

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

% **Date of decision: 14th August, 2019.**

+ **CS(OS) 109/2009**

SOHAN LAL & ORS

..... Plaintiffs

Through: Mr. Rajat Navet and Mr. Kushagra
Pandit, Advs.

Versus

UNION OF INDIA AND ORS.

..... Defendants

Through: Mr. Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar,
Advs. for D-1/UOI.
Mr. Digvijay Rai and Mr. Aman
Yadav, Advs. for D-2/AAI.
Mr. Subrat Deb and Mr. Sujeet
Kumar, Advs. for D-3/DDA.
Mr. S.K. Rout and Mr. Aman
Mehrotra, Advs. for D-13,15,16&17.
Mr. Anil Tomar, E.A.(A), Director of
Punchayats.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The ten plaintiffs, of which five are the sons of Yad Ram and the other five are sons of Udey Ram, instituted this suit in the Court of the Senior Civil Judge, Delhi, (i) for declaration that the plaintiffs are entitled to (a) 500 sq. yds. of land in Khasra No.1242; (b) 2/3rd share in 150 sq. yds. of land in Khasra No.1210; (c) 302 sq. yds. of land in Khasra No.1238/2 and 1238/3; and, (d) 1/3rd share in 78 sq. yds. of land in Khasra No.1243, i.e. total land admeasuring 928 sq. yds., in Village Nangal Dewat, Delhi and entitled to allotment of alternate plot in lieu thereof; (ii) permanent

injunction restraining the defendants No.1 to 3 Union of India (Land Acquisition Collector), Airport Authority of India (AAI) and Delhi Development Authority (DDA) from dispossessing the plaintiffs from the said land till allotment of alternate plot; and, (iii) mandatory injunction directing the defendants No.1 to 3 to make allotment of alternate land to the plaintiffs.

2. Besides the defendants No.1 to 3 aforesaid, defendants No.4 and 5, being the sons of Changdi Ram, defendants No.6 to 10 being legal representatives (LRs) of Changdi Ram and defendants No.11 to 17 being LRs of Surat Ram, were also impleaded as defendants. Vide order dated 19th July, 2016, Director of Panchayats (GNCTD) has also been impleaded as defendant No.18.

3. At this stage, it is deemed appropriate to set out the factual position.

4. On 28th April, 1972, Notification under the Land Acquisition Act, 1894 for acquisition of land at village Nangal Dewat, for purposes of expansion of Indira Gandhi International Airport, was issued. Writ petitions were filed in this Court challenging the said acquisition. Vide a consent order in the said writ petitions, apart from compensation to be paid for acquired lands, those who would be uprooted from their homes, were agreed to be provided alternative land for their residence.

5. This court in the aforesaid litigation, with the consent of the parties, devised a scheme for allotment of alternative land and a Nodal Officer was appointed for preparing the list of persons eligible for allotment of alternate land and for deciding the objections to the list of eligible persons so drawn up and guidelines framed for determining the eligibility.

6. Objections to the list so prepared by the Nodal Officer, including by filing fresh writ petitions, were preferred by a large number of persons.

7. Finally, vide judgment dated 30th May, 2007 reported as ***Airports Authority of India Vs. Karan Singh*** 141 (2007) DLT 277, while disposing of the matters, it was inter alia held that no further petitions challenging the orders of the Nodal Officer or by persons who never filed their claims before the Nodal Officer would thereafter be entertained, either by this Court or by the Civil Court. It was reasoned, that all the claimants belonged to the same village Nangal Dewat and the litigation had been on since 1982 and it was inconceivable that any resident of the village would have been unaware of the pendency of the proceedings and the claims filed by the residents of that village. It was further reasoned that time limit had been set in the guidelines for the Nodal officer to entertain claims and it had been made clear that no further claims beyond the time set in the order dated 26th August, 2004 would be entertained; however, even thereafter the Court had permitted some claims to be filed before the Nodal officer; however all claims must come to an end at some stage and the time limit cannot be open ended, to enable the fence sitters to take a chance, after watching the outcome of the petitions filed by the others. It was recorded that this Court did not want to encourage this. It was felt that if the Court continued to interfere with the orders of the Nodal Officer, others similarly situated, who had not approached the Court, may want similar relief. It was clarified that the relief being granted in some of the petitions was confined to the petitions covered by that judgment and would not result in re-opening the claims of others who had not challenged the order of the Nodal Officer till then. It was reasoned, that the award of acquisition was made in 1986 and till

August, 2001, the petitions were pending in the Court and the petitions which were decided were being heard from December, 2006 onwards and that in these circumstances, it was impossible to believe that other residents of the village were not aware of the pendency of the cases before the writ Court and the writ Court was thus not prepared to entertain those petitions which had been filed at a very late stage. It was thus ordered that no further petitions challenging the order of the Nodal officer would be entertained and that this approach was necessary keeping in view the time bound directions the Court had made earlier.

