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

+ W.P.(C) 10924/2016

LAXMI DEVI

..... Petitioner

Through: Mr. B.B. Sawhney, Sr. Adv. with Mr.
Aditya Shandilya, Adv.

versus

NODAL OFFICER / ADDL. DISTRICT MAGISTRATE
& ORS

..... Respondents

Through: Mr. Yeeshu Jain, Adv. with Ms. Jyoti
Tyagi, Adv. for R-1 & 4
Mr. Digvijay Rai & Mr. Ratish
Kumar, Advs. for R-2
Ms. Sangita Rai, CGSC with Mr.
Pradeep Singh Tomar, Adv. for R-
3/UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **02.12.2016**

W.P.(C) 10924/2016

1. The challenge in this writ petition is to the order dated 28th September, 2016 passed by the Nodal Officer / Additional District Magistrate whereby he dismissed the claim of the petitioner for allotment of alternative plot.

2. It is the case of the petitioner that field survey of the Village Nangal Dawat was conducted by the Government with an intention to acquire the village land for extension of Palam Airport. On 28th April, 1972 and 28th

August, 1979 Notifications under Section 4 and 6 of the Land Acquisition Act, 1894 were issued. The acquisition proceedings were challenged by the residents of the village before this Court in Writ Petition no. 481/1982 titled Daryao Singh & Ors. v. Union of India and Ors.

3. On 15th December, 1985 Sh. Hans Ram, the owner passed away. It is the case of the petitioner that he left a registered Will dated 17th October, 1973 bequeathing all his moveable and immoveable properties including compensation from the Government, Gram Sabha in favour of Sh. Pearey Lal, husband of the petitioner. It is the case of the petitioner that this Court was informed that the land had been acquired in Rangpuri for alternative allotment. It is averred in the petition that the Government of NCT of Delhi was directed to make list of persons entitled to allotment of alternate plots. It is also the stand of the petitioner that this Court on 29th October, 2003 passed an order directing the Tehsildar to decide the application filed by the legal heirs of the deceased land owners for substitution. It was directed that in the case of deceased, whose land was acquired, legal heirs who had applied for mutation be included in the list but allotment to them would be made only after the application for mutation is decided by the Tehsildar. In 2004, Sh. Pearey Lal filed an application for substitution of his name in place of Shri Hans ram. It was allowed by the Tehsildar who certified in writing that Sh. Pearey Lal is a legal heir of Sh. Hans Ram. It is averred that on 28th April, 2004 this Court while hearing the writ petition passed an order appointing the then ADM as a Nodal Officer to expedite the allotment of alternate plot. He was directed to prepare a consolidated list of eligible persons for allotment. It is stated by the petitioner that though the award

mentioned 689 persons, the Nodal Officer presented a list of only 316 eligible persons / later reduced to 308 and this led to filing large number of applications and objections. On 18th May, 2005 this Court disposed of the applications by issuing guidelines / criterion to be followed by the Nodal Officer. In Para 9 this Court has said the following:

“9. The main concern of numerous applicants / objectors was with regard to the cases:-

(a) Where the name of the objector / claimant does not appear in the records as on 28th April, 1972. Mr. Bhushan submitted that the Nodal Officer should consider the Will or bequest, if any, produced with No Objection Certificate and process the case for alternate allotment of eligible heirs in terms of the Will. This was not found acceptable as a person whose name does not appear in the records as on 28th April, 1972, must seek a declaration from the competent court regarding his entitlement and title even though probate may not be necessary in such a case. The limited jurisdiction intended to be conferred on the Nodal Officer by an order passed in writ jurisdiction cannot be extended to determination of the entitlement and title to the land in quest on based on the law of succession. For all such cases or similar cases, DDA and Airport Authority of India would keep in abeyance the claim for the allotment of plot, pending determination of entitlement / title by the competent Court.

(b) The second kind of cases were those where the name of the original holder appears in the records as on 28th April, 1972 but has expired subsequent to 28th April, 1972 and application (s) by the LR(s) for mutation is / are pending, such cases would be considered for joint allotment to LR(s) based on their eligibility and entitlement of original holders as regards the extent of land and the category.

