

(1995) 01 DEL CK 0100

Delhi High Court

Case No: Civil Miscellaneous Appeal No. 1561 of 1994 and Civil Writ Appeal No. 2252 of 1990

Rajinder Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Jan. 1, 1995

Acts Referred:

- Land Acquisition Act, 1894 - Section 4

Citation: (1995) 1 AD 697 : (1995) 57 DLT 271

Hon'ble Judges: D.P Wadhwa, J; Arun Kumar, J

Bench: Division Bench

Advocate: Anand Yadav and S.K. Mahajan, for the Appellant;

Judgement

Arun Kumar, J.

(1) This is an application seeking review of the judgment dated 17.12.1991 disposing of the writ petition.

(2) The Delhi Administration had framed a Scheme called "Large Scale Acquisition", Development & Disposal of Land in Delhi 1961. Under this Scheme the persons whose lands were compulsorily acquired, were made entitled to allotment of an alternative plot. One Kanwar Singh, grandfather of the petitioner was owner of 57 bighas and 13 bids was of land in village Badli, Delhi. The land was notified for acquisition in the year 1961 when a notification u/s 4 of the Land Acquisition Act was issued. Kanwar Singh died in the year 1975. The Award with respect to the said land was made in the year 1981. Kanwar Singh had left behind two sons, namely, Ganga Ram and Prahlad Singh. Ganga Ram received compensation for his share in the land belonging to Kanwar Singh. Thereafter Ganga Ram also died on 14.9.1983. But before his death Ganga Ram had applied for allotment of a residential plot under the aforesaid Scheme of the Delhi Administration. After the death of Ganga Ram, Rajinder Kumar, the petitioner herein pursued the said application. Ultimately

Rajinder Kumar filed the present writ petition in this Court which was allowed vide judgment dated 17.12.1991. The respondents were directed to allot to the petitioner land measuring not more than 400 sq.yds. at a rate payable at the time when the father of the petitioner had applied for allotment of plot in 1982.

(3) By the present application the respondents have sought review of the judgment dated 17.12.1991 on two grounds, namely,

(A) that the petitioner is entitled to only half of the land which would have been allotted to Kanwar Singh because the petitioner represents the branch of only one of the two sons of Kanwar Singh; (b) that in view of a subsequent Full Bench judgment of this Court the petitioner is liable to pay the price of the land as applicable on the date when an offer is made to him by the Dda for allotment of a specific plot.

(4) However, when notice of the application was issued to the petitioner in writ petition on 24.2.94, it was confined to the first ground. This is so as the subsequent change of law or any decision of a Court in some other case cannot affect the judgment in the present case particularly when it has not been appealed against. Stress is thus only on the first ground. According to Mr. Mahajan if the owner of land dies after notification u/s 4 of the Land Acquisition Act, all the legal heirs together are entitled to one plot of the size to which the deceased would have been entitled as per the Scheme. Kanwar Singh who was the recorded owner at the time of notification u/s 4 left behind two sons, namely, Ganga Ram and Prahlad Singh. The petitioner in the writ petition represents the branch of Ganga Ram alone. Therefore, he is entitled to only half of the size of the plot which would have been allotted to Kanwar Singh. In other words it is submitted that on account of death of the recorded owner after Section 4 notification the heirs cannot have the advantage of allotment of plots as per number of heirs left behind. If the application for allotment of an alternative plot is jointly made by all the heirs, they will together get one plot. Otherwise the heirs will have to share the plot between themselves as per plot their respective shares in the acquired land. In the present case the deceased left behind two sons. Only one son made the application and his branch was before the Court. He will be entitled to half of the plot which would have been allotted to Kanwar Singh.

