

(2011) 08 DEL CK 0372

In the Delhi High Court

Case No : Writ Petition (C) 2338 of 2010 and CM No. 4705 of 2010 (for stay)

Narain Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2011) 08 DEL CK 0372

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anup Kumar Sinha, for the Appellant; Digvijay Rai, for R-1 and 2, Amit Mehra and Ajay Verma for R-4 DDA, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner seeks mandamus for allotment of residential plot in lieu of land acquired in Village-Nangal Devat.

2. The land in Village Nangal Devat was acquired for expansion and development of the Indira Gandhi International Airport. The said acquisition was challenged in W.P.(C) No. 481/1982. However on 2nd August, 2001 the Petitioners therein gave up the challenge to the acquisition and confined the relief to rehabilitation at an alternative place, of persons whose land had been acquired. On the assurance of the counsel for the Airports Authority of India (AAI) that such rehabilitation was under consideration, the writ petition was disposed of.

3. However several applications/objections came to be filed even after disposal of W.P.(C) No. 481/1982 and which were disposed of vide order dated 18th May, 2005 laying down certain guidelines/criteria for allotment of alternative land.

4. The grievance of the Petitioner herein is that though his case for allotment of alternative plot was considered and purportedly disposed of vide communication dated 30th October, 2007/5th November, 2007 but his case was not expressly considered therein. From the said communication, it is shown that while at one

place it is stated that the addressees of the communication of whom Petitioner is one, are eligible, at another place it is stated that the addressees had not been found eligible for allotment of alternative plot. The counsel for the Petitioner contends that the latter part applies only to persons, reasons for whose ineligibility are expressly given and since no reason has been given for the Petitioner being not eligible for allotment of alternative plot, he is so eligible.

5. Notice of the petition was issued and pleadings have been completed.

6. The counsel for the Respondent AAI has stated that the acquisition in the present case was by Notification dated 28th April, 1972 u/s 4 of the Land Acquisition Act. He has further stated that the Petitioner herein belongs to the Harijan Community; that there was some land in the village in the name of the said community; however pursuant to an out of Court settlement, the claims of the members of the said community for allotment of alternative plot in lieu of the land in the name of the community were agreed to be considered. He has in this regard invited attention to the report dated 17th July, 2007 of the Committee constituted to look into the eligibility of 122 persons for allotment of alternative plots and it is shown there from that it was decided that only such of the affected persons who were in possession of community land and whose names figured in the allotment list of the year 1958 would be eligible for allotment of alternative land.

7. The grandfather of the Petitioner herein admittedly acquired such community land only in the year 1961 and hence the question of his name figuring in the allotment list of the year 1958 does not arise.

8. The counsel for the Respondent AAI has further invited attention to the judgment dated 18th March, 2008 in W.P.(C) No. 6249/2007 titled Jai Singh v. UOI and other connected writ petitions and has contended that the present controversy is squarely covered thereby. This Court in the said judgment held that if 1958 survey list has been taken as the basis or the outer limit for making allotments, such policy decision could not be interfered with by this Court. The counsel has however fairly stated that intra court appeals against the said judgment have been preferred and are admitted for regular hearing before the Division Bench.

9. Per contra, the counsel for the Petitioner relying on the judgment/order dated 18th May, 2005 (supra) has contended that since the grandfather of the Petitioner had acquired the land by sale deed in the year 1961 i.e. prior to 28th April, 1972, he would be entitled to an alternative allotment. It is contended that the sole criteria in the order dated 18th May, 2005 was of 28th April, 1972.

10. The counsel for the Respondent AAI has rightly contended that the cases as discussed in the order dated 18th May, 2005 would not apply to the Petitioner. He has invited attention to para 7 of the judgment dated 18th March, 2008 supra to contend that the persons in occupation of community land and individual owners of the land constituted two separate distinct classes. It is thus stated that what

has been observed in the order dated 18th May, 2005 with respect to individual land, cannot apply to the Petitioner whose claim for allotment of alternative land was for reason of being in occupation of community land. It is further stated that much water has flown after the order dated 18th May, 2005.

11. The counsel for the Petitioner of course contends that the grandfather of the Petitioner in the present case had sale deed of the year 1961 in his favour. It is however inexplicable, how the sale deed could be executed with respect to community land. He has further invited attention to *Airport Authority of India v. Karan Singh* 141 (2007) DLT 277 particularly to para 30 thereof but which again pertained to individual owners.

12. It is thus found that the matter in controversy is covered by the judgment dated 18th March, 2008 and not by the earlier judgments. The distinction carved out of the sale deed in favour of grandfather of the Petitioner, is not found to make any difference. A Coordinate Bench having dealt with the matter and the intra court appeal where against is pending, it is not deemed expedient to make a fresh adjudication and it is expedient that the matter is considered by the Division Bench if the Petitioner desires so.

The petition is accordingly dismissed. No order as to costs.