(c) Another class of objections sought to be raised

on behalf of applicants / objectors, is where the land was owned by the father while independent structures were raised by his sons and legal representatives. The entitlement of alternate plot was being determined on the basis of the extent of land held by the original land holder. Mr. Bhushan submitted that there was distinctiveness of ownership of structures and the land underneath. However, these were not mutated, since mutation was not permissible in the old abadi in the revenue records. As such the legal heirs, who despite owning separate and distinctive structures and even when their names appeared for compensation are deprived of the benefit of individual entitlement of alternative plots based on the proportionate land falling underneath their respective structures Mr. Ravinder Sethi submitted that the ownership of the land was of the original land holders and the entitlement has to be determined with reference to the extent of land held by them. Joint ownership could be granted to the persons who are shown as owners of the structures in respect of the land underneath. However, it would be a joint allotment of the alternative plot. After hearing the counsel for applicants / objectors, respondent and Amicus Curiae the consensus which emerged for this class of cases was that legal heirs / applicants would be eligible for allotment of individual alternate plots upon the following conditions being satisfied:-

- (i) Name of the legal heirs appear separately in the survey report and Naksha Munta Zamin in respect of distinct holdings;*
- (ii) Legal heirs who have raised separate structures in separate holding for which they are given separate compensation in the award.*
- (d) It was also agreed that no claim for allotment of alternate plot based on a sale, mortgage, gift, relinquishment, power of attorney or Will, after 28th April, 1972, would be accepted and entertained by the*

Nodal Officer.

10. As noted earlier counsel for the applicants / objectors, AAI and the Amicus Curiae were heard at length on the proposed guidelines / criteria for allotment of alternate plots. The guidelines / criteria to be followed by the Nodal Officer have been settled as per Schedule –I.

11. In view of the guidelines and the criteria as settled for alternate allotment, the objectors / applicants if they fall within the said guidelines or criteria may approach the Nodal Officer for inclusion of their names as an eligible alternative allottee or for determination of the size of their plots based on the above criteria. The said letters, requests or applications may be filed before the Nodal Officer within 15 days from today stating clearly their entitlement in terms of the guidelines / criteria. In case the Nodal Officer rejects any application for mutation or application for allotment, it would be for the concerned party to seek substantive relief in the appropriate proceedings and not by any CMs in this disposed of writ petition. Registry is directed not to entertain any such application. Registry is directed not to entertain any such application against the decision of the Nodal Officer and / or either for impleadment or intervention or directions on the above subject matter in this writ petition.”

4. It is stated that on 21st November, 2006 pursuant to order dated 18th May, 2005, Sh. Pearey Lal applied to the Nodal Officer for inclusion of his name in the list of alternate allottees. It is the case of the petitioner that vide order dated 21st November, 2006, the Nodal Officer has held as under:

“(i) That Shri Hans Ram (Raj) was in possession of land in his name on the cut-off dated (28.04.1972) and was entitled for an alternative plot in lieu of his

acquired land;

(ii) That the claim of Shri Pearey Lal for allotment of plot on the basis of the Will was not found satisfactory as the applicant was neither the direct descendent of the deceased nor appered to be his family member and the Will did not contain details of any property or the land in the Village. Since authenticity of the Will was doubtful, the applicant Shri Pearey Lal “is given liberty to seek adjudication of both his claims of entitlement as well as succession from the competent court” and an alternative plot be kept reserved till final decision of the competent court. In the guideline dated 18.05.2005, the Hon’ble High Court, had provided in Guideline no. 4 that in case there is a dispute with regard to the Will, allotment was to be kept in abeyance.”

5. According to the petitioner as the authenticity of the Will has been doubted, Sh. Pearey Lal filed a petition before the District Judge, Delhi for grant of Letters of Administration with Will annexed. The same was dismissed. In an Appeal before this Court, the same was allowed and Sh. Pearey Lal was granted Letters of Administration with Will annexed. It is averred that pursuant thereto reference to the concerned Tehsildar was made for valuation of the estate for the purpose of the Court Fee. After receipt of the valuation and deposit of the Court Fee, Letters of Administration dated 4th March, 2010 was delivered on 22nd February, 2012. Thereafter on 4th April, 2012, Sh. Pearey Lal moved an application before the Nodal Officer on the basis of the Letters of Administration for further orders. On 16th January, 2014, Sh. Pearey Lal passed away during the pendency of the application and the petitioner being his widow pursued the

matter thereafter. On 5th February, 2016 reply was filed by the Airport Authority of India opposing the application for allotment of alternative land. The Nodal Officer in Para 9 of the impugned order under the heading “findings” has held as under:

