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

% *Date of decision: 29.08.2019*

+ W.P.(C) 5801/2010

VIJAY GUPTA & OTHERS

..... Petitioner

Through Mr.Aruneshwar Gupta, Sr.Adv. with
Mr.Varun Dewan and Ms.Shagun Sabharwal,
Advs.

versus

UNION OF INDIA & OTHERS

..... Respondent

Through Mr.T.P.Singh, Sr.Standing
Govt.counsel for R-1/UOI
Mr.Gurmahar Singh Sistani and Mr.Prateek
Kumar, Advs. for DDA
Mr.Digvijay Rai and Mr.Aman Yadav, Advs. for
R-2,3 and 5
Ms.Deepika, Adv. for R-4/LAC

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus or any other Writ or direction to direct respondents to allot plots of land to the petitioners in view of the land acquired pursuant to notification dated 23.12.1986 and 24.12.1986. Essentially the case of the petitioners is for allotment of an alternate land in view of the acquisition of the land situated at village Malikpur Kohi @ Rangpuri, Tehsil Mehrauli, New Delhi. The petitioners seek to be treated at par with the persons whose land were acquired/persons who were displaced from village Nangal Dewat.

2. Some of the salient facts are that on 17.6.1985 a sale deed of agricultural land was said to have been executed in favour of the petitioners in village Malikpur Kohi @ Rangpuri, Tehsil Mehrauli, New Delhi. On 23.12.1986 a Notification was issued under section 4 of the Land Acquisition Act to acquire land at village Rangpuri for rehabilitation of persons displaced or effected due to the expansion/development of the Palam Airport at New Delhi. Notification under section 6 of the Land Acquisition Act was issued on 24.12.1986. On 23.12.1987 an Award was made in respect to the acquisition of the said land. On 12.4.1988 petitioners made representation to respondent No.2 and sent an application for allotment of alternative plot. On 3.8.1988 petitioners No.1 and 2 accepted the compensation amount under protest. On 31.08.1989 respondent No.2 communicated to the petitioners that they were not found eligible for alternate plots.

3. On 2.8.2001 this court disposed of a writ petition No.481/1982 titled Daryao Singh vs. Union of India which was filed by land holders of village Nangal Dewat, New Delhi who had challenged the acquisition proceedings. A submission of the Airport Authority of India was recorded that all persons whose names appear in the Award would be allotted alternate land in terms of rehabilitation scheme.

4. On 17.3.2010 petitioners sent representation to the respondent for allotment of an alternative plot. On 29.6.2010 and 29.7.2010 the respondents dismissed the representations stating that the rehabilitation policy framed for residents of village Abadi of village Nangal Dewat was only against acquisition of Abadi area and not against the agricultural land. Since the land of the petitioners which had been acquired was agricultural land the

applicant could not be equated with the residents of Abadi area.

5. The respondent No.5/Airport Authority of India had filed counter-affidavit. They had stated that the petitioners are not entitled for plots as they are not similarly situated persons as to those who have been allotted plots. It is stated that vide notification dated 28.4.1972 of Abadi Area of village Nangal Dewat was acquired and due to the said acquisition the residents of the said village were rendered homeless as their agricultural land had already been acquired. Hence, as a special case it was decided to rehabilitate the residents of village Nangal Dewat and for the said purpose agricultural land in village Rangpuri was acquired to rehabilitate the residents of village Nangal Dewat. No Abadi Area of village Rangpuri was acquired. Hence, there is no comparison between the two acquisitions. Further, the petitioners have already received compensation for the agricultural land acquired. On the other hand the residents of village Nangal Dewat have been refused compensation for the Abadi Area.

6. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioners has vehemently reiterated that the distinction sought to be drawn by the respondents between Abadi Area and rural area of village is purely artificial and unwarranted. He relies upon Notification dated 23.4.1982 issued by the DMC under section 507 of the DMC Act wherein the area ceased to be a rural area. He also relies upon Article 243 and Schedule 11 of the Constitution of India to argue that the distinction sought to be created between Abadi Area and Rural Area no longer exists and no such distinction can be pleaded by the respondents.

7. Learned counsel appearing for the respondents has pointed out that the Award issued for the Abadi Area of village Nangal Dewat clearly states

that the land in question has been acquired for public purpose, namely, development of Palam Airport. He also states that the area of 287 bighas 9 biswas was acquired and the same area has been used for rehabilitating the residents of said village Nangal Dewat in village Rangpuri. He also relies upon judgment of the Division Bench of this court in the case of ***Mohan Singh and Ors. vs. UOI*** dated 16.3.2007 being W.P.(C) 590/1997 to state that in identical facts the Division Bench had dismissed the Writ Petition.

