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

+ **W.P.(C) 19564/2005**

MOOL SINGH & ANR.

..... Petitioners

Through: Mr R. K. Saini, Advocate.

versus

LT.GOVERNOR OF DELHI& ORS.

..... Respondents

Through: Mr Gursharan Singh, Advocate for R-1, 4, 6 & 7.

Ms Mini Pushkarna, Advocate for EDMC with Ms Anushruti and Ms Vasundhara Nayyar, Advocates for EDMC.

Mr Sanjay Kumar Pathak, Mr Sunil Kumar Jha and Mr Kushal Rajtate, Advocates for respondent/L&B.

Ms Ruchi Jain and Mr Sarfaraz Ahmad, Advocate for UOI.

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HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.12.2017

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

- “(a) To direct the respondents to allot the plot from Khasra No.428/309 measuring 2 bigha 11 biswans which is lying vacant or from any other Khasra to the petitioners and other eligible persons whose names are given in (Annexure A-2) in pursuance to and consequent upon the judgment of this Hon'ble court passed in CWP No, 4534/1993 - Sh. Balbir

Singh & Others Vs. Union of India & Others on
27th February, 2003.”

2. The petitioners claim to be landless workers belonging to the Scheduled Castes/Scheduled Tribes category. It is stated that applications were invited from landless and poor persons for allotment of land in Village Babarpur under the 20-Point Programme. Several persons including the petitioners applied for allotment of land and after examination thirty four persons including the petitioners were found eligible for such allotment. Accordingly, a resolution was passed on 08.09.1987 (hereafter ‘the resolution’) for allotment of land located in Khasra No.50 & 55 covering an area of 1 bigha and 15 biswas.

3. Admittedly, the said allotment was not made as the land in Khasra No.50 & 55 was not available.

4. In the circumstances, the petitioners preferred a writ petition being *W.P.(C) No.4534/1993* captioned *Balbir Singh & Anr. v. Union of India & Ors., inter alia*, claiming that they were entitled to allotment of land under the 20 point programe. The said petition was disposed of by this Court by a judgment dated 27.02.2003. The relevant extract of the said judgment is set out below:-

“During arguments learned counsel for the petitioner did not dispute that in so far as Khasra Nos.50 and 55 are concerned they from passage for the common public and therefore cannot be allotted as house sites. Entire focus was on Khasra No.137 which according to the learned counsel for the petitioner could be allotted to the petitioners and others. It was submitted that although the reason given by Director (Panchayat) in his decision dated 23rd September, 1992 was for Village Babalpur

which was in urbanised limits, the respondents had given the different justification in their counter affidavit to deny the allotment of land to the petitioners.

Respondents had, alongwith their affidavit, filed copy of Khasra Girdhawari for the year 1993-94. As per this Khasra Girdhawari, Khasra nos.50 and 55 are shown as roads. 3 bighas and 5 biswas land in Khasra 137 is shown as 'johar' (pond) and 4 biswas as 'abadi'. In view of this factual position, when the land comprising Khasra No.137 is pond and according to the respondents in any case not sufficient to meet the requirements of the persons, it is not possible to issue mandamus to the effect that this land be allotted to the petitioners.

It may be stated that as per Sections 73 and 75 of the Delhi Land Reforms Act, there is a provision for allotment of Gaon Sabha land to various categories including the landless persons belonging to weaker sections of the society. These are enabling provisions permitting and/or authorising gaon sabha to admit such persons as bhumidars. Unless a person is admitted as bhumidar under this category no corresponding right would accrue in favour of such person.

In the instant case no doubt Resolution was passed initially for allotment of land to 34 persons which included the petitioners. However, this Resolution was in respect of Khasra nos.50 and 55 alone and as noticed earlier this land could not be allotted being road. In so far as Khasra no. 137 is concerned, there is no such decision by any competent authority for allotment of land to any person including the petitioners. No doubt proposal was mooted in this respect but ultimately decision of the respondent was not to allot this land being in Khasra no.137 as it was pond and the land was insufficient. In view of this factual position argument of legitimate expectation as advanced by learned counsel for the petitioner also fails, as there is no decision taken finally in favour of the petitioners.

In view of this, no relief can be granted in this Writ Petition. However, before parting, I may observe that the

respondents had been considering the question of allotment of land to these landless labourers. It is not in dispute that the petitioners and other similarly situated person belong to weaker sections of the society and are landless. In these circumstances it would be desirable for the respondents to find out if any other land is available in the village which can be allotted to such persons and take appropriation decision in this respect.”

5. It is thus noticed that the petitioners’ claim that they were entitled to allotment of land was repelled.

6. Mr Saini, the learned counsel appearing for the petitioner contended that the claim made by the petitioners had been rejected only on the ground that no land was available in Khasra No.50 & 55. He submitted that the petitioners had now pointed out that land was unavailable in Khara No.428/309 and, therefore, the petitioners were entitled to such land.

7. This Court is not persuaded to accept the aforesaid contention. First of all, the decision rendered by this Court in W.P.(C) No.4534/1994 is unambiguous: this court had clearly held that the petitioners were not entitled to allotment in terms of the resolution passed to give effect the 20-Point Programme. Concededly, no allotment was made in favour of the petitioners. Secondly, it is seen that more than three decades have now passed from the date of the resolution by virtue of which the petitioners claim the right to allotment of land. The parameters for a welfare scheme that were applied at that stage may no longer hold good three decades later.

8. The present petition was filed in the year 2005 and has been pending in this court for the last 12 years. It is apparent from the orders passed by

this Court that the controversy that has engaged this Court largely revolved around the issue whether the land in Khasra no.428/309 in Village Babarpur is vacant and available for distribution. Admittedly, the said land is in possession of the Municipal Corporation of Delhi (now East Delhi Municipal Corporation - EDMC). Initially, it was stated that the said land was a part of a school being run by EDMC. The petitioners claim that the same was converted by EDMC into a parking lot.

9. There is considerable controversy as to whether EDMC is entitled to occupation of the said land. According to the petitioners, the said land has not been allotted to EDMC and continues to belong to Gram Sabha. EDMC, on the other hand, disputes the same. In my view, the aforesaid controversy is not material as it is not disputed that EDMC is in possession of the land in question and no action has been initiated for recovering possession of the land from EDMC. The matter whether EDMC ought to be evicted from the land in question is plainly within the discretion of the land owning agency. The petitioners have no vested right for being allotted any land and, therefore, are not entitled to seek any direction that EDMC be evicted from the land in question.

10. Even if the land owning agency was to recover the possession of the land in question from EDMC, the petitioners would have no right to demand that the same be allotted to them. At best, the petitioners can request the concerned authorities to consider allotment of land in their favour as a welfare measure. The question whether such measures ought to be taken is entirely at the discretion of the concerned authorities.

11. In view of the above, respondent nos.1, 2 & 7 are directed to consider the petitioners' request for allotment of land having regard to the observations made by this Court in the order dated 27.02.2003 passed in W.P.(C) No.4534/1993.

12. The petitioners are not entitled to any further relief in this petition and no further orders are required to be passed by this court. The Petition is accordingly disposed of with the aforesaid directions.

VIBHU BAKHRU, J

DECEMBER 01, 2017
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