

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.12.2017

+ **W.P.(C) 7706/2012 & CM Nos.19468/2012 & 44929/2017**

JAI KUMAR AND ORS

..... Petitioners

Versus

AIRPORT AUTHORITY OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Sanjay Sharawat.

For the Respondent: Mr Digvijay Rai an Mr Pulkit Tyagi, for R-1/AAI.

Mr Sanjay Kumar Pathak, Mrs Kaomudi Pathak, Mr Sunil Kumar Jha and Mr Kushal Raj Tater, for LAC.

Mr Arjun Pant, Advocate for DDA.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition impugning an order dated 26.11.2012 (hereafter 'the impugned order'), whereby their representation for allotment of an alternative plot of 100 sq. mtrs. was rejected by respondent no. 4 (the Nodal Officer). The petitioners further seek an order directing the respondents to allot an alternative/rehabilitation plot measuring 100 sq. mtrs. at rehabilitation site in Village Rangpuri, New Delhi.

2. The petitioners' demand for an alternative plot was rejected on the ground of inordinate delay and also for the reason that the petitioners have been unable to establish that they are the heirs of Late Smt. Chandrawati, who stated to be the daughter of Late Shri Arjun Singh.

3. The principal controversy involved in this petition relates to the entitlement of Late Shri Arjun Singh for allotment of an alternative plot in lieu of his land holding in residential area of village Nangal Dewat, which was acquired for expansion of Palam Airport, New Delhi.

4. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

4.1 The lands in the village *abadi* of the village Nangal Dewat were subject matter of Notification dated 28.04.1972 issued under Section 4 of the Land Acquisition Act, 1894 (hereafter 'the Act'). The said land was acquired for the expansion of the Palam Airport at New Delhi. The Notification under Section 4 of the aforesaid Act was followed by notifications under Sections 6, 9 & 10 of the said Act.

4.2 In order to ascertain the amount of compensation payable, the Land Acquisition Collector (LAC) conducted a survey of the acquired land which, *inter alia*, reflected that Late Shri Arjun Singh and Late Shri Raghunath both sons of Late Shri Shera were owners of certain houses/lands on the date of the notifications. Subsequently, an Award (Award no.16/1986-87) dated 14.08.1986 was also published. Admittedly, both Late Shri Arjun Singh and Late Shri Raghunath were entitled to compensation for acquisition of their land in the Village *abadi* area.

4.3 The Notifications issued under sections 4 and 6 of the Act pertaining to Village Nangal Dewat were subject matter of challenge in a petition filed in this court: *W.P.(C) 481/1982* captioned '*Daryao Singh & Ors. v. Union of India*'.

4.4 At a hearing held before this Court on 02.08.2001, in the aforesaid matter, the Court was informed that an alternative piece of land for the purposes of residence of the persons whose land was being acquired had been identified and a scheme would be prepared for allotting alternative plots to residents of Village Nangal Dewat whose lands were being acquired. The persons whose names appeared in the Award would be eligible for allotment of an alternative plots under the scheme. In view of the above, the petitioners in *W.P.(C) 481/1982* gave up their challenge to the acquisition proceedings and the petition was disposed of.

4.5 On 19.09.2003, this Court passed another order in the disposed of writ directing the Government of Delhi to provide the list of persons whose names appeared in the record at the time of acquisition of land. The said list was also directed to be supplied to Delhi Development Authority (DDA) for the purposes of allotment of land to persons whose lands were acquired by the Government. Subsequently, on 29.10.2003, this Court further directed that the list of persons whose lands were acquired be filed in the Court by the Land Acquisition Collector and the Airport Authority of India (AAI) was directed to prepare a list of persons, who would be entitled for allotment of an alternative plot of land.

