
**Jai Singh and Others Vs Union of India (UOI) and Others
 Ganga
Bishan and Others Vs D.D.A. and Others**

**Writ Petition (Civil) No"s. 6249, 6254, 6264, 7170, 7374, 7381, 7382, 7491, 7521, 7564,
7959, 7961, 8162 and 8163**

Court: Delhi High Court

Date of Decision: March 18, 2008

Acts Referred:

Constitution of India, 1950 â€” Article 14#Land Acquisition Act, 1898 â€” Section 4, 6

Citation: (2008) 03 DEL CK 0251

Hon'ble Judges: Sanjiv Khanna, J

Bench: Single Bench

Advocate: Jayant Bhushan, B.S. Maan and J.V. Rana, in W.P. C Nos. 6249, 6254, 6264, 7170, 7491, 7521, 7564, 8162 and 8163 and V.K. Shali, in W.P. C Nos. 7374, 7381, 7382, 7959 and 7961, for the Appellant; Ajay Verma, Rajiv Bansal and Harshit Agarwal for DDA, Digvijay Rai and Sunil Ahuja for AAI, Sarojanand Jha, for Delhi International Airports Pvt. Ltd., Sanjay Poddar and Sachin Nawani for Nodal Officer and Sanjiv Saluja, in W.P. (C) No. 8162/2007, for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna, J.

Common questions of law and similar facts are involved in the present writ petitions. With consent of the parties, Writ

Petition (Civil) No. 6249/2007 titled Jai Singh and Ors. v. Union of India and Ors. is treated as a lead case. This common judgment will

accordingly dispose of Writ Petition (Civil) No. 6249/2007 titled Jai Singh and Ors. v. Union of India and Ors. and other cases. On 28th April,

1972, notification u/s 4 of the Land Acquisition Act, 1898 (hereinafter referred to as the Act) was issued for acquisition of large tracks of land in

village Nangal Dewat for public purpose viz. extension of Palam Airport. This was followed by a declaration u/s 6 of the Act on 22nd August,

1972 and thereafter Land Acquisition Collector announced Award No. 16/1986-87. Compensation was paid to persons entitled to the same in

accordance with the Act and the said question is not subject matter of the present writ petitions.

2. In 1982, nearly 366 residents of village Nangal Dewat filed Writ Petition No. 481/1982 titled Daryao Singh and Ors. v. Union of India and Ors.

challenging the acquisition proceedings in respect of village Nangal Dewat. The writ petition was disposed of on 2nd August, 2001 with the learned

Single Judge recording that the petitioners therein had given up their challenge to acquisition and had restricted their arguments at the time of

hearing to their prayer for rehabilitation/residence at an alternative place. The Court recorded statement of International Airport Authority that land

had been acquired for rehabilitation and a scheme for allotment of land for residential purposes had been formulated. The order further records that

all persons whose land had been acquired and whose name appeared in the award would be allotted residential plots in terms of the scheme. The

Court thereafter dismissed the writ petition after recording that the respondents had agreed to allot alternative residential plots under a scheme, to

all persons whose land had been acquired. A reading of the said order dated 2nd August, 2001 makes it clear that alternative land for residence

was to be allotted under a scheme but only to those persons whose land were subject matter of acquisition and were covered by the award. The

said order did not record any concession for persons who were not owners of land but were awarded compensation for super-structure, trees etc.

It is well settled that in India owner of land need not be owner of a superstructure constructed on the land and vice versa.

3. Subsequently, a review application was filed but the same was dismissed by an order dated 18th May, 2005. While dismissing the said

application, it was noticed that the petitioners therein do not have any enforceable right for allotment of an alternative plot in law and can only claim

the same under a scheme, as formulated.

4. Another Review Application No. 9312/2001 was filed by Harijan and Backward Jan Kalyan Samiti. It was stated in the application that Gaon

Sabha land allotted in the name of four communities viz. Makbuja Jullahan, Makbuja Chamaran, Makbuja Kumharan and Makbuja Ahle was in

possession and occupation of individual persons and the said individuals were entitled to allotment of individual alternative residential plots. The

review application was dismissed by a speaking order on 16th December, 2004, with the learned Single Judge observing as under:

Learned Counsel for Harijan and Backward Jan Kalyan Samiti points out that names of those persons forming part of the Samiti have not been

included in the list. The Nodal Officer present in Court has explained that reason for the same is that the allotment was made by Gaon Sabha in

respect of certain individual persons who have been included in the list while in certain other cases allotment of land was made to the Community

and not to individual persons. It has, thus, not been possible to identify the individual persons since the names do not figure in the record. There is

no dispute about the extent of the land which was allotted by Gaon Sabha to the community as per the records.

