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

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Date of decision: 06.09.2019

+ W.P.(C) 542/2016 and CM APPL. 2211/2016

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..... Petitioner

Through Mr.Avadh Kaushik and Mr.Devashish
Maharishi, Advs.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr.Ankur Chhibber and Mr.Bhanu
Gupta, Advs. for R-1.
Mr.Raja Mahapatra and Mr.Sumit
Mishra, Advs. with Mr.S.K.
Srivastava, Branch-in-Charge EP
Cell) for L& B/R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed seeking a writ of certiorari for quashing of the communication/order dated 20.07.2012 passed by respondent No.1 cancelling the Sanad allotted to the petitioner and his family under The Displaced Persons (Compensation and Rehabilitation) Act, 1954 for Village Mehrauli and restoring the order of the allotment of land at Jharoda Mazra Burari, Delhi where, it is claimed, no land is available.
2. The grievance of the petitioner is that Sh. Shohbat Ram, the great grandfather of the petitioner was the owner of an agriculture land situated in District Montgomeri, Punjab, now part of Pakistan, before partition of India. He migrated to India in 1947. Since Sh.Shohbat Ram was eligible and

entitled for land under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 he filed his claim for allotment of an alternate land. He was allotted some land in part satisfaction of his claim in Punjab Khor. However, balance verified, determined and undisputed claim for allotment of 2 Standard Acre and 11^{3/4} units agricultural land remained pending. Sh. Shohbat Ram expired in 1959. Vide order dated 12.05.1961 passed by the competent authority, the son of Sh. Shohbat Ram, namely, Sh. Ram Chander was allotted the said land being Khasra No. 28/8/1, 28/19/1, 28/22/1, 29/1/2, 29/2 and 29/4 in Village Jahroda Mazra Burari, Delhi in satisfaction of the pending claim of Late Sh. Shohbat Ram. It is contended that Sh. Ram Chander was never put in possession of the allotted land in Burari owing to some orders passed in pending civil litigations.

3. It is further stated that as the authorities were unable to put Sh. Ram Chander in possession of the said allotted Burari Land, the Assistant Settlement Commissioner on 14.07.1995 cancelled the said allotted Burari land. The petitioner was allotted land in Khasra Nos. 109 min (13-15), 119 min (3-04), 23/24/1 min (0-08), 23/5/3 min (0-11) and 38/9/2 min (2-12) in Village Mehrauli, South District, New Delhi vide Sanad dated 25.06.1999. It is claimed that the petitioner/petitioner's predecessor took possession of the said land and started tilling there. Mutation was also done in his favour. However, the said Sh. Ram Chander, the grandfather of the petitioner was served with orders dated 17.08.1999 and 19.08.1999 cancelling the allotment order for the Mehrauli land. Sh. Ram Chander thereafter filed a writ petition before this court being CWP No.6982/1999 whereby he challenged the orders of the respondent cancelling the Sanad for the Mehrauli land dated 17.08.1999 and 19.08.1999. The writ petition was

disposed of on 26.03.2003 setting aside the cancellation orders dated 17.08.1999 and 19.08.1999 being violative of principles of natural justice. However, liberty was granted to the respondents to initiate fresh action after compliance of principles of natural justice. Thereafter, a show cause notice was served on the petitioner on 30.07.2003. Further proceedings were held and on 20.07.2012. The concerned authority passed the impugned order and cancelled the allotment of the Mehrauli land in favour of Sh. Ram Chander holding that the Sanad is wrong and illegal in exercise of powers under Section 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has vehemently relied upon the judgment of this court in the case of **Suresh Kumar Thru POA V.K.Jain vs. GNCT of Delhi & Ors.**, LPA No. 13/2012 dated 21.02.2012 and **Narain Singh & Anr. Vs. Delhi Administration & Ors.**, W.P.(C) 4836/1993 to support his contention that unless possession is handed over by the authority, the Sanad cannot be held to be valid. Further, he submits that the petitioner is ready to accept the Burari land provided the authority hand over possession of the same to the petitioner.