4.6 Undisputedly, the list submitted at the material time indicated plots of land aggregating 631 sq. yards to be in the name of Late Shri Raghunath s/o Late Shri Shera and Late Shri Arjun Singh s/o Late Shri Shera. The

relevant extract of the index Lal Dora Village Nangal Dewat, on the basis of which the Award (Award no.16/86-87) was passed is reproduced below:-

**EXTRACT OF INDEX LAL DORA VILLAGE NAGAL
DEWAT AWARD NO. 16/86-87**

S.NO	NAME OF OWNER OF HOUSE	SHARE	KHASRA NO	ARREA INSQ YDS	REMARKS
113.	A. Raghunath S/O Shera B. Arjuri S/O Shera	½ Share ½ Share	1243	380	
245.	A. Raghunath S/O Prabhu B. Arjun S/O Shera	½ Share ½ Share	1243	146	
274.	A. Raghunath S/O Prabhu B. Arjun S/O Shera	½ Share ½ Share	1243	105	

4.7 Certain objections were filed to the said list and certain persons also filed applications before this Court in W.P.(C) 481/1982 seeking impleadment and adjudication of various issues regarding their eligibility

for allotment of alternative plots. The said persons were directed to approach the Nodal Officer with their grievances.

4.8 Pursuant to the aforesaid directions, an application was made by the sons and grandsons of Late Shri Raghunath claiming that the land measuring 380 sq. yards in Khasra no.1243 had been incorrectly recorded as equal share to Late Shri Raghunath and Late Shri Arjun Singh. According to the said applicants, the plot of land measuring 380 sq yards ought to have been recorded in the name of Late Shri Raghunath, as the said plot of land was the subject matter of gift deed registered on 24.06.1950.

4.9 The said contention was accepted by the Nodal Officer and by an order dated 08.12.2004, it was directed that the land measuring 380 sq. yards be recorded in the name of Late Shri Raghunath s/o of Late Shri Shera for the purposes of determining the eligibility for an alternative plot of land. Thus, out of the total land of measuring 631 sq. yards standing in the names of Late Shri Arjun Singh and Late Shri Raghunath, 505.50 sq. yards was reflected in the name of Late Shri Raghunath and the balance 125.50 sq. yards continued to be reflected in the name of Late Shri Arjun Singh s/o Late Shri Shera.

4.10 A consolidated list of 316 persons who were found entitled for allotment of rehabilitation plot was published on 16.12.2004 by the Nodal Officer. The names of Late Shri Arjun Singh s/o Late Shri Shera and Late Shri Raghunath s/o Late Shri Shera were reflected at sl.no.144 and 145 of the said list. The relevant extract of the said list read as under:-

Sl. No.	NAME OF	TOTAL	TOTAL	REMARKS
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	ENTITLED PERSONS	AREA (SQ. YARDS)	AREA (SQ. MTR.)	
144	Late Rugh Nath s/o Shera	505.50	422.66	
145	Late Arjan s/o Shera	125.50	104.93	

4.11 Thereafter, on 25.01.2005, the Nodal Officer sent a letter to the AAI, *inter alia*, stating as under:-

“7. Two different units have been shown at Sl. No. 144 and 145 in the names of Late Rugu Nath s/o Shera and Late Arjan s/o Shera. Shri Rugu Nath s/o Shera was brother of Late Arjan s/o Shera and died issueless. Hence, these units be merged as single unit in the name of Arjan s/o Shera clubbing the landholdings shown against these units.”

4.12 In terms of the aforesaid directions, the land holding in the name of Late Shri Raghunath s/o Late Shri Shera was merged with the land holding of Late Shri Arjun Singh s/o Late Shri Shera. Admittedly, the same was erroneous. Consequently, Shri Jagdish Singh s/o Late Shri Raghunath sent a letter (the letter is undated but is stated to have been sent on 02.09.2005) requesting that the records be corrected as an incorrect statement had been made to the Nodal Officer that Late Shri Raghunath Singh had died issueless. The Nodal Officer was informed that Late Shri Raghunath had expired on 09.08.1992 leaving behind 3 sons and 3 daughters. It was also stated that Late Shri Arjun Singh, the brother of Late Shri Raghunath who separately owned 125 sq.yards had expired in 1990 leaving behind his daughter, namely, Chandrawati, as a sole legal heir. It was stated that she

too had expired some time in the year 2000 and her legal heirs are alive.

The relevant extract of the said letter is quoted below:-

“On verification from the office of A.A.I., applicants came to know that on 27th December some villagers Alongwith Sh. Vijay Kumar Lochav, local M.L.A. visited the office of Nodal Officer and made false statement/submission that father of the applicant late Raghunath died issueless.