8. It is thereafter that the present suit was filed.

9. It is informed that some other persons had also filed similar suits before the Senior Civil Judge, Delhi and in some of such suits, interim orders were also passed; Delhi International Airport Limited (DIAL), to whom AAI leased out the Airport, being affected by such interim orders, filed CM(M) No.564/2007 in this Court and vide order dated 24th April, 2007, all the said suits including this suit, were directed to be requisitioned to this Court. It is also informed that vide subsequent order dated 31st July, 2017 in CM(M) No.564/2007, all the requisitioned suits were ordered to be listed before the Hon'ble Judge who had passed the judgment in *Airports Authority of India Vs. Karan Singh* supra; however owing to change of Roster, the Judge who had passed the said judgment was not presiding over the writ Court and the Judge who was then presiding the writ Court, vide order dated 1st December, 2008 in CM(M) No.1066/2007, directed all the requisitioned suits to be registered as Original Civil Suits before this Court. This is how this suit is before this Court.

10. This suit came up before the undersigned on 18th July, 2019 for framing of issues, when on enquiry, the counsel for defendant AAI handed over the order dated 30th November, 2017 of the undersigned in CS(OS) No.130/2009 titled ***Balwan Singh Vs. International Airport Authority of India Limited & Ors.*** Being of the opinion that since the issue for determination in the suit was only “whether the plaintiffs were entitled to alternate land in terms of the scheme drawn up by this Court and had not been allotted the said land” and being further of the opinion that no evidence is required in the suit and the suit can be decided after hearing the counsels, the suit was posted for such hearing for today.

11. The counsel for the plaintiffs, the counsel for the defendant AAI, the counsel for defendant Land Acquisition Collector, UOI and the counsel for defendant DDA have been heard.

12. The case of the plaintiffs, as set out in the plaint, is (i) that the predecessors-in-interest of the plaintiffs namely Yad Ram and Udey Ram, on 22nd July, 1961 purchased a piece of land measuring 500 sq. yds., by a registered Sale Deed; (ii) that the predecessors-in-interest of the plaintiffs exchanged the said 500 sq. yds. of land for land measuring 500 sq. yds. in Khasra No.1221 of Changdi Ram and constructed a house thereon and were in joint possession thereof; (iii) that the predecessors-in-interest of the plaintiffs, besides the aforesaid land, were also in joint possession of land *ad measuring* 220 sq. yds. in Khasra No.1199 and land *ad measuring* 151 sq. yds in Khasra No.1210; (iv) that the predecessors-in-interest of the plaintiffs were also allotted plots No.5 and 6 measuring 3 *biswas* each out of land comprised in Khasra Nos.1238/2 and 1238/3; (v) that in the survey

conducted by the Nodal Officer in the year 1972, the compensation of structure existing on Khasra No.1221 was assessed in favour of the plaintiffs, while the land underneath the said structure was shown in the account of the defendants no. 4 to 10 and in lieu whereof the defendants no.4 to 10 were allotted alternate plot; (vi) that allotment of alternate plots of 64 sq. mtrs. and 26 sq. mtrs. in Plots No.53-B and 79-A was recommended in the name of Yad Ram and Udey Ram respectively, being the predecessors of the plaintiffs; and, (vii) that as per the scheme drawn up by this Court, the plaintiffs no.1 to 5 are entitled to get alternate plot of 450 sq. mtrs. and plaintiffs no.6 to 10 are also entitled to allotment of alternate plot of 450 sq. mtrs. and which has been denied to them.

