appellants under Section 31(3) because they have not been given any compensation.

22. There is no dispute about the fact that Section 31(3) and Section 48 of the Land Acquisition Act, 1894 operate in different situation. In the first instance, i.e. under Section 31(3) while the land is in the process of acquisition the govt. may leave a portion of the land for bona fide residential use of the oustee while as the remaining land may be acquired for which he may or may not be paid compensation. While as under Section 48, the entire parcel of land stands acquired for a public purpose which may be de-acquired on representation of the oustee in case it is not required this is called release of the land. The present case is neither a case of release under Section 48 nor of acquisition of the same a portion under Section 31 (3) therefore distinction is not relevant for our purposes.

23. On the contrary, Mr. Verma, the learned senior standing counsel for the DDA has contended that even though if it is assumed that the learned ADJ has held the appellants to be entitled to an allotment of plot of land measuring 500 sq. mts. to each of the lineal descendants, still the mode of allotment has to be in terms of *Ramanand vs. Union of India*, AIR 1994 Delhi 29.
24. In *Ramanand's* case the mode of allotment is that if a person is held to be entitled to an alternative plot of land, he has to apply to the appropriate Government, which may be State or the Central Government. It will examine its eligibility and once the eligibility has been satisfied by a person then it will send the recommendation for allotment of a plot of land to such an oustee to the DDA which control the *nazul* land and it would in turn allot the land to such an oustee.
25. In the instant case, it has been contended by Mr. Verma that even learned ADJ in its penultimate paragraph has specifically talked about that the appellants are entitled to plot of land “if eligible”. It has been further stated that in terms of *Ramanand's (supra)* case the appellants had to apply to the L&DO and the acquisition authority for being allotted an alternative plot of land then they would have checked its eligibility for allotment of a parcel of land in terms of the circular applicable and recommended the names of the appellants, if found eligible to the DDA for allotment. It has also been contended by Mr. Verma that it is really very strange that although the prayer in the suit was for allotment of land to the

appellants who were four in number and to the respondents No.5 to 9, who were the descendants of Late Shri Harish Chand Lohiya from the first wife, yet the execution petition has been filed by only two of the appellants, one of whom has since died and it has been contended in the execution petition that the allotment of land may be made in favour not only to the appellants but also in favour of respondents No.5 to 9.

26. So far as the filing of the execution petition on behalf of other beneficiary is concerned, Order 21 Rule 15 permits that. But I feel even in such case the other beneficiary must either file affidavits in support of execution petition or at least sign *vakalatnama* in favour of the counsel. This has not been done. Anyhow not much turns on this and therefore this point is ignored.
27. It has been contended that whosoever feel aggrieved by the judgment and decree before executing court, he has to apply by way of execution petition and support the execution petition by filing his/her affidavit. In the instant case this is a surrogate execution petition which has been filed by the appellants not only for themselves but also for the respondents and the two of the other appellants, who are not parties in the execution petition nor they have filed their affidavits. It has been contended that this exercise has been done by the appellants only in order to cover the land which is very valuable in the city of Delhi.
28. I have carefully considered this submission of Ms. Luthra, as well as Mr. Verma. I find considerable force in the submissions made

by Mr. Verma that there is absolutely no occasion for the executing Court to go into the question as to whether the land is to be allotted to the appellants was released under Section 31(3) or under Section 48 of the Land Acquisition Act. That question is totally irrelevant, unsafe to be dealt with in the instant case. The question to be dealt with in the instant case even if we assume that the appellants were entitled to plot, what is the *modus operandi* to be followed by the respondents No.1 to 4 for allotment of such land. The only *modus operandi* which is envisaged by the respondents and which has found a seal of approval in the form of *Ramanand's case* (supra) is that a party would apply to the appropriate Government for allotment of alternative plot of land on account of acquisition of their land or the acquisition of land of their predecessor-in-interest; their eligibility would be determined and then after determination of the eligibility the appropriate Government would recommend the name of such a person along with the size of the plot which is to be allotted to him by the DDA. The DDA controls the entire *nazul* land. It would make parcel of land available in terms of the said recommendation available to the appropriate Government it will allot the plot of land to him. Apart from this exercise, there is no method of allotment of land as alleged by the appellants.

