

(2013) 04 DEL CK 0310

Delhi High Court

Case No: LPA No"s. 260 and 274 of 2008

Bhoop Singh

APPELLANT

Vs

DDA and Others
 Om

Prakash and Others Vs UOI and
Others

RESPONDENT

Date of Decision: April 16, 2013

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 6

Hon'ble Judges: D. Murugesan, C.J; V.K. Jain, J

Bench: Division Bench

Advocate: Sanjay Sharawat, for the Appellant; Sanjay Kumar Pathak, for LAC, Mr. Rajiv Bansal, for DDA and Mr. Digvijay Rai, for AAI, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jain, J.

Village Nangal Dewat consisted of old abadi (Lal Dora) as well as extended abadi. Though revenue record had been prepared in relation to extended abadi area, no such record had been prepared for the old abadi (Lal Dora) area. A notification u/s 4 of the Land Acquisition Act proposing to acquire the aforesaid land was issued on 28th April, 1972, followed by a declaration u/s 6 of the said Act on 28th August, 1979. The award in respect of the notified lands was passed on 14th August, 1986, determining separate compensation for land, structures and trees. The award came to be challenged before this Court by way of W.P. (C) No. 481/1982, titled as Daryao Singh & Ors. versus Union of India & Ors.. An order was passed in the said writ petition on 2nd August, 2001 recording the submission of the appellant-Airport Authority of India that all the persons whose names appeared in the award would be allotted alternative land in terms of a Rehabilitation Scheme which would be framed within six months. In view of the said statement, the petitioners in W.P. (C) No. 481/1982 gave up challenge to the acquisition proceedings and the writ petition

was disposed of accordingly. Review application No. 9312/2001 was filed by Harijan and Backward Jan Kalyan Samiti in the aforesaid writ petition. It was stated in the application that the Gram Sabha land allotted in the name of the communities was in possession and occupation of individual persons, who were entitled to allotment of individual alternative plots. During the course of hearing of the said application, the counsel representing Harijan and Backward Jan Kalyan Samiti pointed out the names of the persons forming part of the Samiti who had not been included in the consolidated list of 316 persons to whom the alternative land was sought to be allotted by the Nodal Officer. It was explained by the Nodal Officer that the allotment was made by Gram Sabha in respect of certain individuals who had been included in the list while in some other cases, the allotment was made to the community and not to individual persons and, therefore, it had not been possible to identify the individual persons since their names did not figure in the revenue record. The Court was of the view that in terms of the total land allotted, such community would also be entitled to allotment of plot as a group and how they divide the same between themselves was their own business. It was also stated by the counsel representing Airport Authority of India that the next exercise which had to be carried out was to find out as to which of the persons were entitled to which size of plot and being a short exercise, this court be done within two weeks. Thus, the prayer of the Samiti for allotment of separate or individual alternative plots to the persons who were in occupation of community land was rejected.

2. In a meeting held in the chamber of Joint Secretary, (Civil Aviation) on 14.3.2007, it was decided to constitute a committee to look into the issue of allotment of alternative plots to the persons who were in possession of the land recorded in the name of communities. The Committee recommended that the residents of land recorded in the name of individuals may be considered for allotment of individual plots and for this purpose, the list of 122 persons prepared in the year 1958 could be the outer limit to examine the eligibility for allotment of alternative plots. The Committee recommended that in order to examine the entitlement for alternative plots, a fresh survey of the Khasras wherein plots were allotted to the community in the year 1958 should be conducted, to ascertain the area in possession of individual persons. The report of the Committee was accepted by the Government. The Committee decided that in order to be eligible for allotment of alternative plots, the persons whose names had been mentioned in the list of 122 persons should also be in possession of the community land at the time of inspection in June-July, 2007 and in case he had died in the meanwhile, his legal representatives should be in possession of the aforesaid land. It was also decided by the Committee that mere allotment in the year 1958 should not be the sole basis for allotment of alternative plot. Thus, as per the decision of the Committee, the persons who did not fulfill the twin requirement i.e. (i) inclusion of their names in the list of 1958 and (ii) possession of community land in June-July, 2007, should not be considered for allotment of alternative plot. A team of officials visited the Village between 29.6.2007 to 4.7.2007

and verified the claims of each and every person. The Team also measured land found in possession of the claimants at the time of verification.