13. The counsel for the plaintiffs has additionally argued, (i) that the plaintiffs have not taken possession of the alternate land *ad measuring* 64 sq. mtrs. and 26 sq. mtrs. recommended to be allotted to them; (ii) that 500 sq. yds. of land which the predecessors-in-interest of the plaintiffs had purchased vide a registered Sale Deed was situated within the *Lal Dora* (old *abadi*) of village Nagal Dewat; (iii) that there are no revenue records of *Lal Dora* area; (iv) the 500 sq. yds. of land in Khasra No.1221 which the predecessors-in-interest of the plaintiffs received in exchange of 500 sq. yds. purchased vide Sale Deed, was situated in extended *abadi* area, of which land records are maintained; (v) that as per the scheme, while the allotment of alternate plot in lieu of lands situated within the *Lal Dora* was on the basis of possession thereof, the allotment of alternate plot in lieu of lands situated in the extended *abadi* area was on the basis of entries in the revenue record; (vi) that since the plaintiffs, though owners vide registered Sale Deed of 500 sq. yds. of land within the *Lal Dora* were owners thereof, but

owing to the exchange aforesaid, at the contemporaneous time were not in possession thereof; (vii) similarly though the plaintiffs were in possession of the 500 sq. yds. in the extended *abadi* area but their names were not entered in the revenue records; (viii) the plaintiffs, in this manner, have been deprived of alternate land in lieu of the said 500 sq. yds. of land; (ix) that the claim of the plaintiffs for the other plot of 450 sq. mtrs. is in lieu of land *ad measuring* 302 sq. yds. in Khasra No.1238/2 and 1238/3 which was allotted by the *Gram Sabha* to the community of *Harijans* and the said community had allotted 302 sq. yds. of the said land to the predecessors-in-interest of the plaintiffs; and, (x) that the plaintiffs have been declined alternate land in lieu of the said 302 sq. yds. of land on the ground of the land having been allotted by the *Gram Sabha* to the community and not because the plaintiffs were not found in possession of the said land; attention is drawn by the counsel for the plaintiffs to the order dated 17th November, 2006 of the Nodal Officer in this regard at page 62 to 66 of Part-III A file.

14. The counsel for the plaintiffs, on enquiry, has also stated that under the scheme, compensation for acquisition was to be awarded to those not taking alternate land and since the plaintiffs have been seeking alternate land, they have also not been paid compensation for their land which has been acquired.

15. The counsel for the plaintiffs has contended, that the plaintiffs, in equity and justice, are entitled to alternate land for their land which has been acquired and have neither received compensation nor alternate land.

16. The counsel for the defendant AAI has drawn attention to undated Order No.112/2004 at page 61 of Part-III A file. However the counsels are

ad idem that the said order is of prior to the order dated 17th November, 2006 supra of the Nodal Officer.

17. In the Order No.112/2004, on the application of the plaintiffs in pursuance to the order in CWP No.481/1982, the Nodal Officer has found/observed (i) that the land *ad measuring* 18 *biswas* in Khasra No.1238/2 and Khasra No.1238/3 was recorded in the common name of Ahle Harijanan; that wherever the intention of the *Gram Sabha* was to allot the land to the individual in their own name, even to the landless persons of the village, the *Gram Sabha* had categorically and specifically allotted the land in the specific individual names, as in the case of Khasra No.1236; in the instant case, the entry in the revenue record has been made in the name Ahle Harijanan and wherefrom it appeared that the land was not allotted to the predecessors-in-interest of the plaintiffs and was kept reserved for common utility purpose for the community as a whole; (ii) thus the claim of the plaintiffs for alternate land in lieu thereof could not be accepted; (iii) that the heirs of Changdi Ram had raised objections to the claim of the plaintiffs for alternate land in lieu of land in Khasra No.1221 which was recorded in the name of Changdi Ram; (iv) that the plaintiffs had been unable to produce the original Sale Deed in their favour with respect to 500 sq. yds. of land within the *Lal Dora*; and, (v) thus the claim of the plaintiffs for alternate land in lieu of land in Khasra No.1221 could not be accepted.