8. I may note that the petitioner had earlier also filed Writ Petition W.P.(C)2507/1990 which was disposed of on 6.1.2010 by the Division bench. The Division Bench noted the contentions of the petitioners as follows:-

“The fulcrum of the submission of the learned counsel for the petitioners is that the Notification issued in the present case both under Section 4 & Section 6 of the Land Acquisition Act, 1894 states Rehabilitation of persons displaced or effected due to the expansion/development of Palam Airport. It is, thus, the submission of the learned counsel that persons like the petitioners also fall within the aforesaid definition as they have been effected. The petitioners are stated to be effected inasmuch as their land has been acquired to rehabilitate the people who have been displaced on account of their land being acquired for the development of the Airport.”

9. The Writ petition was withdrawn with liberty to approach the competent authority seeking allotment under the scheme of respondent No.5. It is thereafter that on 29.6.2010 respondent No.5 has pursuant to the above liberty granted informed the petitioner rejecting its representation. Relevant part of the communication reads as follows:-

“A perusal of the orders passed by the Hon’ble High Court of Delhi

and the representation, makes it clear that the applicant has concealed the fact that it was their agricultural land which was acquired and not their abadi land. There is no policy of/scheme of the AAI for allotment of rehabilitation plots against acquisition of agricultural land. Moreover, most of the people including the applicants have already taken compensation against the said acquisition.

There was no such scheme of 2003 but the said scheme was initiated in the year 1982 and was disclosed before the Hon'ble High Court of Delhi on 02.08.2001. This was a special scheme formulated by the Ministry of Civil Aviation in consultation with the Lt.Governor of Delhi and other departments and the benefit was provided only to those whose abadi land was acquired in village Nangal Dewat and the rehabilitation of the said persons at village Rangpuri is only for residential purposes.

This issue has arisen in various writ petition before this Hon'ble Court and also finds mention in Ravi Khullar & Anr. Vs. UOI & Ors. reported as (2007) 5 SCC 231.

Vide notification dated 23.12.1986 only the agricultural land of village Rangpuri has been acquired for rehabilitation of persons displaced or affected due to the expansion/development of Palam Airport. No abadi land of village Rangpuri has been acquired and hence the applicant does not qualify as a person displaced or effected due to the expansion/development of Palam Airport. Neither the applicant is amicably situated as other persons namely residents of village Nangal Dewat who have been allotted rehabilitation plots and hence the applicant is not entitled to equal treatment..."

10. Clearly, the case of the petitioners is completely different. The agricultural land of the petitioner was here acquired and compensation has been duly paid. In the case of village Nangal Dewat it was the Abadi land, namely, land where the residents used to reside which was acquired. The habitation of said persons at village Rangpuri was only for residential purpose. No Abadi land in village Rangpuri has been acquired. Clearly, the

petitioners cannot be treated at par with the beneficiaries of the scheme whose residences situated in village Nangal Dewat, New Delhi were acquired.

11. Reference may also be had to the judgment of the Division Bench of this court in *Mohan Singh vs. UOI*, (*supra*). The said judgment notes the submissions of the respondents that the policy for giving alternate residential plots is to accommodate villagers who have been residing in village generation after generation and after the acquisition are left with no place to live. The order also noted that the petitioners therein had purchased land from agriculturists of the same village meaning thereby that they were not originally inhabitants of the said village. Based on that, writ petition was dismissed relying upon the Full Bench decision of this court in the case of *Ramanand vs. UOI*, AIR 1994 DELHI 29. The court held as follows:-

“3. The substance of the petition is as under:

The petitioners were “Bhumidars” and are alleged to be “cultivating” The lands in village Malik Kohli (Rangpuri), Delhi. They are said to be in possession of 16 acres of land and are alleged to have constructed farm houses.

4. It is pleaded that the residents of Nangal Dewat and the present petitioners are similarly situated and they should also be rehabilitated and not discriminated against.

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10. Learned counsel for the respondents have vehemently argued that another petitioner had also filed petition No.[WP(C) No.2203/90] titled Shailender Jain Vs. Union of India and Ors. for the same relief, which petition has been dismissed alongwith three other identical petitions, vide judgment dated 3.9.2004 passed by Single Bench of this court.

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12. In our view the present case is fully covered by the judgment passed by the learned Single Judge in Shailender Jain's case (supra) and we agree with the reasoning given therein. In the result we do not find any merit in the petition. The same is therefore dismissed.

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12. As far as the reliance of the learned senior counsel for the petitioner on Article 243/part ix of the Constitution of India is concerned the same is misplaced. Article 243 merely defines various functionaries like the Gram Sabha, village panchayat etc. Part ix only describes the functions of the Panchayat. Merely because by the constitution's 73rd Amendment part IX was introduced in the Constitution of India would not mean that there is no distinction between residential areas of village and agricultural areas of village. To urge that the two are virtually identical and there is no distinction between the two is a completely futile argument.

13. Clearly, there is no merit in the contention of the petitioner. The petitioners cannot claim any parity with the residents of village Nangal Dewat whose residences were acquired. The petitioners are subsequent purchasers of agricultural land and are clearly not covered under the scheme.

14. Writ petition is dismissed.

JAYANT NATH, J

AUGUST 29, 2019

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corrected and released on 4.10.2019