“The bone of contention in the case is accessibility of Will dated 17th October, 1973 for the allotment of alternative plot. Both the counsels have put their points in the light of various orders by the competent authorities. In the light of arguments placed by both the counsels it is important to discuss the order dated 18th May, 2005 in CWP NO. 481 of 1982 passed by the Hon’ble High Court regarding criteria for allotment of alternative plot. For this purpose we must read para 9 of the order dated 18th May, 2005.

Para 9.

“(d) It was also agreed that no claim for allotment of alternate plot based on a sale, mortgage, gift, relinquishment, power of attorney or Will, after 28th April, 1972, would be accepted and entertained by the Nodal Officer.”

The Hon’ble High Court further stated in view of the guidelines and the criteria as settled for alternate allotment the objectors / applicant if they fall within the said guidelines or criteria may approach the Nodal officer for inclusion of their names as an eligible alternative allottee or for determination of the size of their plots based on the above criteria from 9(a) to (d). There is no doubt that this Will was executed on 17th October, 1973 which is more than one year later than the cut off date, i.e., 28th April, 1972. As per guidelines / criteria laid down by Hon’ble High Court in CWP 481 of 1982, no claims would be accepted on the basis of will issued after 28th April, 1972. Therefore, the basis of claim / Will dated 17th October, 1973 filed by the claimant is in violation of order of Hon’ble High

Court dated 18th May, 2005. Also Nodal Officer has no authority to exceed its jurisdiction clearly framed by the Hon'ble High Court. Accordingly, the claim is likely to be rejected.

After hearing the arguments in details of the parties and perusal of the record, I am of the view that the claim of claimants for allotment of alternative plots is not sustainable the same is not within the guidelines / criteria laid down by the Hon'ble High Court in Para 9 (d). Accordingly, order for rejection of the claimants claim for allotment of alternative plots for the reasons that the claimant failed to fulfil the criteria laid down by the Hon'ble High Court vide order dated 18th May, 2005 in WPC No. 481 of 1982."

6. Mr. B.B. Sawhney, learned Sr. Counsel appearing for the petitioner would state that the Nodal Officer has erred in dismissing the application of Sh. Pearey Lal for alternate allotment on the ground that the Will was executed on 17th October, 1973 after the cut-off date of 28th April, 1972. According to him, the instruments in Para 9 (d) of the order dated 18th May, 2005 of this Court refers to "Will", which must be read "noscitur a sociis" with the words like sell, mortgage, gift, relinquishment, power of attorney. In other words, according to him, the para has to be construed and understood as referable to acts in the nature of motivated sales or like alienation to third parties or strangers outside the family and not to a near relative. He heavily relies on the Letters of Administration annexed with Will granted by this Court in the Appeal in favour of Sh. Pearey Lal on 14th March, 2010. Mr. Sawhney would rely upon the judgments of the Supreme Court in the case of ***Coastal Paper Ltd. v. Commissioner of Central Excise, Visakhapatnam*** 2015 10 SCC 664 and ***Suraj Lamp and Industries Pvt. Ltd., Through Director v. State of Haryana and Ors.*** 2012

1 SCC 656 and by this Court in the cases of *Sh.Raj Kumar Singh and Anr. v. Mrs. Jagjit Chawla and Ors. MANU/DE/3667/2011* and *Satyawan v. Govt. of NCT of Delhi and Ors. MANU/DE/1297/2004*. The last three judgments referred to above were relied upon by him to submit that Will accompanying the documents like, power of attorney, gift, relinquishment necessarily depict the intention to sell or alienate to third parties the interest in the immoveable property.

