

\$~

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

Reserved on : 25th May, 2018

Date of Decision: 4th July, 2018

+

RFA 311/2016

UNION OF INDIA & ANR.

..... Appellants

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

versus

KANHIYALAL KEWALRAMANI & 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 the 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.

The 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 RFA 765/2015 i.e., ***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 13th January, 1979. 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 by the Government, on 16th March 1979. Thereafter, on multiple occasions i.e., on 25th April, 1979 and 23rd July, 1979 the Government asked the Plaintiffs to submit the particulars of their passports for their application to be considered for allotment. Finally, the Government on 25th October, 1979, the Government acknowledged receipt of the complete application of the Plaintiffs. By this letter, the Government also informed the Applicant that the allotment of plots will be made by the end of 1980. Thus, the Plaintiffs had fulfilled all the formalities.

7. By letter dated 26th July, 1984 the Government communicated to the Plaintiffs 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 11th May, 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 Plaintiffs/Respondents 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 1984, 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