

SUPREME COURT OF INDIA

Delhi Administration

Vs.

Kaushilya Thakur

C.A.No.3432 of 2012

(G.S. Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

09.04.2012

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. This appeal is directed against order dated 22.9.2010 passed by the Division Bench of the Delhi High Court whereby the appeal preferred by the appellants against the order of the learned Single Judge was dismissed and the direction given by him for consideration of the case of the writ petitioner, namely, Ranjodh Kumar Thakur (husband of respondent No.1) for allotment of 1000 sq. yards land was upheld.

3. By notification dated 13.11.1959 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, b the Actb), the Government of India proposed the acquisition of 2275 Bigha and 18 Biswa land of village Kotla for planned development of Delhi. The declaration under Section 6(1) was issued on 20.6.1966 and the award was passed on 5.1.1977. The possession of the acquired land was taken on 25.4.1977.

4. The husband of respondent No.1, who is said to have purchased 1000 sq. yards land forming part of Khasra Nos.166, 167 and 168 from Hari Chand son of Mukh Dayal Singh, General Power of Attorney of M/s. Universal Colonizers vide Sale Deed dated 12.7.1959 lodged claim for compensation and succeeded in getting an amount of Rs.10126.30. On a reference made by the Collector under Section 18 of

the Act, Additional District Judge, Delhi held that the claimant is entitled to a sum of Rs.23,283/-.

5. After 10 years of receiving the amount of compensation in terms of the award made by the Land Acquisition Collector, Ranjodh Kumar Thakur submitted application dated 6.7.1987 for allotment of an alternative plot measuring 1000 sq. yards. In para 5(ii) of the application, he gave the number of the acquired land as plot No.70/2. In para 6, he mentioned that he had purchased the land vide sale deed dated 12.7.1959.

6. The application of Ranjodh Kumar Thakur was rejected by Joint Secretary (LB), Delhi Administration on the ground that Khasra No.70/2 was not owned by him. This was conveyed to him vide letter dated 28.8.1989, the relevant portions of which are extracted below:

With reference to your application dated 6.2.87 on the subject noted above, I am directed to say that the Kh. No. 70/2 mentioned in your application belongs to Gram Sabha as per report of land Acquisition Collector Delhi.

As such, you are not found eligible for alternative plot in lieu of acquired land, in accordance with the policy as Kh. No. 70/2 was not owned by you, neither any compensation has been received against this Kh. Number by you. Accordingly your application is rejected.

7. After about 2 months, Ranjodh Kumar Thakur made representation dated 12.10.1989 and reiterated his demand for allotment of plot by asserting that the reason assigned by the Competent Authority was untenable. He claimed that the benefit of the policy framed by the Government of India cannot be denied to him because his entitlement to get compensation in respect of khasra No. 70/2 was accepted by Additional District Judge, Delhi and Gaon Sabha has no right over the land comprised in that khasra number. Thereupon, the Special Secretary, Delhi Administration sent letter dated 7.3.1990 to Ranjodh Kumar Thakur and informed him that the decision communicated to him vide letter dated 28.8.1989 holds good. The second representation made by Ranjodh Kumar Thakur on 3.4.1990 was rejected by the Competent Authority on 10.3.1993 and the decision contained in letter dated 28.8.989 was reiterated.

8. Ranjodh Kumar Thakur challenged the rejection of his claim for allotment of 1000 sq. yards land in Writ Petition No. 4450 of 1993. The same was allowed by

the learned Single Judge vide order dated 13.3.2003, paragraphs 4 and 5 of which read as under:

4. The aforesaid has happened apparently on account of certain disputes between the vendor of the sale deed dated 12-7-1959 and the gram sabha in view of the fact that the vendor was the colonizer. The matter was referred to adjudication under Section 30-31 of the Land Acquisition Act, 1894 to determine this issue and judgement was delivered by the learned Additional District Judge in LAC No. 53/1979 on 26th April, 1986. It was held in para 4 of the Judgement that the gram sabha has failed to substantiate its claim and were not entitled to any compensation. Another order was rendered in the same case on 30- 9-1986 which refers the case of the petitioner in which it has been stated in para 1 [xiv] that in so far as the land of the petitioner concerned the sale was admitted by the seller out of Khasra No. 70/2. The aforesaid facts thus clearly show that the land of the petitioner was acquired. Further petitioner has got the compensation in respect of land In question. Thus the impugned orders dated 28-8-1989 read with 10-3-1993 reiterating the same cannot be sustained and are hereby quashed. The petitioner is thus eligible for allotment of alternate plot. The case of the petitioner has to be considered for the said allotment subject to fulfillment of the normal formalities and other conditions prevalent at the relevant time.