On the bases of abovesaid wrong statement the Nodal officer wrote a letter No. F.ADM/SW/Rehabilitation/2004/1186 to The General Manager (Land). AAI New Delhi saying that “Two different unites have been shown at. SL. No. 144 and 145 in the name of late Raghunath s/o Shera and Late Arjun s/o Shera. Sh. Raghunath S/o Shera was brother of Arjun S/o Shera and died issueless. Hence, these units be merged as single unit in the name of Arjun S/o Shera clubbing the holdings shown against these units”

After receiving the abovesaid latter The General Manager (Land), AAI merged the applicants plot in the plot of late Arjun and further held the unit in the name of late Arjun s/o Shera. It is submitted that Sh. Raghunath s/o Shera did not died issueless he died on 9th August 1982, leaving behind three sons and three daughters namely 1. Jagdish Singh 2. Ramkavar (deceased) 3. Rameshwar Dayal 4. Smt. Phoolwati 5. Smt. Panmeshwari and 6. Smt. Rame. (All three daughters file affidavit before Tehsildar vasant vihar for not appointing them as legal heir of late Raghunath hence only male members appointed as legal heir of late Raghunath) And Sh. Arjun brother of late Raghunath was separately owner of his share i.e. 125 sq. yds. And died in 1989, leaving behind his daughter namely Smt. Chandrawati, who was his sole legal heir. That Smt. Chandrawati legal heir of late Arjun died sometime in 1995 and now her legal heirs are alive. It is specifically submit that Smt. Chandrawati was permanent resident of village Shersa,

district Sonipat Haryana and she never resided in this village.”

4.13 On receipt of the aforementioned letter, the Nodal Officer directed the Tehsildar (Vasant Vihar) to enquire into the matter and submit its report. The Tehsildar submitted a report indicating the names of legal heirs of deceased Shri Raghunath and this information was forwarded by the Nodal Officer to the AAI by a letter dated 13.09.2005.

4.14 On 05/10.10.2005, the AAI sent a letter to the DDA intimating that the name of Late Shri Raghunath be read as sl. no.142 in place of Late Shri Arjun Singh s/o Late Shri Shera. It was also stated that Late Shri Arjun Singh s/o Late Shri Shera had died issueless and even if Late Shri Arjun Singh's share was merged with his brother, the entitlement of plot would not be affected.

4.15 Apparently, the said correction was carried out in the list of persons entitled for allotment. The name of Late Shri Arjun Singh s/o Late Shri Shera was deleted and the name of Late Shri Raghunath was included in his place.

4.16 Some time, in the year 2007, the possession of lands were taken over by the respondents and alternative plots were allotted.

4.17 Since, the petitioners did not receive any intimation from the respondents regarding allotment of alternative plot; they contacted DDA in July/September, 2010. They also made an application under the Right to Information Act, 2005 seeking the details of allotment made in lieu of land held by Late Shri Arjun Singh.

4.18 Thereafter, the petitioners filed a writ petition in this court - W.P.(C) No.7174/2011- which was withdrawn on 27.09.2011 with liberty to make a representation to the respondents.

4.19 The petitioners made a representation dated 30.09.2011. However, the same was not decided and, therefore, the petitioners once again filed a petition (being W.P.(C) 199/2012), which was disposed of by this Court by an order dated 26.09.2012 directing the Nodal Officer (respondent no.4) to decide the petitioners representation.

4.20 Initially, the petitioners' representation was not decided as the Nodal Officer was of the view that he was incompetent to decide the representation. Thereafter, respondent no.4 was vested with the necessary power and he proceeded to decide the petitioners' representation by an order dated 26.11.2012, which is impugned in the present petition.

5. At the outset, Mr Sharawat, learned counsel for the petitioner states that the petitioners are not pressing their challenge to the order dated 08.12.2004 by virtue of which the share of Late Shri Arjun Singh s/o Shri Shera in land measuring 380 sq. yards was recorded in the name of Late Shri Raghunath. The petitioners have thus restricted their claim for an alternative plot in lieu of 125.50 sq. yards (104.93 sq.mtrs.), which was recorded in the name of Late Shri Arjun Singh.

6. Mr Sharawat, contended that there was no occasion for the petitioners to challenge the list as the name of Late Shri Arjun Singh was duly reflected in the list of entitled persons published by the respondents. He states that apparently, the name of Late Shri Arjun Singh was deleted some time between September, 2005 and in the year 2007. He stated that

the predecessor of the petitioners Smt. Chandrawati was not residing at Village Nangal Dewat but was residing in Sirsa and, therefore, her heirs were not aware of the change that was brought about after 2005. He stated that the land in question was looked after by the sons/grandsons of Late Shri Raghunath and, therefore, the petitioners had no apprehension that they would get their rightful due. He submitted that there was no occasion for the Nodal Officer to delete the name of Late Shri Arjun Singh as no such application had been made by any person and thus, the same is clearly an error for for which the petitioners are not responsible.

