

(2004) 12 DEL CK 0033
In the Delhi High Court
Case No : WP (C) No. 1244 of 1980

Smt. Basanti Devi and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2005) 117 DLT 742 : (2005) 80 DRJ 26

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Anjana Gosain and Digvijay Singh, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—At the hearing held on 23.11.2004, Ms. Anjana Gosain pressed the petition only on behalf of the first petitioner.

2. By way of the present petition, petitioners pray that directions be issued to the respondents to restore land from where the petitioners were dispossessed during emergency and petitioners be compensated for loss suffered due to demolition of their houses. Alternative prayer made is that petitioners be allotted land in a new area.

3. In para 2 of the writ petition, petitioners" claim parity with claim made by writ petitioners of WP(C) No. 135/1980 Madan Lal Sharma and Ors. v. UOI and Ors.

4. Case of the petitioners is that they purchased a plot of land in a colony called Pandav Nagar, Block-L. Petitioner No. 1 is stated to have purchased land vide sale deed dated 19.11.1971. Petitioners No. 2 and 3 claimed to have purchased a plot each vide sale deed dated 17.2.1972. As per the petitioners, they constructed a house on the plot purchased by him. On 1.1.1976, during emergency, houses in Block-L, Pandav Nagar were demolished. Occupants were removed to Kalyan Puri, a J.J. resettlement colony. Petitioners were put in

possession of a plot admeasuring 25 Sq.Yds. in Kalyanpuri at a monthly rental of Rs. 8.50.

5. Petitioners plead as under:-

"The sale deed holders like the Petitioners were told to give the option as to whether they like to get a flat on payment of full market price, in the alternative they were told to give preference for 80 sq.yards plots in Gondha (Plots situated at 39 kms. From Delhi). However, in the meantime, the Petitioners were told to stay on 25 square yards plots on a rental basis. Even the allotment of 80 sq.yards plots at Gondha could be made only if the petitioners deposited immediately cash payment of Rs. 4,000/- which the petitioners were not in a position to do, having already lost their houses and lands. It was also clarified that if any of the petitioners get a plot of land or flat as aforesaid, then, they would not get the land on rental basis at J.J. Resettlement Scheme."

6. It is further stated by the petitioners that on 16.2.1977, Government took a decision to regularize all unauthorized colonies. As a consequence thereof, Pandav Nagar which was an unauthorized colony became entitled for regularization. Petitioners stated that had they not been evicted, they would have got the benefit of regularization in terms of the policy dated 16.2.1977.

7. It is the case of the petitioner that on 24.5.1978, DDA issued a public notice notifying that it had decided to re-settle the persons displaced in Delhi during emergency to the original place or in the nearby residential areas. Applicants were notified that they should apply under the decision aforesaid on or before 30.6.1978. The public notice has been annexed as Annexure-C to the writ petition.,

8. Petitioners claim to have submitted the requisite applications. Since, petitioners were not offered any alternative plot and were not even re-settled from the land where they were displaced, present petition was filed praying as noted in para 5 above.

9. Counter affidavit has not been filed by the DDA.

10. Documents filed by the petitioners would reveal that land on which illegal colonization of Block-L, Pandav Nagar took place were acquired vide award No. C-6/71-72. Post acquisition, possession of land was transferred to the Delhi Development Authority.

11. Document at page 53 of the writ record, being letter dated 26.10.1983, addressed by DDA to the first petitioner would reveal that DDA had informed her that for being entitled to an alternative plot in lieu of the acquired land, she should have her case recommended from Delhi Administration. This appears to be for the reason that under the large scale acquisition of land policy in Delhi, persons whose lands are acquired for purposes of planned development of Delhi are entitled to be considered for allotment of a residential plot provided Delhi Administration sponsors their names.

12. Ms. Anjana Gosain, arguing for the petitioners, relied upon counter affidavit filed by DDA in WP(C) No. 135/1980. She relied upon reply of DDA to para 10 of the said writ petition. Reply of DDA to para 12 of WP(C) No. 135/1980 relied upon reads as under:-

"Para 12 of the petition is a matter of record. However, as already stated in paras 4 and 5 of this affidavit the cases of those of the petitioners who have been found eligible and who had furnished the requisite particulars are being dealt with. The answering respondent crave leaves to refer to those paragraphs for a detailed reply.