29. Therefore, I feel that the execution petition which has been filed by the appellants is rightly rejected by the learned executing court on the ground that there is no specific direction for allotment of parcel of land nor the appellants followed the procedure which is

envisaged in *Ramanand vs. Union of India*, AIR 1994 Delhi 29. Accordingly, this contention of Ms. Luthra is also dismissed.

30. One of the arguments which has been made by the learned senior counsel for the appellants is that the land in question, that is, plot No.6 and 7 which has been utilized by the appellants deserve to be protected by passing an ad interim order in as much as in respect of this vary parcel of land the respondents has declared it to be *nazul* land and they are well within its right to retrieve the same.
31. If one has a look at Order 21 Rule 11 (2) it gives the details of that the execution application when filed in writing must contain. The relevant sub-rule (2) is reproduced as under:-

“(2) Written application—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j) the mode in which the assistance of the Court is required whether-

(i) by the delivery of any property specifically decreed;

(ii)

(iii)

(iv);
(v);”

32. A perusal of the aforesaid sub-rule would clearly show that when a party requires assistance of a Court for delivery of a property then it must not only specifically state as to how and in what respect the assistance of the Court is required and what is the specific property which has been decreed in his favour.
33. In the instant case if ones sees the operative portion of the judgment which has already been reproduced hereinabove, it does not give any specific property number or the plot number which is to be allotted to a particular applicant/decreed-holder. In the absence of such a direction, the decree itself, in my view is an inchoate. Even if it is considered that the decree was inchoate, the absence of such specific number can be explained by the fact these alternative plots were to be allotted to the decree-holder if found eligible as has been observed by the learned Court itself while passing the judgment. For determining the eligibility of the decree-holder they had to apply to the Appropriate Government which had acquired their land, they would consider their application and if found eligible would have recommended their names to the DDA for the allotment of *nazul* land and thereupon specific plots would have been allotted to them. This is precisely further explained by *Ramanand's case* wherein it has been held that alternative allotment of a plot cannot be claimed as a matter of right. It is only the discretion on the part of the Appropriate Government. Therefore, I feel that the submissions of Mr. Verma, the learned

standing counsel of the DDA has a considerable force that there is no illegality or impropriety in the rejection of the execution application of the appellants by the trial Court.

34. The submission of Ms. Luthra that while executing the decree the Court has tried to go behind the decree or that it has to interpret the decree in the light of the averments made in the petition to give effect to the decree does not apply to the facts of the present case.
35. I do not find that the learned executing court by dismissing the execution petition on the strength of the order passed by the Division Bench holding that the letter in question on the strength of which the trial Court had passed an order for declaring the applicant/decreed-holder to be eligible for allotment of alternative plots of 500 sq. mts. itself having been set aside, the executing court was bound by the Division Bench order.
36. Similarly, there was no occasion for the executing court to go into the averments and then give effect to the decree when the applicants/appellants are not entitled to any plot of land at all.
37. Ms. Luthra, the learned senior counsel for the appellants has cited judgments on *lis pendence* in case titled *Rajender Singh & Ovs. Vs. Santa Singh & Ors.*, (1973) 2 SCC 705; and *Lov Raj Kumar vs. Dr. Major Daya Shankar*, AIR 1986 DEL. 364, to contend that the one person Ukil and one more person have been allotted land during the pendency of the execution petition from the plot of land in question and therefore, they are bound by the doctrine of *lis pendence*, does not convince the Court that any order is warranted

on that score. So far as the said persons are concerned, it appears from the record that they were put in possession by the orders of Hon'ble High Court before the letter in question being declared as not constituting as a policy.

38. In view of the aforesaid facts and circumstances of the case, I feel that there is no illegality in the order passed by the executing court dismissing the execution petition of the appellants holding that the appellants are not entitled to any specific plot of land in terms of the judgment and the decree as has been sought to be executed by them. Accordingly the present appeal stands dismissed.
39. Pending applications also stand disposed of.
40. Interim orders, if any, stands vacated.

MAY 10, 2016
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V.K. SHALI, J.