7. Mr Digvijay Rai, learned counsel for the AAI countered the submissions made on behalf of the petitioner. He submitted that that the entire village Nangal was aware of the scheme of relocation and, therefore, the petitioners' explanation for delay in approaching the authorities cannot be condoned. Next, he submitted that the policy of rehabilitation was a special scheme made by Ministry of Civil Aviation to rehabilitate those persons, who were affected by acquisition of the *abadi* are of Village Nangal Dewat and since the petitioners were not residing in the village after Late Shri Arjun Singh had expired, none of his legal heirs were affected by acquisition of land and thus were not entitled to an alternative plot.

8. He submitted that the petitioners have not produced Surviving Members Certificate before the Nodal Officer and they cannot now be permitted to claim allotment of a plot under the rehabilitation scheme. Lastly, he referred to the decision of the Coordinate Bench of this Court rendered on 30.05.2007 in W.P.(C) 775/2007, wherein the Court had directed that the entire exercise of vacation of lands at Village Nangal

Dewat will commence on 01.07.2007 and be completed by 31.07.2007 and the allottees of the alternative plot would be given possession of the plots simultaneously during the said period. This Court had directed that the Land Acquisition Collector (LAC) and concerned officials of DDA and AAI would draw a programme to inform each of the allottees and their legal heirs (if the allottees were not alive) with regard to the programme by giving wide publicity to the said programme. He submitted that in view of the aforesaid directions, the petitioners could not be heard to now state that they were not aware of the allotment of an alternative lands.

9. I have heard the learned counsel for the parties.

10. At the outset, it is relevant to mention that the scheme of allotting alternative plots to residents of village Nangal Dewat was in lieu of compensation payable to them under the Land Acquisition Act, 1894. It is thus necessary to bear in mind that the petitioners are not seeking alternative land on account of any welfare scheme but are seeking their right to receive compensation for acquisition of their property.

11. The contention that the rehabilitation scheme was only for the benefit of persons residing in Village Nangal Dewat and since the petitioners were not residing in the Village at the time when the possession of lands were taken over by the respondents, they are not entitled to alternative property, is unmerited. As stated above, the alternative plots of land were allotted in lieu of compensation payable for acquisition of land and the relevant date for determining the entitlement would be the date on which the relevant notifications under the Land Acquisition Act, 1894 were published. The award was made on 14.08.1986 and, therefore, the names of the persons who were entitled to allotment stood frozen much prior to

taking over possession of the lands in question. Thus, all persons whose land was acquired were entitled to allotment of alternative plots as the same were allotted in lieu of compensation.

12. Petitioner nos.1 and 2 claims to be sons and petitioner no.3 claims to be daughter of Late Smt Chandrawati alias Chandro. Smt. Chandrawati is stated to be the only child of Late Shri Arjun Singh. The petitioners are thus claiming an alternative plot as per the entitlement of Late Shri Arjun Singh.

13. The facts narrated above clearly indicate that there is no dispute that Late Shri Arjun Singh was recorded as the owner of land measuring 125.50 sq. yards (104.93 sq. mtrs.). Late Shri Raghunath, who was the brother of Late Shri Arjun Singh was reflected as the owner of land measuring 505.50 sq. yards (422.66 sq. mtrs.). As to who and what prompted the Nodal Officer to merge the land holding of the two brothers is not discernible. However, it does appear that on the basis of some information, Nodal Officer by an order dated 25.01.2005 directed two different units at sl. no.144 and 145 in the names of Late Shri Raghunath s/o Late Shri Shera and Late Shri Arjun Singh s/o Shri Shera be merged. The only reason for merging said units was the assumption that Shri Raghunath Singh had died issueless. Concededly, the said information was incorrect. Thus, the order dated 25.01.2005, directing the merger of units of Shri Raghunath and Late Shri Arjun Singh was palpably erroneous and was liable to be rectified.