In respect of Annexure E(ix) being the application sent by Shri Kamaleshwar Persad, it is stated that it has been received in R & R Cell for allotment of alternative plot. Shri Kamaleshwar Persad is resident of 9/457, Khichripur East, Delhi-91. The aforesaid claim is in the name of his wife Smt. Basanti Devi in whose name the Sale Deed of Plot measuring 476 sq.yards situated in village Gonda, Nimkabanagar alias Patparganj had been executed on 16th November, 1971."

13. Ms. Anjana Gosain also relied upon averments made in para 8 of the reply to WP(C) No. 135/1980. Response of DDA reads as under:-

"Para 8 of the Petition is wrong and is denied. It is submitted that the Government had appointed a Committee on 26th August, 1974 to make a case by case study in respect of all unauthorised colonies which have gone up in Delhi from time to time, in particular before 15th June, 1972. This was done so that Government could take a decision with respect to the future of such colonies. The Committee submitted its report to the Government on 26.12.75. As alleged in Annexure B of the Petition. Hence, the Government order dated 16.2.77 issued on the basis of the recommendation of the Committee is much before the appointment of the Shah Commission. It is further pointed out that private land would be considered for regularisation and not government land. Hence, the recommendation given in Annexure B will be applicable only to the owner of the land whose lands have not been acquired. But in this case the Petitioners had unauthorisedly occupied the Government acquired land. Sub-paras (a), (b)(i) to (iv)(a)(b), (v) to (x) are matters of records."

14. Relying upon DDA's defense as noted above in para 8 of the counter affidavit filed to WP(C) No. 135/1980, Ms. Anjana Gosain urged that it was the positive case of DDA that private land was to be considered for regularization of unauthorized colonies. Lands on which petitioner's house was constructed was private land.

15. Relying upon para 12 of the counter affidavit filed by DDA to WP(C) No. 135/1980, counsel urged that DDA had admitted therein that husband of petitioner No. 1 had applied for allotment of an alternative plot.

16. Pleadings of the petitioner shows that the petitioner is making a claim to be

allotted a 80 Sq.Yds. plot. Same is evident from the pleadings of the petitioners noted in para 5 above.

17. I may note that WP(C) No. 135/1980 pertained to a similar claim by 14 writ petitioners who were likewise displaced from blocks A and C of a colony called Vinod Nagar.

18. Said writ petition was disposed of by this court vide order dated 1.4.1987.

19. Dismissing the claim of the petitioners therein, it was noted that lands were notified for acquisition u/s 4 of the Land Acquisition Act, 1894 on 13.11.1959. Section 6 Notification followed on 20.6.1966. Thereafter, awards were announced and physical possession taken over. It was held that as the lands were acquired, title vested in the Government. Question, Therefore, of re-allotting the land to the petitioners did not arise.

20. It was noted that the petitioners had purchased the land from the colonizer at their own risk as the land was notified u/s 4 of the Land Acquisition Act. It was also noted that the colony as well as houses constructed were totally unauthorized.

21. It was noted by this court that DDA was offering built-up flats to the persons who were evicted.

22. Counter affidavit filed by DDA in the said writ petition records that DDA was willing to allot flats to the persons who were evicted during emergency at 50% of the cost. DDA has averred the following in para 3 of the said counter affidavit:-

"In addition it was also decided that those who hold regular sale deed could be offered Janta/LIG flats at Madipur/Lawrence Road, provided they were willing to pay 50% of the cost of the flats."

23. In the present writ petition, order dated 1.4.1987 records as under:-

"Present: Mr. Kamleshwar Prasad, husband of the petitioner.

Mr. A.S. Chandiok for respondent.

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It is stated that counsel for the petitioner is unwell and has Therefore gone back home. The representative of the petitioner states that she has not opted for an alternative flat but wants the land from which she was evicted. Particulars of the land from which the petitioner is stated to have been evicted should be given to the counsel for the respondent within two weeks. Mr. Chandiok may seek instructions thereafter, and list this petition for directions on 5th May, 1987."

