

(2013) 04 DEL CK 0338
In the Delhi High Court
Case No : LPA No. 25 of 2008

Tasnemul Haq (Since Deceased)

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 200 DLT 78

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Sanjay Jain and Ms. Sudha Bhadauria, for the Appellant; Jatan Singh, CGSC and Mr. Soayib Qureshi, for the Respondent

Judgement

V.K. Jain, J.—On partition of the country in the year 1947, the appellant before us continued to reside in India, though some of his family members migrated to Pakistan. The Custodian of Evacuee Properties, acting under the Administration of Evacuee Properties Act, 1950, declared the appellant as well as his brother and sisters to be evacuees and consequently the properties held by them were declared as evacuee properties. On a representation submitted by the appellant to the Custodian General seeking restoration of his share in the said property, an order was passed by the Assistant Custodian on 18.3.1955, holding therein that the share of the appellant in the aforesaid properties could not be evacuee property. It was also declared that he had 1/3rd share in the land in question and such share was not an evacuee property. However, 1/3rd share of the appellant in the aforesaid could not be restored to him in view of the fact that the said land had been sold to third parties. Vide Memorandum dated 27.1.1967, issued by the Assistant Custodian, Jalandhar, Punjab, the share of the appellant in the aforesaid land was sought to be changed from 1/3rd to 7/24th in the Jamabandi sent by him. In order to compensate the appellant for his land which had been transferred to third parties, the land measuring 10 bighas in Village Lampur was allotted to him on 8.11.1978. The appellant, however, was not satisfied with the extent of land allotted to him and claimed that more land should have been

allotted to him. He also claimed that he should be given land at the current market value and not on area to area basis. Thereupon, additional land measuring 17 bighas and 12 biswas was allotted to him over and above 10 bighas of land which had been allotted to him in Village Lampur. The appellant was asked to indicate the choice of the village, where he wanted the additional land to be allotted to him. The appellant selected the land situated in Village Hamidpur, which was given to him on 29.6.1982.

Being still not satisfied, the appellant filed W.P. (C) No. 429/1984 seeking following reliefs:

(i) they should allot lands to the petitioner equivalent in value of the lands taken over from the petitioner in a most illegal and unnatural way;

(ii) they should give mesne profits for the use of the lands belonging to the petitioner;

(iii) they should adopt the area of 9B 7B Pukhta as representing 1/3rd share in the composite property in Faridabad which is 8/24th of the total area of such lands and not force the petitioner to accept the area of 8 bighas 4 biswas which is just 7/24th of the total area;

(iv) they should be directed to allot all the lands in sold blocks and in adjoining villages and for this action, they may be directed to take back the lands at present allotted to the petitioner in Village Lampur.

2. The respondents contested the petition claiming that the share of the appellant in the land in question was wrongly stated to be 1/3rd in the order dated 1.3.1984, which was later corrected in the year 1967 and appropriate equivalent land was restored to him, on area-to-area basis. The learned Single Judge vide impugned order dated 19.3.2007 was of the view that though ordinarily the land of the appellant ought to have been restored to him, since he had accepted the alternative land, it was not open to him to say that such allotment of alternative land to him should be ignored and the original land belonging to him should be restored to him. It was also held by the learned Single that share of the appellant in the land in question was 1/3rd and not 7/24th.

3. The learned Single Judge was of the view that though the appellant should be put in the same position in which he would have been placed on restoration of the original land to him, the procedure adopted by the respondent in making the land available to him on area to area basis, considering the alternative land was in the nature of valuation similar to that of the original land, satisfies the test of restoration of the appellant to the original position. As regards compensating the appellant for the differential area consequent to his share in the land being "(determined as 1/3rd, the learned Single Judge noted the statement of the respondents that list of lands similar in nature and location to the original land of the appellant would be shown to him and he could exercise the option thereafter.

