

(2008) 07 DEL CK 0186
In the Delhi High Court
Case No : L.P.A. No. 338 of 2008

Govt. NCT of Delhi and Another

APPELLANT

Vs

Jai Gopal

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 4(1)
Nazul Rules, 1981 — Rule 6

Citation : (2008) 106 DRJ 238

Hon'ble Judges : A.P. Shah, C.J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Rachna Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The short question that falls for our consideration is whether the respondent is entitled to allotment of an alternative land in terms of the

Welfare Scheme notified by the Government of NCT of Delhi to rehabilitate the "agriculturists" whose lands were acquired by the Government.

2. The facts are few and may be briefly stated.

The respondent purchased land measuring 4 bighas and 12 biswas, comprising khasra No. 59/25, which was situated in the revenue estate of Rithala, Delhi under a registered sale deed dated 28th November, 1981, which was registered in the office of the Sub Registrar II, Delhi on 30th November, 1981. By a notification bearing No. F-11(15)/8-L & B issued on 31st December, 1981 u/s 4 of the Land Acquisition Act, 1894, the respondent's land was notified for compulsory acquisition. The respondent also approached the concerned revenue authorities for mutation of the demised land in his favour and orders in that behalf were passed by the concerned Tehsildar on 15th July, 1982. The order records that the vendor of the land was represented before the Tehsildar whose

statement was recorded. The Tehsildar has also taken on record a copy of the sale deed which was placed before him. The acquisition proceedings culminated in the passing of an award dated 10th September, 1985 and that compensation towards acquisition of the subject land was paid to the respondent on 27th April, 1994.

3. The respondent applied for grant of plot against the land, which was acquired under the award dated 10th September, 1985, which was received by the competent authority on 1st August, 1994. The respondent also annexed the documents including the sale deed in his favour along with the application. As there was no response and no information was forthcoming, the respondent was constrained to approach this Court by means of a writ petition under Article 226 of the Constitution of India. The writ petition was opposed by the appellants on the sole ground that both the sale deed of the respondent and mutation of the property were required to be prior to the notification u/s 4 of the Land Acquisition Act, 1894. As mutation in the revenue records was not prior to that date, the respondent was not eligible for grant of an alternative plot pursuant to the scheme of the appellant as he did not satisfy the eligibility conditions.

4. The learned single Judge after hearing both sides held that while the purchase of the land is required to be prior to Section 4 notification, so far as the mutation is concerned, the only requirement is that the applicant must be in a position to place the same before the authorities considering the application for allotment. Consequently, the learned single Judge directed the appellants to consider the application of the respondent afresh and make appropriate directions in accordance with the notified policy for consideration and allotment of an alternative plot within four weeks.

5. The relevant eligibility conditions contained in the notified policy read as follows:

CASES WHERE LAND PURCHASED THROUGH SALE DEED

The following conditions are also to be fulfilled in addition to above:

1. For awards announced pre 3.4.1986 land should have been purchased prior to issue of notification u/s 4 of Land Acquisition Act and mutation must have carried out in their names.
2. For awards announced post 3.4.1986 land must have been purchased 5 years earlier from the date of notification u/s 4 of Land Acquisition Act and mutation has been carried out in the name of the purchaser.
3. That where the land was purchased by a auction purchaser from the Ministry of Rehabilitation and the applicant had entered into a written agreement with the auction purchaser to buy the same, after the sale certificate was issued by the Ministry of Rehabilitation, his case would be processed for allotment on the basis of agreement and the compensation awarded by the L.A.C.

(emphasis supplied)

6. In our opinion, the view taken by the learned single Judge is absolutely correct. On a plain reading of Clause 1 of the eligibility conditions it is clear that words "prior to issue of notification u/s 4 of the Land Acquisition Act" qualify only the date of purchase of the land and not the mutation of the name in the records. The transfer of right, title and interest of any immovable property takes place on the execution of the sale deed and the purchase while the mutation is for recording the name of the purchaser in the records of the revenue authorities. The mutation is carried out by the revenue authorities after verification of the documents relied upon by the applicant. The requirement of the rule is that the applicant should have purchased the land prior to Section 4 notification and as such sale deed had been mutated in the revenue records on the date of the application.

7. Learned Counsel appearing for the appellants, however, submitted that the decision of the learned single Judge is contrary to the judgment of the Full Bench of this Court in *Ramanand v. Union of India* and Ors. AIR 1994 Delhi 29 and judgment of the Supreme Court in *Union of India v. Shivkumar Bhargava* and Ors. AIR 1995 SC 812. The submission is stated to be only to be rejected. In *Ramanand's* case (*supra*), the issue before the Full Bench was relating to the rates of premium chargeable for allotment of the land. The Bench held that rates of premium chargeable from different categories of persons, including an individual whose land had been acquired, shall be the predetermined rates in force at the time when the offer is made to the concerned person or allotment of a specific plot of land in particular area or zone, under Rule 6 of the Nazul Rules. In that context the Bench further held that an individual whose land has been acquired for planned development of Delhi, has no absolute right to allotment, but, he is eligible to be considered for allotment of an alternative plot for residential purposes; and that the DDA may allot Nazul land to such an individual, in conformity with the plans and subject to other provisions of the Nazul Rules. This judgment has no bearing on the controversy raised in this writ appeal.

8. In *Union of India v. Shivkumar Bhargava* and Ors. (*supra*), the question was whether the persons who had purchased land subsequent to the notification would be entitled to allotment of alternative site. The Court held that a person purchasing land after date of notification is not an, owner for the purpose of allotment. The following observations made by the Supreme Court are pertinent and support the case of the respondent than the appellants:

4. The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition, and he alone will be entitled to allotment of alternative site. A person who purchases land subsequent to the Notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had but, he cannot be said to be the owner for allotment

since the right of ownership would be determined with reference to the date on which Notification u/s 4(1) was published. This was the view of this Court in another case while considering the Full Bench judgment of the Delhi High Court. Under these circumstances, the appeal is allowed. The respondent cannot be considered to be the owner as on the date of Notification u/s 4(1) published in the Gazette....

9. In our considered opinion, the appeal is devoid of any substance and the same is hereby dismissed.