24. Petitioners have made averments in writ petition that they were given an option to get a plot. No document, much less a policy has been shown that DDA ever gave said option to petitioners. Policy of 1977 relied upon is for regularization of unauthorized colonies which were existing. Block-L, Pandav

Nagar was not in existence in 1977.

25. Petitioners have relied upon the policy decision dated 16.2.1977 (Annexure-B). The said policy decision does not relate to evictees of unauthorized colonies. It contemplates in-situ regularization of unauthorized colonies. Petitioners were admittedly dispossessed much prior to 16.12.1977.

26. Claim of the petitioners can, at best, fall under the public notice dated 24.5.1978 (Annexure-C). Said document would reveal that DDA had notified a decision to re-settle the persons displaced in Delhi during emergency, to the original places or in the nearby residential areas. It was never notified that re-settlement would be in the form of land or a flat. It was only notified that DDA had decided to re-settle the displaced persons.

27. Petitioners cannot, Therefore, insist that they should be allotted a plot. This court has to take note of the fact that as far as the present lands are concerned where the colony Pandav Nagar came to be illegally colonized, a notification u/s 4 of the Land Acquisition Act, 1984 was issued on 3.3.1964. It is obvious that present petitioners, like the petitioners of WP(C) No. 135/1980, purchased the land in a wholly unauthorized colony, which lands were under acquisition. These petitioners could have no claim against acquisition of their lands.

28. Reliance of the petitioners on averments made by DDA in para 12 of its counter affidavit to WP(C) No. 135/1980 is neither here nor there. Said pleadings of DDA have to be understood in context of what was pleaded by the writ petitioners of WP(C) No. 135/1980 in their writ petition. Averments made in para 12 of WP(C) No. 135/1980 read as under:-

"12. However, in spite of these timely applications, which were duly accompanied by all the necessary documents, the Respondents have taken no steps to regularise the petitioners' colony or re-settle them in the lands from where they were up-rooted. A number of reminders sent by the petitioners and other similarly situated aggrieved persons of other colonies as per details given below have been in vain.

S. No. Dates To Annexure 1 23.6.1977 Facts Finding Committee E-1 2 27.7.1977 Shri Lalu Prasad Yadav E-2 3 10.10.1977 Prime Minister E-3 4 28.10.1977 Prime Minister E-4 5 5.3.1978 Prime Minister E-5 6 14.4.1978 Vice-Chairman, DDA E-6 7 2.6.1978 Vice-Chairman, DDA E-7 8 22.12.1978 Prime Minister E-8 9 6.11.1979 Asstt. Housing Commissioner (R. Cell) L&B, Delhi Admn. E-9 10 11.12.1979 President of India E-10 11 10/11/78 Secretary, Land & Building, Deptt. of Rehabilitation Cell, Vikas Bhawan, New Delhi E-11

Copies of these documents are annexed herewith and Annexures are marked as Annexures E-I, E-II, E-III, E-IV, E-V, E-VI, E-VII, E-VIII, E-IX, E-X and E-XI."

29. Said writ petitioners, in para 12 of their writ petition, had annexed a representation made by husband of the first petitioner herein which was annexed as "Annexure-E (ix)" to the said writ petition. Said representation dated

6.11.1979 by the husband of the present petitioner is to the Assistant Housing Commissioner, Land & Building Department, New Delhi. Request is to restore the land.

30. It is in this context that response of DDA in para 12 of its counter affidavit to said writ petition has to be understood. It cannot be read as an admission of the DDA in said writ petition that petitioner No. 1 herein was held entitled to an alternative plot.

31. It is rather unfortunate that the present petitioner chose not to be guided by order dated 1.4.1987 passed in WP(C) No. 135/1980 when this court held that only right of the evictees was to an alternative flat.

32. Present petition appears to have been prosecuted only by petitioner No. 1. This petitioner, on 1.4.1987 when present petition was listed along with WP(C) No. 135/1980, declined the benefit of alternative flat.

33. Since the petitioner No. 1 does not want a flat and there is no policy under which it can be said that she would be entitled to a plot, I find no merit in the petition.

34. I may note that in the present petition, petitioners have not made any averments that they had applied to the Land & Building Department, Government of NCT Delhi for allotment of a residential plot under the large scale acquisition policy framed by the Government.

35. Rule is discharged. Writ petition is dismissed.

36. No costs.