I am, thus, of the considered view that in terms of the total land allotted, such community would also be entitled to allotment of plots as a group.

How they divide the same between themselves is their business.

5. Thus, the prayer of the applicant Samiti therein that the persons who were in occupation of the community land should be allotted separate or

individual alternative plots was rejected. It was held that in case of community land, allotment would be made to the community and not to

individuals and the community may divide the allotted land amongst the individuals.

6. It appears that the scheme after being formulated faced difficulties in implementation and several applications were filed in W.P. (C) No.

481/1982 for directions. These applications were disposed of by a detailed order dated 18th May, 2005, with the Court giving several directions

to the Nodal Officer who had been appointed for verifying cases for allotment of alternative plots. The Court once again noticed the contention of

some of the applicants that they were entitled to individual or separate alternative plots on the ground that they were in occupation of community

land. Noticing the contention, the learned Single Judge of this Court in his order dated 18th May, 2005 observed as under:

The Nodal Officer presented a list of eligible persons numbering 316 copies of which were given to the parties. Harijan and Backward Jan Kalyan

Samiti made a grievance on 16th December, 2004 in court that the names of the persons forming part of the Samiti have not been included in the

list. The Nodal Officer clarified that since Gaon Sabha allotted land to the community, the alternate land has to be allotted to the community as a

group and not to individuals wherever allotment was made to individuals by Gaon Sabha, they would be considered for alternate allotment. What

remained to be determined was the entitlement of persons to plot and size thereof.

7. Thus, the contention that persons in occupation of community land or who had built structures on community land were entitled to separate

individual alternative residential plots, was rejected by this Court. It was held that the community land belonging to Gaon Sabha was allotted to the

four communities and their case was distinct and separate from cases of persons, who were in recorded possession of land in the revenue records

in their individual capacity and right.

8. It has been clarified in the affidavit filed by Land Acquisition Collector (South-West) that land belonging to Gaon Sabha was allotted to the four

communities in the consolidation proceedings in the years 1953-54. In revenue records entries were made in the name of the four communities.

The revenue records did not recognize any individual right in the community land. As per revenue records, the land was reserved for common

utility purpose (Shamlat Deh). Noticing the above facts, the Nodal Officer by his order dated 9th November, 2006 dismissed the claims made by

the petitioners for being allotted alternative residential plots in their individual names holding that the matter was fully covered by the orders passed

by this Court on 16th December, 2004 and 18th May, 2005. However, the Nodal Officer noticed that some of the applicants had produced old

record which contained a list of 122 persons prepared in the year 1958 indicating that these persons were allotted independent plots in their

individual names measuring between 100-150 square yards. However, the said allocation/division was not was incorporated in the revenue

records, Khatauni records, etc. The Nodal Officer held that it was beyond his jurisdiction to go into all these aspects as the issue was already

concluded by the orders passed by this Court on 16th December, 2004 and 18th May, 2005, rejecting the claims of the applicants for allotment of

individual plots.

9. This led to second round of litigation with some persons including Harijan and Backward Jan Kalyan Samiti filing Civil Writ Nos. 17778/2006

and other writ petitions.

10. As per the scheme formulated and approved by this Court, maximum size of an alternative plot cannot be more than 650 square metres. In

terms of the said scheme, each community would have been entitled to allotment of a residential plot of land measuring 650 square metres that had

to be divided amongst different persons. With a view to grant further relief to backward communities, a meeting was held in the Chamber of Joint