3. In the Revenue record entries in respect of the community land had been made in the name of four communities i.e. Julahan, Chamaran, Kumahran and Ahle. The names of the individuals who belonged to those communities were not recorded in the revenue record, which indicated that the aforesaid land had been reserved for common utility purposes (Shamlath Deh). In view of the above, the Nodal Officer, vide his order dated 9.11.2006 rejected the claims made by these individuals for allotment of residential plots in their individual names. He, however, noticed that some of the applicants had produced old record which contained 122 persons prepared in the year 1958 indicated division of land to various persons named therein and the person allotted individual plots in their individual names, though such allocation/division was not incorporated in the revenue record. He, however, was of the view that the said list could not be admitted as record. He also observed that in a survey conducted in the year 1972-73 the name of the persons in possession of land comprised in those Khasras were also recorded and, therefore, it was possible to identify the individuals who were in possession of the said land in the year 1972 though their names did not figure in the revenue record. He, however, was of the view that in view of the order of the Court dated 16.12.2004 observing therein that in terms of the total land allotted, the community is also be entitled to allotment of plots as a group and in view of the fact that the Court did not allow allotment of individual plots in the name of the persons found in possession of the land recorded in the name of the communities, he could not go into merits of the record/claim, the same being beyond his jurisdiction.

4. During hearing of W.P. (C) No. 17778/2006, the counsel representing Airport Authority of India stated on 31.5.2007 that the report of the Committee constituted by the Joint Secretary, Civil Aviation to look into the issue of allotment of alternative plots in respect of the land recorded in the name of communities in Village Nangal Dewat had been accepted by the Ministry and the residents of the land recorded in the name of the communities would be considered for allotment of individual plots and such eligibility would be considered on the basis of list of 122 persons that was prepared in the course of 1958 Consolidation Proceedings and the said list would be the outer limit to examine the eligibility for alternative plots. He also stated that the eligibility would be considered on the basis of same criteria which had been followed for considering the eligibility of other persons for the rehabilitation scheme.

5. A number of persons dissatisfied with the aforesaid decision of the Committee dated 1.8.2007 filed various writ petitions challenging the aforesaid decision and seeking allotment of alternative plots. The writ petitions have been dismissed by the learned Single Judge vide impugned order dated 18.3.2008, the appellants are before us by way of these appeals.

6. There is no evidence to show that the land, subject matter of the list of 122 persons prepared in the year 1958 was owned by the persons shown as plot holders in the said list. Admittedly, the names of these persons do not find mention in the revenue record as the owner of the aforesaid land. It had come in the report of the Nodal Officer that this land actually belonged to Gram Sabha and was allotted to the communities to which the persons whose names appear in the list of 1958 belonged. Even the aforesaid list does not show these persons to be the owners of the aforesaid land. The only indication one gets from this list is that the aforesaid land allotted to the communities was divided by these persons amongst themselves in the form of various plots and thereafter those persons had taken possession of their respective plots. Since the names of these persons did not find mention in the revenue record, they cannot claim allotment of alternative plots to them in terms of the scheme framed by the respondents for allotment of alternative plots to these persons land owned by whom was acquired in the village for a public purpose.

7. It was only by way of a rehabilitation scheme that the Government decided that the persons whose names appear in the list of 1958 and who were also found in possession of the land in respect of which their names appear in the list of 1958, at the time of inspection in June-July, 2007 should also be allotted alternative plots. But for such a scheme, the persons whose names appear in the list of 1958 were not entitled to allotment of an alternative plot from the respondents.

8. The scheme framed by the Government, in the year 2007, to allot alternative plots to the persons who satisfied the twin requirements of being in possession at the time of preparation of the list of 1958 as well as at the time of inspection in June-July, 2007, was not challenged in the writ petition filed by the appellants. Though the appellant challenged the communication dated 1.8.2007, sent to them by the Nodal Officer, they chose to challenge the scheme on the basis of which their claim was examined and rejected by the Nodal Officer.

Even if we proceed on the basis that challenge to the communication dated 1.8.2007 could also be construed as challenge to the scheme on the basis of which the claim of the appellants was rejected by the Nodal Officer, we find no merit in the challenge to the scheme. In the absence of any legal right vested in the appellants to claim alternative plots from the respondents, it was for the government to decide to what extent and on that basis it wanted to rehabilitate those persons whose names appear in the list of 1958, despite the fact that they had no legal right to obtain alternative plots from the Government by way of their rehabilitation. 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. We find 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. The Government of India, in our view, 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. 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 to them. As regards those whose names did not appear in the list of 1958, we are of the opinion 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.

9. In case, the member of the community who got land in the division of 1958, moved to another area by the time survey/inspection was carried out in June--July, 2007, the government in our view was justified in denying the alternative plots to such persons they no more being in need of rehabilitation by way of allotment of alternative plots.