6. Learned counsel for the respondent has relied upon the judgment of a Coordinate Bench of this court in **Mange Ram & Anr. Vs. Union of India & Ors.**, W.P. (C) 6313/2010 dated 26.11.2015 and a judgment of the Division Bench of this Court in the case of **Mange Ram & Anr. Through the GPA Holder Vs. Union of India & Ors.**, in LPA No. 442/2016 dated 22.10.2018, where the order noted above of the Single Bench was upheld. It is contended that in virtually identical facts, this court held that grant of

a Sanad pre-supposes that the allottee has been given possession. Transfer of title pursuant to Sanad takes place irrespective of the fact that the possession has not been handed over to the allottee.

7. A perusal of the impugned order shows that it concludes that the allotment of the Mehrauli land on 25.06.1999 was wrong and illegal. The impugned order notes the submission of the parties and thereafter, simply records its conclusion, namely, that the submission of the respondent is correct and the allotment of the land in Mehrauli was wrong and illegal. The impugned order quashed the said order dated 13.06.1995 allotting the land in Mehrauli and also the cancelation of the allotment of land in Village Burari. Meaning thereby, the title of the petitioner to the land in Burari was restored.

8. I may note that in the original round of litigation, after the land at Mehrauli was cancelled, this court had on 26.03.2003 noted that the respondent had failed to comply with the principles of natural justice and hence, quashed the order dated 25.06.1999. However, liberty was granted to the respondent to initiate fresh proceedings. In my opinion, the present proceedings have also been done without following the principles of natural justice. The impugned order merely reproduces the submissions of the parties and comes to its conclusion without giving any reason or basis as to why the conclusions have been reached. An order of this type cannot be termed to be a speaking order. Clearly, the order is contrary to the principles of natural justice and cannot be said to be a speaking order. It is not in accordance of the directions of this court dated 26.03.2003 which had directed the respondent to initiate fresh proceedings after compliance of the principles of natural justice.

9. Be that as it may, I do not think it is appropriate to remand the matter

back to the authorities for giving a fresh hearing and passing a fresh order. The reason being that the issue has been pending since 1999 when the Sanad for Mehrauli was cancelled. We are now in 2019 i.e. more than 20 years have passed. In fact, pursuant to the directions of this court dated 26.03.2003 the impugned order was passed on 20.07.2012 after nine years.

10. I may also look at the judgment of a Coordinate Bench of this court in the case of *Mange Ram & Anr. Vs. Union of India & Ors.(supra)*. That was a case where a similar issue had arisen. The court noted as follows:-

“31. From the scheme of the Rules aforesaid, it is borne out that the allotment of agricultural land and delivery of possession thereof precede the execution of Sanad. That is also how the documents relied upon by the petitioners show the transaction to have taken place. In the light of the scheme of the Rules, the suggestion of the senior counsel for the petitioners that there was nothing to show that the petitioners had accepted the Sanad inasmuch as the same is not signed by them, is of no avail. Under the Rules, if the petitioners had not accepted the land allotted to them and / or had refused the same, their claim for compensation would have stood extinguished. The petitioners after more than 35 years cannot contend that they had not accepted the Sanad. The said stand is also falsified from the letter dated 30th September, 1980 supra admittedly written by the petitioner No.1.

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34. In this context I have also wondered, whether after the petitioners had accepted the Sanad which is a document of transfer of title of the land to the petitioners, the petitioners under the Civil Law can have a claim for alternative land on the ground that the possession of the land of which Sanad was granted in their favour was not delivered to them