Secretary (Civil Aviation) on 14th March, 2007 to look into the issue of eligibility for alternative plots to persons belonging to backward classes,

who were in occupation of community land. The question of eligibility came up for consideration. The Committee noticed that a list of 122 persons

was prepared in the year 1958 but the said list was not a part of revenue records. The Committee recommended that this list of 122 persons

would be the outer limit for examining eligibility for allotment of alternative plots. The Committee further recommended that in order to examine

entitlement, a fresh survey of the community area should be conducted by a joint team of revenue officials, LAC officials and AAI officials to

ascertain the individuals and the actual area in their possession. The report given by the Committee was accepted by the Ministry of Civil Aviation

specifically clarifying that this list of 122 persons prepared in the year 1958 would be the outer limit. On 14th June, 2007 Ministry of Civil Aviation

constituted another committee of a Deputy Director, DDA, Assistant General Manager, Airport Authority of India and SDM (South West). The

said Committee thereafter examined each and every claim. A team of officials consisting of Tehsildar, Kanoongo, Patwari along with

representatives of the Airport Authority of India and DDA visited the said village from 29th June, 2005 to 4th July, 2007 and verified the claim of

each and every person, who had claimed any right on the basis of his occupation of community land. The committee also measured the land found

to be in possession of an individual at the time of verification.

11. Alternative land has been allotted to 63 persons who fulfill the two-fold criteria. Firstly, that his name or name of his forefathers was mentioned

in the list of 122 persons prepared in 1958 and secondly, that they were found to be in possession of community land at the time of survey

between 29th June, 2007 to 4th July, 2007.

11A. Contention of the petitioners herein is that this dual criteria adopted by the respondents is illegal. It is stated that the criteria adopted is

arbitrary and discriminatory and, therefore, offends Article 14 of the Constitution of India as the criteria adopted in other cases was the 1972

survey list. In other cases actual possession in 2007 was not the relevant eligibility criteria. My attention in this regard is also drawn to order dated

31st May, 2007 passed in Writ Petition Civil No. 17778/2006 titled Harijan and Backward Jan Kalyan Samiti and Ors. v. Union of India and

Ors. and other cases, wherein it has been recorded as under:

8. Today, in the course of his submissions, Mr. Sanjay Jain, learned senior counsel for the AAI on instructions from(sic) Shri Sanjeev Jindal, Under

Secretary, Ministry of Civil Aviation, makes the following statement:

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 has been accepted by the Ministry. The residents of land recorded in the

names of Communities would be considered for allotment of individual plots and such eligibility would be considered on the basis of the list of 122

persons that was prepared in the course of 1958 Consolidation Proceedings and this list of 122 persons would be the outer limit for examining the

eligibility of alternative plots.

The eligibility would be considered on the basis of the same criteria which has been evolved for considering the eligibility of other persons in the

rehabilitation scheme.

9. After making the above statement Mr. Sanjay Jain states that the Govt. having agreed with the suggestion made in the report of the Committee,

the Order dt. 16.12.2004 passed by Justice Kaul will not come in the way of individual plots being allotted in favour of the eligible persons from

among the list referred to hereinabove.

12. I have examined the above contentions of the petitioners. I may note here that in the writ petition it is stated that the petitioners are entitled to

individual plots or plots of a bigger size by including the area, as per 1972 survey. In the year 1972, the Land Acquisition Collector's office had

conducted survey of the village abadi or the lal dora area and the extended abadi. There were no revenue records in respect of the lal dora area

but survey was required as the lal dora land had been acquired. Survey was necessary to record details of persons in occupation of land and

structures constructed thereon for payment of compensation. In lal dora area possession itself is treated as equivalent to ownership. As far as

extended abadi area was concerned, in land revenue records or jamabandi Gaon Sabha was recorded as the owner-bhumidar of the land, which

was declared to be Shamlat Deh land that had been allotted to the four communities. The survey report of 1972 in respect of the extended abadi

only recorded details of structure, trees and whether any hand pump or other improvements had been made in the extended abadi area. No

compensation for land was paid to persons in occupation of community land in the extended abadi. The land already belonged to and was owned

by Gaon Sabha. Compensation was paid for the structures, trees and other improvements made on the land by persons in occupation of

community land in the extended abadi. On the request of the Court, the respondent after examining the survey report of 1972 has filed a chart in

the case of 46 petitioners. The said chart is as under:

S.No. Khasra SRS Name & Type of Names

No. No. Father Name Structure in 122

list

1 1252/2 88 Manohar Lal Nil yes

S/o Rama

Nand

2 Do 89 Nayader S/o Rs. 10,350/- yes

Rama Nand

3 Do 87 Pratap S/o Neem-01 no

Jug Lal Sehtut-01

Rs.33,20/-

4 Do Do Het Ram S/o Sehtut-01 yes

Kehri Hand Pump-

01

5 Do 86 Ram Singh Neem-01 yes

S/o Kehri

6 Do 85 Ram Phal Hand Pump- yes

S/o Ram 01

Mehar

7 1254/1 98 Gyani Ram Hand Pump- no

S/o Angana 01

Gair Mumkin

Chaha-01

Neem-02

Lehsawa-01

Rs. 6150/-

8 Do 99 Kashi Ram Hand Pump- no

S/o Sheo 01

Nath Khatta-01

Neem-01

Rs. 16,700/-

9 Do 100(2) Ram Kishan Rs. 21,70/- no

S/o Manphool

10 Do 100(1) Khazan S/o Rs. 21,60/- no

Manphool

11 Do Ganga no

Bishan S/o

Manphool

12 Do 101(2) Hira Lal S/o Hand Pump- no

Deda 01

Bakan-01

Pilkhan-01

Rs. 37,70/-

13 1251/3 276/21 Zile Singh Kikar-01 no

S/o Udey Hand Pump-

Ram 01

14 Do 277 Ram Pat S/o Hand Pump- No

Udey Ram 01

Rs.42,30/-

15 1232/5 511 Jai Singh, Rs. 20,50/- no

Ishwar Singh,

Udmi S/o

Attrra

16 1229/1 Khajan S/o Hand Pump- No

Khechru 01

Sehtut-01

17 Do Basanta S/o Hand Pump- Yes

Made 01

Anar-01

Sisam-02

Bakan-02

18 Do Kitabe S/o Kikar-01 No

Gordhan Sehtut-03

19 Do Ram mehar Choubara Yes

S/o Mange

20 Do Har Nath S/o Sisam-02 Yes

Made Lehsawa-01

21 Do Ran Singh Chhapar No

S/o Jogi

22 Do Chattar Chhapar Yes

Singh S/o

Dal Pat

Balbir S/o

Risal

23 1239/1 42 Shiv Lal, Only

Ram Kishan, names of

Partap, Shiv lal

Chander, s/o

Ss/o Behy Behram

Ram & Smt and and

Ganga Devi Behram

W/d Bhey s/o kalia

Ram (Equal are

Share) mentioned.

24 Do Raghveer Chhapar No

S/o Mangat

25 Do 43 Tej Ram S/o Chhapar Yes

Lakhu Ram

26 Do 44 Nanak Chhapar No

Chand S/o

Lakhu Ram

27 Do 45 Puran S/o Yes

Kalia

28 1235/2 3 Balle Ram Yes

S/o Bheku

Ram

29 1245/2 Nafe S/o T.SH-04 No

Chaju Sumer Chhapar-01

S/o Raj

Singh

Dharamveer

S/o Sarup

Singh, (Equal

Share)

30 1192/1 496 Rattan S/o Sehtut-01 Yes

Ram Ji Lal Chah

Kachha

Chhapar Rs.

44,40/-

31 Do 497 Bhagwana Chhapar-02 Yes

S/o Ram Ji Neem-01

Lal Rs. 13,60/-

32 Do 498 Ram Chhapar-01 No

Chander S/o Neem-01

Puran Rs. 1090/-

Bhaktwar S/o

Nandu

33 Do 499 Lekh Ram Neem-01 Yes

S/o Ram Ji Chhapar-01

Lal Rs. 13,10/-

Ram Singh

S/o Lekh

Ram

34 Do 499(A) Do Rs. 48,20/- No

35 Do 500 Har Nath S/o Chhapar-02 yes

Ram Ji Lla Rs. 45,10/-

36 Do Tek Ram S/o Chhapar-02 Yes

Chimman

37 Do Risal Singh Sehtut-02 Yes

S/o Neki Chhapar-01

38 Do Shish Ram Hand Pump- No

S/o Bhartu 01

Kikar-01 Bakan-01

40 Do Shri Chand Neem-01 No

S/o Bhartu Chhapar-01

41 Do Ram Singh Char Diwari Yes

S/o Kallu

42 Do Shera S/o No

Nathu

43 Do Ram Sehtut-02 Yes

Swaroop S/o Amrood-02

Baldev Chhapar

T.SH

44 Do Balle S/o Sehtut-01 No

Nathwa Neem-01

Chhapar-02

45 Do Man Singh Sehtut-03 No

S/o Nathwa Anar-02

Amrood-03

Hand Pump-01

Chhapar-03

46 Do Lachhu S/o Chhapar-02 Yes

Chimman

47 Do Ram Kala Sehtut-01 No

S/o Chimman Neem-01

Chhapar-01

13. It is pointed out by the learned Counsel for the respondents that only 21 persons would be eligible for allotment of individual plots out of the