10 It was contended by the learned counsel for the appellants that in case of certain other persons, alternative plots were allotted on the basis of survey report or Jamabandi as on 28.4.1972 and, therefore, the respondents are discriminating with the appellants by stipulating conditions that only those who were found in possession at the time inspection in June-July, 2007 would be eligible for allotment of alternative plots. In our view, the contention is wholly misconceived. The persons who were allotted alternative plots on the basis of survey report or Jamabandi as on 28.4.1972 were the owner of the land, whereas there is no material before us to showed that the appellants before us own the lands which was subject matter of the division list prepared in the year 1958. Therefore, the appellants before us, belong to a class which is wholly different form the class to which the persons who were allotted alternative plots on the basis of survey report or Jamabandi as on 28.4.1972 belonged. The appellants and those who were allotted alternative plots on the basis of survey of 1972 not being similarly situated their classification into separate categories was based on an intelligible differentia and therefore cannot be questioned. Therefore, it cannot be said that the appellants have been discriminated against by laying down the criteria of being found in possession not only in the year 1958 but also in June-July, 2007

11 The Survey of 1972 was necessitated because of the fact 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 structure 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. 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 made by them on the community land. In fact, as noted by learned Single Judge, if 1972 survey is made the basis for allotment only 21 persons out of the list of 122 persons prepared in the year 1958 would be eligible for allotment of alternative plots, whereas 63% out of the said list would be eligible for allotment of alternative plots on the basis of survey of June--July, 2007.

12 As regards the statement made by the counsel for the Airports Authority of India on 31.05.2007 to the effect that the eligibility would be considered on the basis of same criteria which had been followed for considering the other persons for rehabilitation, the learned Single Judge was of the view that if the Court was to direct the allotment of alternative plots on the basis of 1992 survey, the directions for such allotment could have been given there and then since the survey list of 1972 was also available to the Court at the time the aforesaid statement was made. We are also of the view that since the eligibility criteria was still under examination at that time, it cannot be said that the respondents had given up their right to frame an appropriate eligibility criteria or that the said statement prevented them from fixing an appropriate eligibility criteria. We, therefore, cannot accept the contention that in view of the statement made by their counsel on 31.5.2007 respondents were duty bound to make alternative allotment on the basis of survey list of 1972.

13 For the reasons stated hereinabove, we are in agreement with the learned Single Judge that the policy framed and operated, the respondents cannot be said to be arbitrary, discriminatory, irrational or unreasonable.

14 The case of the appellants/petitioners were not duly examined by the Nodal Officer in the light of the eligibility criteria approved by the Government and since they did not fulfill the twin requirement laid down by the Government, their request for allotment of alternative plot was rejected. There is no material before us to show that the report of survey/inspection by a team of officers in June-July, 2007 was factually incorrect. In any case, it is neither permissible nor possible for us to go into the disputed questions of facts while considering the appeal against an order passed in a writ petition. Despite that, we have examined the recommendations made by the Nodal Officer on the basis of survey/inspection carried out in June-July, 2007 and we find that neither any of the appellant nor their father/grandfather were shown in possession in the list prepared in the year 1958 as well as the survey/inspection carried out in June-July, 2007.

As regards Om Prakash son of Mawasi, appellant in LPA No. 274/2008, we find that he was not found in possession in June-July, 2007 and commercial structures of other persons was found. The verification team specifically recorded that he was not

in possession of any plot in this Khasra. number. Therefore, his claim was rightly rejected.

As regards the appellants 3 to 7 in LPA 274/2008, we find that though the name of their father appeared in the list of 1958, none of them was found in possession during verification carried out in June-July, 2007. The report indicates that these appellants had exchanged the community land which they were occupying, with some land belonging to Rajesh and Naresh Kumar.

As regards the appellants 8 to 10 in LPA 274/2008, we find that though the names of their father Boohnda son of Chhalu appeared in the list of 1958, they were not found in possession in June-July, 2007 and some other persons namely Ram Singh, Mahender, Baljeet, S/o Jogi Ram and Baljit son of Jogi Ram were found in possession. It also appears from the remarks made in the survey that these persons had exchanged their land with Ram Singh, Mahender and Baljit son of Jogi Ram.

As regards appellants No. 11 to 13 in LPA 274/2008, we find that though the names of their father Bhole appear in the list of 1958, they were not found in possession during verification carried out in June-July, 2007. The commercial structure of other persons were found at the time of verification and it was specifically recorded by the verification team that they were not in possession of any plot in this Khasra

As regards Kanshi Ram son of Sheon, appellant in LPA 264/2008, we find that his name does not appear in the list of 1958. The respondents, therefore, were justified in refusing allotment of alternative plot to him.

As regards Bhoop Singh appellant in LPA No. 260/2008, we find that his name does not appear in the list prepared in the year 1958. Therefore, the respondents were fully justified in refusing to allot the alternative plot to him. For the reasons stated hereinabove, we find no merit in the aforesaid appeals and the same are hereby dismissed. There shall be no orders as to costs.