18. The counsel for the defendant AAI has also handed over a copy of ***Bhoop Singh Vs. DDA*** 2013 SCC OnLine Del 1470 (DB), wherein (i) the challenge to the scheme framed was negated, reasoning that in the absence of any legal right to claim alternative plots, it was for the Government to

decide to what extent and on what basis it wanted to rehabilitate those persons whose name appeared in the list of the year 1958, despite the fact that they had no legal right to obtain alternative plots from the Government by way of their rehabilitation; (ii) it was held that unless it is shown that the criteria laid down by the government was irrational, arbitrary or discriminatory, the Court would not be justified in interfering with the decision taken by the government in this regard; (iii) it was found that there was nothing arbitrary or discriminatory in the government deciding to rehabilitate only those persons who were occupying the community land, not only in the year 1958 but also in the year 2007; the purpose being to rehabilitate only those who continued to occupy the aforesaid land throughout since the time it was divided amongst the members of the community; (iv) it was observed that the Government of India was not unjustified in deciding not to allot alternative plots to those who had already parted with possession of the community land to others by way of sale, transfer or in some other manner; (v) it was reasoned that such persons having already taken advantage of the community land by selling or transferring it to outsiders, these persons cannot be allowed to derive yet another advantage from the same community land by way of allotment of alternative plots; (vi) as regards the persons who did not appear in the list of 1958, it was stated that since these persons did not possess the community land at the time it was divided amongst its members, they cannot claim allotment of alternative plots on the strength of acquisition of the community land from those who were occupying the said land in the year 1958.; (vii) with regard to those who moved to another area by the time survey/inspection was carried out in June--July, 2007, it was observed that

the government was justified in denying the alternative plots to such persons who were no more in need of rehabilitation; (viii) it was noted that there was no revenue record in respect of *Lal Dora (abadi)* though even the land comprised in *Lal Dora (abadi)* had been acquired; the survey was, therefore, necessary to record details of the persons in occupation of the land and structures constructed thereon, for the purpose of payment of compensation as, to the extent the land is comprised in *Lal Dora (abadi)*, the possession is considered equivalent to ownership; and, (ix) it was further noted that on the other hand, as regards the land comprised in extended *abadi*, the revenue record being available, it is only such record which indicates the ownership of the land; no compensation for land was paid to the persons occupying the community land in extended *abadi* since such land belonged to and was owned by *Gram Sabha* – they were given compensation only in respect of structures, trees and the improvements.

19. The counsel for the defendant AAI has thus contended that as per the dicta of the Division Bench aforesaid in ***Bhoop Singh*** also, the plaintiffs have been rightly denied the alternate plot in lieu of 500 sq. yds. of land of which the predecessors-in-interest of the plaintiffs held Sale Deed, inasmuch as the plaintiffs were admittedly not in possession thereof and inasmuch as the land in possession of the plaintiffs in Khasra No.1221 of extended *abadi* admittedly was not recorded in the name of the plaintiffs in the revenue records.

20. Similarly the plaintiffs have been rightly denied alternate land in lieu of Khasra No.1238/2 and 1238/3 which was admittedly community land.

21. The counsel for the defendant DDA has contended that DDA has delivered possession of whatsoever land was recommended to be allotted.

22. The counsel for the plaintiffs, in rejoinder has contended (i) that the heirs of Changdi Ram who had earlier filed objections as noted in the order dated 17th November, 2006 of the Nodal Officer, have in this proceeding filed no objection to allotment of alternate land in lieu of land in Khasra No.1221 to the plaintiffs; (ii) that in the minutes of the meeting held on 24th July, 2007, copy of which has been received under Right to Information Act, 2005 only in the year 2015 and copy of which is handed over and is taken on record, the plaintiffs are entitled to be allotted land in lieu of Khasra No.1238/2 and 1238/3; and, (iii) that for the community land, people who were in the original list of 1958 as well as in possession in the survey in 2007, have been given alternate land and the plaintiffs though figured in the 1958 list but do not figure in the 2007 list are covered by the categories drawn up in the minutes of meeting held on 24th July, 2007.

23. The counsel for defendant AAI has contended that 'no objection' today of the heirs of Changdi Ram is of no avail and is *mala fide*. It is contended that as per the scheme, the maximum size of alternate plot which could be allotted had been kept and the heirs of Changdi Ram, after being allotted the maximum size, if possessed of more land at the time of acquisition, are not entitled to alternate land in lieu thereof and are now not entitled to any alternate plot, to which they may give the NOC to the plaintiffs. It is also contended that the minutes of the meeting of 24th July, 2007 were considered in ***Bhoop Singh*** supra. Attention in this regard is

drawn to para 3 of the said judgment. It is thus contended that on the basis of the said minutes no allotment can be sought by the plaintiffs.

