

(2010) 09 DEL CK 0426

Delhi High Court

Case No: Writ Petition (C) 553 of 2007 and C.M.. No. 1033 of 2007

Sarjo

APPELLANT

Vs

L.G. of Delhi and Others

RESPONDENT

Date of Decision: Sept. 15, 2010**Hon'ble Judges:** Rajiv Sahai Endlaw, J**Bench:** Single Bench**Advocate:** A.K. Sen and Minati Murari, for the Appellant; Som Dutt Kaushik, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The petitioners by these two petitions seek inter alia relief of correction of the Gazette Notification vesting certain lands purportedly of the Gaon Sabha in the revenue estate of Village Neb Sarai, in the forest/ridge department pursuant to the direction of the Apex Court in M.C. Mehta's case. It is the case of the petitioners that their lands have been wrongly included in the said Notification and seek exclusion of their land from the said Notification.

2. It is the case of the petitioners that the petitioners/their predecessors were owners of the lands bearing khasra No. 179 in the said village; that the said land was exchanged in pursuance to the Resolution dated 30th December, 1981 of the Gaon Sabha, for land in Khasra Nos. 451 and 452 now in occupation of the petitioners and which land was given to the petitioners on freehold basis for constructing pucca houses and residences. It is further the contention of the petitioners that the said exchange was also approved by the Lieutenant Governor of Delhi. The present petitions were filed when the lands now in occupation of the petitioners and given to them in exchange as aforesaid, have been vide Notification aforesaid transferred to the forest department, treating the same to be the land of the Gaon Sabha.

3. The counsel for the petitioners has contended that the matter in controversy is squarely covered by the judgment dated 25th August, 2004 of this Court in W.P.(C) 1146/2003 titled as Amit G. Rohra v. Lt. Governor of Delhi and the judgment dated

9th April, 2009 in W.P.(C) 1044-48/2004 titled Jasbir Singh Malik v. UOI.

4. This court in *Amit G. Rohra* (supra) held that when admittedly the land in khasra No. 179 belonged to the predecessor of the petitioners and the Gaon Sabha took possession of the said land and in exchange thereof allotted the land in khasra Nos. 448, 449, 450, 451 and 452 of Village Neb Sarai to the petitioners therein, the petitioners therein had a legal title and a legal claim to the land in their possession now and would be entitled to the relief. A mandamus was issued directing the respondent to issue a corrigendum to the Notification vesting the land in forest department.

5. The respondents in the present case have filed a counter affidavit, the only defence wherein is that the exchange aforesaid of the land was not approved by the competent authority in the year 1986.

6. This aspect of the matter is covered by the judgment in *Jasbir Singh Malik* (supra). This court in the said judgment held that the decision of 1986 produced for the first time in *Jasbir Singh Malik*'s case, nowhere reflects application of mind to the approval granted in 1983 by the Lieutenant Governor. It was further held that the decision of 1986 in a letter issued by the Assistant Development Commissioner (Panchayat) has not even referred to the exchange and the proposal or the final approval thereto granted by the Lieutenant Governor. In these circumstance, this Court held that the decision of 1986 to be having no effect at all.

7. It has been enquired from the counsel for the respondents whether there is any distinguishing feature in the present case which requires this Court not to follow the two judgments aforesaid. The counsel for the respondents has been unable to show any such reason.

8. In the aforesaid circumstances, the petitions are allowed. A mandamus is issued directing the respondents to issue a Corrigendum excluding the land in Khasra No. 452 measuring 4 biswas (200 sq. yds) subject matter of W.P.(C)553/2007 and land in Khasra No. 451 as shown in the site plan in W.P.(C)13101/2009, both situated in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, Delhi from the Notification dated 2nd April, 1996. Consequently, the respondents are also directed to make necessary entry in their records regarding exchange of land and the right of the petitioners be recorded with respect to their lands aforesaid.

The petitions are disposed of. No order as to costs.