(5) The main question for consideration is: For purposes of determination of the right to allotment of a plot under the Scheme what is the crucial stage? Is it the stage when notification u/s 4 of the Land Acquisition Act is issued notifying the land for acquisition for a public purpose or it is the date when the award is made? According to the learned Counsel for the applicant the right of a land owner qua his acquired land are determined on the basis of the date of Notification u/s 4 of the Land Acquisition Act. The compensation for the acquired land is paid on the basis of the market value of the land on that date. Further in view of the Delhi Land (Restrictions on Transfer) Act, 1972, there are restrictions on transfer of lands

which are notified u/s 4 of the Land Acquisition Act. Section 4 notification freezes the land for all purposes. Secondly, it is submitted that death of the recorded owner on the date of the notification u/s 4 cannot result in conferring any extra benefit on the heirs of the owner. It cannot be that if a landowner entitled to a plot dies leaving behind more than one heirs, each heir will get an independent right to a plot under the Scheme. The learned Counsel for the applicant has relied on a judgment of the Supreme Court in C.As.97 & 98/1992 Shiv Nath Sharma v Union of India decided on 27.1.1994 in support of his contention. In this case the appellant had purchased a portion of the acquired land from his father under a registered. On the basis of the purchase he applied for allotment of an industrial plot. The appellant had purchased the land after the acquisition was complete, i.e. even the Award had been made. There were several co-sharers Along with the father of the appellant. The father of the appellant had died in the meanwhile and the appellant claimed also as heir to his father. The claim of the appellant was negatived. It was noted that when there were several claimants to a plot one of the co-sharers alone could not be held entitled to the plot in the absence of the other co-sharers. Further the Court noted that the Scheme did not envisage allotment of plots to each one prorata to land acquired. It contemplates only allotment of one plot to the owner whose land was acquired.

(6) The learned Counsel for the writ petitioner/non-applicant argued that the right to allotment of alternative plot has to be determined on the basis of date of the Award. Since the father of the petitioner, namely, Ganga Ram received the compensation for his share of the land and he alone had applied for allotment of alternative plot, his son, the present petitioner should be allotted a full size plot. He has relied on a Full Bench judgment of this Court in Shiv Devi v. Lt. Governor 1986 R.L.R. 557. This judgment of the Full Bench was also relied upon on behalf of the appellant in the aforementioned case before the Supreme Court. The Supreme Court did not follow the same. Moreover, we feel that the reasoning contained in the judgment of the Supreme Court squarely deals with the point in controversy. The Full Bench judgment does not deal with some of the points urged before us. Therefore, we prefer to follow the Supreme Court judgment cited by the learned Counsel for the applicant.

(7) The object of the Scheme appears to be to alleviate the condition of an owner of land whose land is acquired. To rehabilitate him it was considered just and proper to allot him a suitable residential or industrial plot. The right to apply under the Scheme is given to the owner whose land is notified for acquisition. The transferees of land after the notification u/s 4 of Land Acquisition Act do not get any independent right. Moreover, transfers are restricted under the Delhi Lands(Restrictions on Transfer) Act, 1972. However, in case of death of the owner, his heirs only step into his shoes and are entitled to only what the owner, if alive, would have been entitled to. The heirs cannot have more. The right to compensation for the acquired land as also the entitlement to allotment of

alternative plot are to be determined on the basis of what the owner, if alive, would have got. Any other interpretation would lead to absurd results. If the recorded owner on the date of Section 4 notification leaves behind ten heirs, will each get a separate plot of the same size as the owner would have got, if alive? The answer has to be in the negative.

(8) It is also relevant to note here that the right to allotment of alternative plot was in a sense personal to the owner. This is so because the allotment is not automatic. It is subject to certain conditions, one being that he should not have any other residential house or plot. Suppose an owner who apart from the land under acquisition owned a residential plot. In order to take advantage of allotment of alternative plot, he may transfer the land under acquisition to another who may not be owning any residential plot. Can this be permitted? Obviously not. The Scheme of allotment of alternative plot is only a measure to relieve the owner of the hardship resulting from acquisition of his land which may often include residential house. The Scheme is rehabilitative and not intended to confer extra gains. Therefore, the right of the heirs of a deceased owner cannot be better than the right of their predecessor. The result is that the review application is partly accepted and it is held that the writ petitioner will be entitled to allotment of only half of the size of plot which would have been allotted to Kanwar Singh, if he had been alive which means that in any case of the petitioner will not be entitled to a plot of a size more than 200 sq.yds. No costs.