5. It directed that the petitioner shall appear before Deputy Secretary, [Alternate] Department of Land Building Government of NCT of Delhi, Vikas Bhawan, New Delhi on 4th April, 2003 at 3.00 P. M. and the necessary action shall be taken and the recommendation be made in terms of the policy of the respondent within a maximum period of three months from the said date which has to be communicated to respondent no. 1 within the said period of time for further action by respondent no.1.

9. The appeal preferred by the appellant against the order of the learned Single Judge was dismissed by the Division Bench of the High Court solely on the ground that the Reference Court had accepted his entitlement to receive compensation in lieu of the acquired land which formed part of khasra No.70/2 of village Kotla. The relevant portion of the order of the Division Bench is extracted below:

In view of the aforesaid, there is no doubt that the respondent- petitioner was granted compensation in respect of the land situated in Khasra No. 70/2. Learned counsel for appellant submitted that the grant of compensation does not establish ownership because tenants are also granted compensation. It is

contended by her that the respondent was required to prove his ownership. On a perusal of the order passed by the Land and Acquisition Collector, which has been brought on record as well as the order passed by the Reference Court, we do not notice that the compensation was granted to the respondent treating him as a tenant. In the absence of the same we do not perceive any error in the order of the learned Single Judge.

10. We have heard Shri H.P. Raval, learned Additional Solicitor General and Shri Rishikesh, learned counsel for respondent No.1 and perused the record. In our view, the impugned order as also the one passed by the learned Single Judge are liable to be set aside because,

i) While granting relief to the husband of respondent No. 1, the learned Single Judge overlooked the fact that the writ petition had been filed after almost 4 years of the rejection of an application for allotment of 1000 sq. yards plot made by Ranjodh Kumar Thakur. The fact that the writ petitioner made further representations could not be made a ground for ignoring the delay of more than 3 years, more so because in the subsequent communication the concerned authorities had merely indicated that the decision contained in the first letter would stand. It is trite to say that in exercise of the power under Article 226 of the Constitution, the High Court cannot entertain belated claims unless the petitioner offers tangible explanation b State of M.P. v. Bhailal Bhai (1964) 6 SCR 261.

ii) The claim of Ranjodh Kumar Thakur for allotment of land was clearly misconceived and was rightly rejected by the Joint Secretary (LB), Delhi Administration on the ground that he was not the owner of land comprised in khasra No. 70/2. A bare reading of Sale Deed dated 12.7.1959 executed by Shri Hari Chand in favour of Ranjodh Kumar Thakur shows that the former had sold land forming part of khasra Nos. 166, 167 and 168 of village Kotla and not khasra No.70/2. This being the position, Ranjodh Kumar Thakur did not have the locus to seek allotment of land in terms of the policy framed by the Government of India. The payment of compensation to Ranjodh Kumar Thakur in terms of the award passed by the Land Acquisition Collector and the enhanced compensation determined by the Reference Court cannot lead to an inference that he was the owner of land forming part of Khasra No.70/2. In any case, before issuing a mandamus for allotment of 1000 square yards plot to the writ petitioner, the High Court should have called upon him to produce some tangible evidence to prove his ownership of land forming part of Khasra No.70/2. Unfortunately, the learned Single Judge and

the Division Bench of the High Court did not pay serious attention to the stark reality that Ranjodh Kumar Thakur was not the owner of land mentioned in the application filed by him for allotment of 1000 square yards land.

11. In the result, the appeal is allowed. The impugned order as also the order passed by the learned Single Judge are set aside and the writ petition filed by the husband of respondent No.1 is dismissed. The parties are left to bear their own costs.