1958 list of 122 persons, if the 1972 survey is made the basis for allotment. In this regard, it is highlighted that on the basis of 2007 survey, 63

persons from the 1958 list of 122 persons, have been found to be eligible. It is also clear from the 1972 survey that in most cases no construction

or structure existed on the community land in the extended village abadi. Only in few cases compensation was awarded for built up structure. In

most cases, trees, hand pumps, etc, existed on the community land.

14. Under the Land Acquisition Act, compensation is payable to owners of the land or the super-structure. There is no enforceable right under the

said Act on the basis of which owner of a superstructure can make a claim for allotment of an alternate plot. An enforceable right may arise under

a scheme, which may be framed by Government for rehabilitation. A person cannot claim a legal right for allotment of an alternative residential

accommodation on the basis of the said Act, de hors a scheme. I may also note here that the present case does not pertain to acquisition of

agricultural land. Supreme Court in *Satluj Jal Vidyut Nigam Ltd. and Another Vs. Sangh Dass and Another, and Narmada Bachao Andolan Vs.*

Union of India (UOI) and Others, has held that rehabilitation schemes can furnish enforceable legal rights.

15. 1958 survey list has been taken as the basis or the outer limit for making allotments. The other condition imposed is that the said person or his

legal representative should be in possession of land in 2007. Thus, an additional eligibility criterion of actual possession in 2007 has been imposed.

This eligibility condition is justified and fair as allotment of alternative land is being made in the year 2007 and, therefore, the survey list of 1958

cannot be the sole basis. Occupants of the community land in 1958 may have shifted or moved to another area. In these circumstances, the twin

conditions imposed by the respondents cannot be termed as arbitrary. In fact, the respondents were justified in imposing the condition that the

persons mentioned in the 1958 survey list or his legal representative should be in actual physical possession in 2007.

16. The petitioners relied upon the statement made by the learned Counsel for the respondent-AAI as recorded in the Order dated 31st May,

2007 that the eligibility criteria for persons mentioned in the 1958 list, would be on the basis of the criterion as was involved in other cases. The

petitioners are reading too much in the said statement, for if the same eligibility criterion had to be applied, then the only requirement was to

examine the 1972 survey list. This could have been recorded and directions issued. The eligibility criterion was still under consideration and being

examined. It cannot be said that the respondents had given up their right to frame eligibility criteria or the said statement prevents them from fixing

eligibility criteria. It is not for the Court to frame the criteria and no directions were given by the Court in the Order dated 31st May, 2007. It

cannot be said that in view of what is recorded in the Order dated 31st May, 2007, the respondents are bound to follow the survey list of 1972.

17. The persons in occupation of community land and individual owners of land constitute two separate and distinct classes. In the case of

community land, Gaon Sabha was the owner and the land was allotted to the community. The land was recorded as *Shamlat Deh* in revenue

records. Names of individuals were not recorded in the revenue records. No individual could have claimed any right on the said land. It was for

benefit of all members of the community and not for individual benefit. Member of the community may and could shift, vacate and move from one

place to another. Community was at liberty to allow any person occupy and use the land. The 1958 list did not result in entries in revenue records

or confer individual rights. It is too late today for the petitioners to allege that there is no difference between the petitioners, who were in

occupation of community land and others. The distinction was accepted by this Court as is clear from the orders dated 16th December, 2004 and

18th May, 2005. Therefore, the petitioners cannot insist that the 1972 survey list should be made the basis for allotment of alternative plots and the

respondents could not have taken the 2007 survey, as the basis for allotment.

18. What should be the terms and conditions of allotment are policy matters. This Court cannot frame guidelines or policy. It is the role of the

Executive to frame guidelines or policy for allotment of alternative plots. Courts have limited role and can strike down a policy or guidelines if they

offend Article 14 of the Constitution of India. For this, petitioners have to establish and prove that the guidelines/policy is arbitrary, discriminatory

or irrational on applying the test of Wednesbury's principle of unreasonableness. In view of the above discussion, petitioners have not succeeded

in establishing any violation.

19. I do not find any merit in the present writ petitions and the same are accordingly dismissed. No costs.