7. The learned counsel for the respondents including AAI/UII would justify the impugned order.

8. It is noted, that, the order dated May 18, 2005 was a consent order, and the intention in Para 9(d) was very clear that 28th April, 1972 shall be the cut-off date and no claim for allotment of alternate plot based on a sale, mortgage, gift, relinquishment, power of attorney or Will after that date would be accepted and entertained by the Nodal Officer. The intentment/purpose was, if the property is alienated by the said means, the beneficiary shall not have the right (limited in nature) to make a claim for alternate allotment. The said clause does not make any differentiation between the Will to a third party or a Will to a near relation. If, the submission made by Mr. Sawhney, is accepted, then the same is applicable to a gift, mortgage etc and the cut off date shall lose its relevancy. Further, the reliance placed by Mr. Sawhney on the letters of administration or the earlier order of the Nodal Officer, is totally misplaced as, the issue (on which the claim was rejected) goes to the root, as to whether, a 'Will' of a date subsequent to April 28, 1972 would give a right to the beneficiary to make a claim at all. The same has been decided against the petitioner. The

said order dated 18th May, 2005 is in vogue for the last 11 years without any deviation. At least not brought to my notice. The claim of Sh. Pearey Lal / petitioner was rightly rejected by the Nodal Officer.

9. In so far as the judgment relied by the learned Senior Counsel for the petitioner in the case of *Coastal Paper Ltd. (Supra)*, is concerned, the Supreme Court was concerned with a case where the facts were that the appellant which was a paper mill was engaged in the manufacturing of paper. For manufacture of paper, assessee used various conventional raw materials and also non-conventional raw materials namely waste gunny bags, jute waste etc. The assessee was exegible to the Central Excise on the aforesaid manufacture namely paper manufactured by it, which the assessee has been paying to the respondent Revenue from time to time. In order to encourage production of paper by use of non-conventional raw material Govt. of India issued notification dated 1st March, 1994 which assures concessional rate of duty @ 5% for a paper board or articles made from non-conventional material. The conditions contained in the said notification needs to be fulfilled in order to avail the benefit therein to pay concessional rate of duty. As per the conditions specified in the notification, certain materials which are excluded from the notification included bamboo, hard woods, soft woods, rigs or rags. In other words, if the paper is manufactured with these materials, the manufacturer would not be entitled to the benefit of the notification. The appellant assessee was manufacturing paper out of pulp of waste gunny bags / jute waste and on the manufacture of paper from the pulp of the aforesaid waste, assessee wanted to pay concessional rate of excise duty as it was the contention that the pulp of waste gunny bags or jute

waste does not fall in any of the material mentioned in the notification. The case of the revenue was that the pulp of the waste gunny bags / jute waste is nothing but pulp of rags. The Supreme Court held that the expression rags appearing in the notification has to be construed having regard to the attendance circumstances, the context in which the same is used in the notification as well as the purpose for which this term has appeared in the notification. The Supreme Court further held that it is also necessary to go beyond the objective for which the notification itself is issued thereby giving it a purposive interpretation, which has become a cardinal rule of interpretation. The Supreme Court was also of the view that expression 'rags' is not defined in the notification; it has to be assigned a particular meaning which defines the purpose for which such notification was issued by giving a plain meaning, even when there is a total disconnect between the said meaning of the notification, may lead to absurd results as it would exclude non—conventional material in the form of waste paper, jute bags or gunny bags. The judgement has no application in the facts of this case and in view of my conclusion above.

10. More over, it is a settled law of interpretation that the word must be given its natural meaning. The principle of “noscitur a sociis” is applied to when the meaning of a word is doubtful then the same can be ascertained by the reference to the meaning of the words associated with it. It is not the case herein. The other judgments *Suraj Lamp and Industries Pvt. Ltd. (Supra)*, *Shri. Raj Kumar Singh and Anr. (Supra)* and *Satyawan (Supra)* relied upon was primarily to make good the point that in Delhi the sale of property is effected by way of power of attorney / gift/ Will and the same has been acknowledged by this Court in various judgments. I may only state

here in *Suraj Lamp (supra)*, the Supreme Court held, that, immovable property can be transferred/conveyed only by deed of conveyance (sale deed) duly stated and registered as required by law, and the General Power of Attorney/Will does not convey any title or interest in the immovable property.

11. In view of my above discussion, I do not find any merit in the present petition. Same is dismissed.

CM No. 42755/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

DECEMBER 02, 2016

jg