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38. Even if it were to be believed that though by the Sanad of the year 1966, the land admeasuring 71 bighas and 5 biswas stood transferred to the petitioners but the possession thereof was not delivered by the Government of India to the petitioners, the senior counsel for the petitioners was unable to explain, as to how the same would entitle the petitioners to claim alternative land. The remedy, if any of the petitioners for such a situation was to claim against the Government of India as the transferor to deliver possession and which claim could have been made within the period of limitation provided therefor and/or to have the transfer annulled or to claim back the sale consideration i.e. compensation in lieu of which the land was given to the petitioners. The petitioners cannot after 36 years, without having annulled the transfer, claim another plot of land in lieu thereof. Supreme Court, in *Vimal Chand Ghevarchand Jain Vs. Ramakant Eknath Jajoo* (2009) 5 SCC 713 held that right of possession over a property is a facet of title; as W.P.(C) No.6313/2010 Page 29 of 29 soon as a deed of sale is registered, the title passes to the vendee; the vendor, in terms of the stipulations made in the deed of sale, is bound to deliver possession of the property sold; if he does not do so, he makes himself liable for damages. Here, not only is there no stipulation in the Sanad that the grantor thereof will deliver vacant, physical possession of the land with respect whereto it was executed, to the petitioners but on the contrary the reading thereof shows that the transfer was complete, with the right, title and interest acquired by the Central Government in the property being transferred to the petitioners, thereby also vesting in the petitioners the right to recover possession from whosoever may have been in possession of the land.”

11. The aforesaid view was upheld by the Division Bench in the case of *Mange Ram & Anr. Vs. Union of India & Ors. (supra)*. It is clear that merely because the possession of the land at Burari was not taken over by the petitioner would not be a ground to cancel the Sanad awarded in favour of the petitioner. The Sanad would remain valid and title of the property at

Burari had passed to the petitioner.

12. The reliance of the learned counsel for the petitioner on the two judgments in case of ***Suresh Kumar Throu POA V.K.Jain vs. GNCT of Delhi & Ors.(supra)*** and ***Narain Singh & Anr. Vs. Delhi Administration & Ors., (supra)*** is misplaced. The case of ***Suresh Kumar Thru POA V.K.Jain vs. GNCTD & Ors., (supra)*** deals with a case of allotment made to evacuees but the Revenue Authorities did not take steps to evict the unauthorised occupants. Hence, a mandamus was issued to the respondent to evict the unauthorised occupants from the land and give effect to the entitlement recognized. This order does not deal with the legal position and has been passed in the facts of that case.

13. As far as the case of ***Narain Singh & Anr. Vs. Delhi Administration & Ors., (supra)*** is concerned that case relates to a 20-Point programme of the Government where economically weaker and backward residents were allotted plots. It was in those facts and circumstances that the orders were passed by a Coordinate Bench holding that the respondents have a legal obligation and social responsibility to honour their commitments of allotting land to the landless residents and hence, appropriate directions were passed. The facts of that case are entirely different.

14. I have concluded that the petitioner continues to remain owner of the land at Burari for which the Sanad has been received. However, one cannot lose sight of the fact that the Sanad that was given to the petitioner for the Burari land was cancelled on 14.07.1995 and immediately thereafter, a fresh sanad was issued regarding the Mehrauli land. There is no dispute that the possession of the Burari land was not handed over to the petitioner. Thereafter, the land in Mehrauli was cancelled in 1999 itself. Litigation

followed. The writ petition was filed by the petitioner challenging the order of the cancellation in 1999. This writ petition was disposed of in 2003. Thereafter, a show cause notice was issued to the petitioner. The proceedings initiated by the petitioner have culminated in 2012 whereby the original order cancelling the Sanad in Mehrauli has been upheld. It is also a fact that the Sanad for the Burari land which was cancelled in 1995 was also restored in 1999. It is now 2019. It is quite possible that there may have been encroachments on said land at Burari for which the petitioner cannot really be blamed.

15. I, accordingly, dispose of the petition with the directions to the respondent to take steps to have the land at Burari evicted from any trespassers and unauthorised occupants and hand over possession of the same to the petitioner. All necessary assistance would be rendered by the local police in this regard.

16. Pending applications also stand disposed of.

JAYANT NATH, J

SEPTEMBER 06, 2019

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Corrected and released on 3.10.2019