24. Para 3 of the judgment supra in **Bhoop Singh** refers to the meeting held on 14th March, 2007. There is no express reference to the meeting or minutes of the meeting of 24th July, 2007. The counsel for the defendant AAI however contends that in the said meeting of 24th July, 2007 the recommendations made in the meeting of 14th March, 2007 were merely accepted.

25. I have considered the rivals contentions.

26. As would be evident from the above, the claim of the plaintiffs is on the basis of possession of land in Khasra No.1221 of extended *abadi* of which the predecessors-in-interest of the plaintiffs came in possession of in exchange for the land *ad measuring* 500 sq. yds in *Lal Dora* purchased vide registered Sale Deed. However in **Bhoop Singh** supra it has categorically been held that while allotment of alternate plot in lieu of land situated within the *Lal Dora* was on the basis of possession, the allotment of land in lieu of land in extended *abadi* was on the basis of revenue records. The plaintiffs were admittedly not in possession of any land within the *Lal Dora* even though they claim ownership by way of a registered Sale Deed and were also admittedly not having any land within the extended *abadi* in their own names. Thus the question of entitlement of the plaintiffs to alternate land on the said basis does not arise and no error can be found with the reasoning of the Nodal Officer declining alternative allotment in lieu thereof. No evidence is required to be recorded for determination of the said entitlement

claimed in the suit. It is not even the argument that any evidence is required to be led.

27. The only other entitlement to alternate land claimed in the suit is in lieu of land in Khasra No.1238/2 and 1238/3. As per dicta in **Bhoop Singh** supra, the plaintiffs, being admittedly not in possession of any land in the said Khasra numbers in the year 2007, are not entitled thereto as well.

28. It only remains to be examined, whether the plaintiffs have any entitlement or which is required to be determined by requiring evidence, in terms of the minutes of the meeting held on 24th July, 2007 and which are not disputed by the defendant AAI also.

29. Para 4 of the said minutes, under clause (ii) whereof the plaintiffs claim entitlement, refers to a list prepared of persons found in possession of vacant plots for land “in other Khasra number” prepared an Annexure-C of the report of survey in June/July, 2007. The clauses of para 4, including clause (ii) on which reliance is placed by the counsel for the plaintiffs, are with respect to the said Annexure-C only. Annexure-C is however not available, neither with the counsel for the plaintiffs nor with the counsel for the defendants. It is significant that the claim of the plaintiffs in the suit is also not on the basis of the said list; rather the suit is found to have been instituted on 31st January, 2007 i.e. prior to the minutes of the meeting held on 24th July, 2007.

30. It cannot be lost sight of that this proceeding is a suit and trial whereof is confined to the parameters of pleadings thereof. Though the suit has been pending for the last 12 years, but the plaintiffs have not claimed

any amendment to the plaint to claim the reliefs on the basis of minutes of the meeting dated 24th July, 2007. The said minutes were also admittedly received by the plaintiffs under cover of letter dated 12th August, 2015, more than four years back and thereafter also no steps have been taken. Thus the need to keep the suit pending for the purpose of argument urged today for the first time by handing over in the Court a copy of the minutes of the meeting dated 24th July, 2007, is not felt.

31. A plaintiff, in a suit, cannot be permitted fishing and roving enquiry, by merely contending that it is the defendant who is in possession of all the records and throwing the onus on the defendant. It was for the plaintiffs here, to establish a case for entitlement to alternate land under the scheme framed under the directions of this Court and the plaintiffs, on the pleadings are unable to make out even a semblance of a case of, the decision of the Nodal Office declining alternative plot to the plaintiffs, being contrary to the scheme in any case. As has been held by the Division Bench, outside the scheme, the plaintiffs have no right.

32. There is merit also in the contention of the counsel for the defendant AAI that even though the minutes of 24th July, 2007 are not expressly mentioned in **Bhoop Singh** supra but the said judgment being of 16th April, 2013 and all the relevant records being available to the Division Bench, this Court in any case is bound by the findings returned by the Division Bench and as per which, the plaintiffs admittedly having not been found in possession in June/July, 2007, are not entitled to alternate plot in lieu of 302 sq. yds. of land in Khasra No.1238/2 and 1238/3.

33. The suit is thus dismissed.

34. However I refrain from imposing any costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

AUGUST 14, 2019

‘bs/pp’