14. Admittedly, the application of rectification was made by one of the sons of Late Shri Raghunath, who pointed out that Late Shri Raghunath did not die issueless. He pointed out in his letter that Late Shri Arjun Singh

was also survived by his daughter Smt. Chandrawati, although, she had expired, she too was survived by her heirs. The Nodal Officer directed the Tehsildar to make the necessary inquiry and in this court's view rightly so. The Tehsildar submitted its report informing the Nodal Officer that Late Shri Raghunath was survived by three sons and three daughters.

15. In view of the above report, the order dated 25.01.2005 directing that the units of Late Shri Raghunath and Late Shri Arjun Singh be merged was liable to be recalled/rectified. This is so because the verification done by the Tehsildar clearly established that the said order had been passed on an erroneous assumption that Late Shir Raghunath had died issueless.

16. However, instead of correcting the said error, it appears that the Nodal Officer/AAI proceeded to now erroneously club the holding of Late Shri Arjun Singh's with that of Late Shri Raghunath. There is no plausible reason for the Nodal Officer/AAI to have done so. Having accepted that Late Shri Raghunath had not died issueless, there was no reason for the Nodal Officer to presume that Late Shri Arjun Singh's holding was required to be merged with Late Shri Raghunath. This action of Nodal Officer of AAI is plainly erroneous and is unsustainable.

17. It is also relevant to mention that by the letter dated 02.09.2005 sent by Shri Jagdish Singh s/o Late Shri Raghunath, the Nodal Officer was duly informed not only that Shri Raghunath had not died issueless but also Shri Arjun Singh had also survived by his daughter, who inturn survived by her legal heirs. Curiously, the Nodal Officer had accepted that Late Shri Raghunath had not died issueless but for some reason had decided to merge the holding of Late Shri Arjun Singh with that of Late Shri

Raghunath as stated above. This was wholly erroneous and bereft of any basis.

18. At this stage, it is also relevant to refer to the scheme of allotment of alternative plot, which is set below:-

S. NO	AREA OCCUPIED BY THE VILLAGERS (SQ MTRS)	AREA PROPOSED TO BE ALLOTTED BY AAI (SQ MTRS)
1.	0-32	26
2.	33-48	40
3.	49-80	64
4.	81-100	90
5.	101-140	100
6.	141-180	160
7.	181-250	200
8.	251-350	250
9.	351-550	350
10.	551-800	450
11.	801-1500	550
12.	1500 and above	650

19. As is apparent from the aforesaid scheme, Late Shri Raghunath would be entitled to plot measuring 350 sq. mtrs. as 422.66 sq. mtrs of land was held in his name. Concededly, the heirs of Late Shri Raghunath have been allotted the said plot commensurate with his correct holding. There would be no change in the entitlement of Late Shri Raghunath on account

of inclusion of the land holding of Late Shri Arjun Singh with his holding. This is so because if the land holding of Late Shri Arjun Singh was merged with Late Shri Raghunath - as had been done - the merged holding would be 527.59 sq. mtr. (422.66 + 104.93), which would also result in allotment of a plot measuring 350 Sq. mtrs. In this view, no reduction in the land allotted to heirs of Late Shri Raghunath is required. However, since the heirs of late Shri Arjun Singh had not been allotted an alternative plot in lieu of Late Shri Arjun Singh's land in Village Nangal Dewat. They would be entitled for allotment of the alternative plot as per the scheme, which works out to be a plot measuring 100 sq. mtrs.

20. Insofar as the question of delay is concerned, the petitioners have explained the reason for not approaching this Court immediately after 2007. More importantly, the delay does not entitle the respondents to forfeit the compensation payable for acquisition of land and since the alternative plots have been allotted in lieu of acquisition of land, the respondents are not entitled to deny the same. The respondents cannot expropriate the land of Late Shri Arjun Singh without paying the due compensation.

21. In view of the above, the petition is allowed and the respondents are directed to allot an alternative plot measuring 100 sq. mtrs in Village Rangpuri to the legal heirs of Late Shri Arjun Singh after due inquiry and verification of their identity. The petitioners will fully cooperate with the concerned authorities by submitting the necessary documents to establish: (a) that Late Smt. Chandrawati was the sole legal heir of Late Shri Arjun Singh; and (b) the identity of all legal heirs of Late Shri Chandrawati.

22. The petition and pending applications are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

DECEMBER 19, 2017
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