He also held that in case appropriate land was not made available, the question of compensating the appellant in equal terms would remain open to adjudicate in separate legal proceedings. Being aggrieved from the said order, the appellant is before us by way of this appeal.

4. Since no appeal or cross objections have been filed by the respondents, the findings of the learned Single Judge that the share of the appellant in the land in question was 1/3rd, has become final. It is also an admitted position that the land of the appellant which was declared as evacuee property has since been transferred by the respondents to third parties. Considering the fact that the appellant has already accepted the alternative land from the respondents, instead of insisting upon restoration of his original land, we are in agreement with the learned Single Judge that it is no more open to the appellant to seek restoration of his original land and he was only entitled to adequate compensation for his land which the respondents wrongly declared to be the evacuee property and later transferred to third parties. Though the exact date when the land of the appellant was declared to be an evacuee property is not known, a perusal of the documents would show that it was in the year 1952, that the land of the appellant, his brother and sisters at Faridabad was declared as evacuee property and acquired by the respondent. It was on 29.5.1952 that the appellant represented to the Custodian General that he was an Indian National and by mistake his share in the aforesaid land had been declared as evacuee property, it should be restored to him. In our opinion, the appellant is entitled to either cash representing the market value of this land as in the year 1952 or alternative land which would have the same value in the year 1952, as was the value of the land of the appellant at that time. This, in our opinion, is the only manner in which the appellant can be appropriately compensated for his land which was wrongly declared an evacuee property and transferred to third parties. Neither the appellant can justifiably claim more than what was the value of his land in the year 1952 nor can the respondents deny him cash or land equivalent to the value of the land of the appellant in the year 1952. There is no material on record to show as what was the value of the land of the appellant in the year 1952. Though alternative land has been allotted to the appellant two times, it is not known as to what was the value of that alternative land in the year 1952. Therefore, the material available on record does not enable us to decide as to how much additional compensation, if any, needs to be paid to the appellant either in the form of land or in money terms. It is not possible for us, while considering the appeal arising out of a writ petition, to go into such disputed questions of facts and take a view one way or the other. In these circumstances, we dispose of the appeal with the following directions:

- (i) The respondents shall constitute, within four weeks, a committee of three officers to ascertain as to what was the market value of the land of the appellant (1/3rd share) when it was declared to be in evacuee property in the year 1952.
- (ii) The aforesaid committee shall also ascertain as to what was the market value

of the alternative allotted to the appellant, as in the year 1952. Separate valuation shall be made in respect of 10 biswas of land allotted to the appellant on 8.11.1978, and 17 bighas and 12 biswas of land allotted to him on 6.6.1981.

(iii) If the Committee finds that the market value of the alternative land already allotted to the appellant was equal to or more than the value of his original land (1/3rd share) as in the year 1952, the appellant shall not be entitled to further compensation either in money terms or in terms of additional land.

(iv) If the committee finds that the market value of the alternative land allotted to the appellant, as in the year 1952, was less than the market value of the appellant's original land (1/3rd share) as in the year 1952, the appellant would be entitled to money representing the difference between the market value of his land (1/3rd share) in the year 1952 and the market value of both the alternative lands allotted to him, as in the year 1952.

(v) The appellant shall also be entitled to interest @ 6% per annum on (a) the market value of his original land (1/3rd share), as in the year 1952 with effect from 1.1.1953 to 7.11.1978. (b) On the difference between the market value of his original land (1/3rd share) as in the year 1952, and the market value of 10 bighas of alternative land as in the year 1952, from 8.11.1978 to 5.6.1981 and (c) On the difference, if any between the market value of his original land (1/3rd share) as in the year 1952 and the combined market value of the both the alternative lands allotted to him, as in the year 1952, from 6.6.1981, till the payment of the amount of difference to him.

(vi) Since we are awarding interest to the appellant, he shall not be entitled to any separate amount towards mesne profits.

(vii) The appellant shall not be entitled to any additional land. There shall be no orders as to costs.