

\$~

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

Reserved on : 25th May, 2018

Date of Decision: 4th July, 2018

+

RFA 224/2016

UNION OF INDIA & ANR.

..... Appellants

Through: Mr. Sanjiv Kumar Saxena and Mr. R. Mishra, Mr. M.K. Tiwari Advocates.
(M-9811673689)

versus

SUDHA NATH & ANR.

..... Respondents

Through: Mr. Amit Singh Chadha, Senior Advocate with Mr. Kunal Sinha Advocate. (M:9350859333)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The sentiment of Non-Resident Indians (*hereinafter*, 'NRIs') to be tied to their country is the fulcrum of this dispute. The present appeal is part of a batch of 26 appeals arising from the same scheme for allotment of lands which was advertised by the Government. All the legal issues are being determined and decided in the lead matter ***RFA 765/2015 Union of India v. G.Singh*** (*hereinafter*, '*G.Singh*'). On facts, separate orders have been passed in each of the appeals.

2. On 6th February, 1978, the Government of India launched a scheme for "*Allotment of land in Delhi to Non-Resident Indians*" (*hereinafter*, '*the scheme*') living abroad to build residential house in Delhi. The scheme was launched by the Ministry of Works and Housing, L&DO. As per the prospectus and application form the objective of the scheme was as under:

“Objectives

This scheme is intended to facilitate Non-Resident

Indians living abroad to build residential houses in India and thus to satisfy their natural urge to own property in their own country and to settle down therein whenever they wish to do so. As it is difficult for such persons living abroad to acquire properties through Government auctions or private dealers, it has been decided to frame a scheme which will facilitate this.

This scheme will, for the present, be introduced in Delhi on an experimental basis.”

3. Several NRIs applied under the above Scheme for allotment of plots. After applications were made, earnest money was paid and the agreement for lease was duly signed by them and submitted to the Appellant i.e., Government (*hereinafter*, ‘Government’). Thereafter, a decision was taken to revoke the Scheme and cancel the Scheme itself. This led to the filing of writ petitions challenging the said cancellation by the Government. The cancellation came to be upheld in two judgments of the Delhi High Court in W.P.(C) 2372/1981 titled as ***R. K. Deka & Ors. v. Union Of India & Anr*** and ***R. K. Deka v. Union of India AIR 1992 Del 53***. The Supreme Court also did not interfere with the findings of the Delhi High Court.
4. Apart from the writ petitions, some other Applicants filed civil suits seeking specific performance and damages. The said suits were heard and disposed of by the Trial Court on 7th April, 2014.
5. First Appeals challenging the said order of the Trial Court have been preferred. The present appeal is one amongst the said batch of cases. The lead judgment has been passed today in ***G. Singh (supra)***. The facts in the present case are similar to the case of ***G. Singh (supra)***.
6. The Application in the present case was made on 22nd July, 1978. Earnest Money Deposit of Rs. 10,000/- was made. The agreement for lease

was also duly signed and sent by the Respondents/Plaintiffs (*hereinafter, 'Plaintiffs'*). The submission of the same was acknowledged on 22nd August, 1978 by the Government. On 19th February 1979, the Government informed the Plaintiff that the allotment would be made by the end of 1979. The Plaintiff was working as part of the Engineering Corps at Abu Dhabi, UAE and on 23rd March 1979, he informed his latest address for correspondence. Since the allotment was to be made in the end of 1979, after waiting a few months, the Plaintiff made enquiries on 24th August 1980 about the status of the allotment. On 18th September 1980, he was informed by the Government that the anticipated date of allotment would be December 1980. The Plaintiff again made enquiries on 31st January 1981 so that he could arrange his finances. He again enquired on 29th March 1981. However, there was no response.

7. On 19th September 1981, the Government claims to have sent a letter intimating the Plaintiff that it has decided to drop the scheme. However, this letter is disputed by the Plaintiff. By letter dated 30th September, 1983 the Government communicated to the Plaintiff that a decision has been taken to cancel the Scheme. Thereafter the present suit was filed by the Plaintiffs seeking the following reliefs:

"PRAYER

That the Plaintiff prays that:

- (i) a decree for specific performance of the agreement to transfer and convey the perpetual leasehold rights in a plot of land measuring 400 sq. yds. situate in the area shown in the lay out plan of the land on Badarpur Mehrauli Road, New Delhi as per the scheme; and or*
- (ii) directing the defendants to transfer the perpetual leasehold rights in the plot measuring 400 sq. yds.; and*
- (iii) a decree be passed directing the defendants to*

deliver the vacant and peaceful possession of plot measuring 400 sq. yds. situate in the area shown in the lay out plan of the land on Badarpur Mehrauli Road, New Delhi on the basis of the already executed deed of conveyance in respect of the said plot.

(iv) if this Hon'ble Court finds/holds that the specific performance of the contract or a direction/mandatory injunction directing the defendants to execute a sale deed in respect of perpetual leasehold rights in the said plot of land measuring 400 sq. yds. situate in the area shown in lay out plan of the land on Badarpur Mehrauli Road, New Delhi cannot be granted or made, a decree of recovery of Rs.10 lakhs in hard currency (US Dollars) as damages including recovery of Rs.10,000/- (Rupees ten thousand only) in hard currency (US Dollars) paid as part of the plot to the defendants be passed in favour of the plaintiffs and against the defendants with cost.....”

The Trial Court decreed the suit vide judgment dated 7th April, 2014.

8. The present Appeal was filed before this Court and on 19th April, 2016, notice was issued in the appeal and the impugned judgment was stayed. Thereafter it has been taken up for hearing. The issues that arise in this case are the same as in RFA 765/2015 i.e., **G. Singh (supra)**. The four broad questions that arise in these appeals are-

- 1) Whether the judgments in the W.P.(C) 2372/1981 titled **RK Deka vs. Union of India** constitute *res judicata*?
- 2) Whether the suits are maintainable in view of the cancellation having been upheld in the above writ petition?
- 3) Whether the contract between the Government and the Applicants stood concluded?
- 4) Whether the Applicants/Plaintiffs are entitled to damages/compensation and if so, to what amounts?

9. All the issues have been decided in favour of the Plaintiff/Respondent by the judgment of today's date in RFA 765/2015 i.e, **G. Singh (supra)**. The findings therein would be applicable herein and bind the decision in the present Appeal.

10. The Government has, by scrapping the scheme, retained the entire land in its possession and has, hopefully put it to good use. It is prime land located in Delhi. The Plaintiffs have not only litigated with the Government for the last almost 34 years, but they have also been deprived of owning a plot of 400 sq. yds. in a city like Delhi. Thus, compensation is the least that can be given to them under these circumstances. The award of compensation of Rs.11,20,000/- by taking the market rate prevalent at the time of cancellation in 1983, is a reasonable basis to quantify damages due to breach. The same is also completely justified in these facts. While this Court does not agree with some of the observations of the Trial Court in respect of 'acts of criminal negligence', the conclusion arrived at by the Trial Court, in respect of award of damages, is liable to be upheld.

11. The amount as per the decree passed by the Trial Court, would be liable to be paid by the Government to the Plaintiffs along with 8% interest from the date of filing of suit till the date of payment. The Government is directed to make payment to the Plaintiffs within 8 weeks, failing which 12% interest would be payable on the decretal amount.

12. Appeal is dismissed in the above terms.

PRATHIBA M. SINGH
JUDGE

JULY 04, 2018/dk