

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th July, 2011

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W.P.(C) 9048/2008

SMT. SARJO & ANR.

..... Petitioners

Through: Mr. Brajesh K. Srivastava & Mr.
Dinesh Kumar, Adv.

versus

D.D.A. AND ANR

..... Respondents

Through: Mr. C.S. Dahiya, Adv. for R-2&3.
Mr. Ajay Verma & Mr. Amit
Mehra, Adv. for DDA.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to the reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioners being two of the daughters of one Shri Chandgi have filed this writ petition seeking quashing of the letter dated 29th June, 2007 of the respondent no.1 DDA allotting in the name of the respondents no.2&3, Plot No.26, Block-C in Village Rangpuri, in lieu of land acquired

in village Nagal Dewat.

2. It is not in dispute, that the land which was acquired was in the name of Shri Chandgi; that Shri Chandgi died on 26th May, 1982 leaving nine daughters and one son. Neither counsel is able to state whether the wife of Shri Chandgi is alive or was alive at the time of demise of Shri Chandgi. The respondents no.2&3 are the sons of the son of Shri Chandgi who died on 3rd March, 1999.

3. A Writ Petition being W.P.(C) No.481/1982 was filed by the residents of village Nagal Dewat whose land had been acquired. It appears that directions were issued in the said writ petition for allotment of alternative land in lieu of acquired land. A list of persons entitled to such allotment of rehabilitation plot was prepared and in which the name of Shri Chandgi found mention.

4. Certain applications came to be filed in the said disposed of W.P.(C) 481/1982 and which applications were disposed of vide order dated 18th May, 2005. Vide interim orders during the said proceedings, on 28th April,

2004 a Nodal Officer was appointed to prepare a list of persons eligible for allotment, after considering the objections of different parties. The Nodal Officer is stated to have prepared a list which was placed before this Court in that writ petition. This Court in the order dated 18th May, 2005 also issued certain directions/guidelines/criteria regarding allotments. It was *inter alia* directed that any person whose name found mention in the Survey Report or in the Jamabandi as on 28th April, 1972 was eligible for allotment of alternative plot; that if such a person has died intestate after 28th April, 1972 the legal heirs would be jointly entitled for allotment of one plot only; that in the event of recorded owner dying after 28th April, 1972 leaving a Will, mutation in accordance with the Will shall be carried out; the claims for mutation were directed to be made before the Nodal Officer within 15 days of 18th May, 2005 and it was further directed that in case the Nodal Officer rejected any applications, the aggrieved person would have remedy by way of appropriate proceedings and not by way of application in that writ petition.

5. The petitioners claim that Shri Chandgi being the recorded bhoomidar and having died after 28th April, 1972, in accordance with the guidelines aforesaid, the allotment of alternate/rehabilitation plot has to be in the name of all the legal heirs of Shri Chandgi, including themselves and has been wrongly made in the name of the respondents no.2 & 3 only. They thus seek quashing of the allotment letter in name of respondents no.2&3 only and issuance of allotment letter in name of all heirs of Shri Chandgi.

6. The stand of the counsel for the respondent no.1 DDA is that the respondent no.1 DDA has issued the allotment letter in the name of the respondents no.2&3 in accordance with the list forwarded to it by the ADM (SW) appointed as the Nodal Officer and thus no error can be said to have been committed by respondent no.1 DDA.

7. It is not the case of the petitioners that they had applied to the Nodal Officer for inclusion of their names as legal heirs of Shri Chandgi. The petitioners however upon allotment in favour of the respondents no.2&3 have by way of this writ petition challenged the same. Notice of the

petition was issued and vide order dated 19th December, 2008 the respondent no.1 DDA was restrained from executing the Conveyance Deed of the plot in favour of the respondents no.2&3. The Conveyance Deed has not been executed as yet.

8. The respondents no.2&3 in their counter affidavits have not set up any Will of Shri Chandgi in favour of their father or in their favour. They however contend that they along with their father were in possession of the land which was acquired and possession whereof was ultimately delivered only in the year 2007 and accordingly alternative plot aforesaid has been allotted in their favour. They thus claim that since they alone were in possession, they alone are entitled to the alternative plot.

9. The petitioners have filed CM No.4975/2011 to amend the writ petition to implead the ADM and to challenge the mutation if any from the name of Shri Chandgi to the name of the respondents no.2&3 only leading to allotment in favour of the respondents no.2&3.

10. The respondents no.2&3 have filed CM No.10575/2011 contending that another writ petition being W.P.(C) 3956/2010 though relating to certain other family was filed on similar grounds but was withdrawn on 24th May, 2011 with liberty to file a suit. The contention of the counsel for the respondents no.2&3 before this Court also is to relegate the petitioners to a suit to establish their rights if any in the plot allotted, as the heirs of Shri Chandgi.

11. I have wondered whether to allow the application for amendment, issue notice to the ADM/Nodal Officer who had prepared the list and then to verify the correctness thereof and/or to relegate the petitioners to a suit. Though the respondents no.2&3 have also taken a plea of the petitioners having relinquished their rights in their favour but admittedly there is no registered Relinquishment Deed by the petitioners. The respondents no.2&3 have not been able to state as to how they alone are entitled to the estate of Shri Chandgi, it being not in dispute that the allotment of the alternative plot is a part of the estate of Shri Chandgi. It is felt that rather than multiplying the litigation, in the aforesaid facts the issue should be

decided in these proceedings only. This Court in exercise of powers under Article 226 is to do substantial justice and not pass an order which would merely lead to further litigation.

12. I have also considered the effect of the petitioners not approaching the Nodal Officer. There is nothing in the orders in the W.P.(C) 481/1982 or otherwise in law which can extinguish the rights of the petitioners as the heirs of Shri Chandgi for not approaching the Nodal Officer within the stipulated time. Moreover the matter is not stale, the orders being of as late as 2006 and the allotment of alternative plot being of immediately preceding the filing of this petition.

13. It is also not as if any title has come to be vested in respondents no.2&3 as yet. Challenge has been made at the stage of allotment itself. Clause 3 of the allotment letter dated 29th June, 2007 is as under:-

“3. If it is discovered that the allotment has been obtained by suppression of any facts or by mis-statement, mis-representation or fraud or if there shall have been in opinion of the DDA, any breach of the condition of allotment the allotment is liable to be cancelled forthwith.”

The respondents no.2&3 having not explained as to how they alone came to be substituted in place of Shri Chandgi and why the petitioners are not entitled to have their names and names of other legal heirs of Sh. Chandgi included in the allotment letter. There is also no merit in the claim of respondents no.2&3 of alone being entitled to allotment for the reason of being in possession. The directions in the earlier writ petition were unambiguous. All the legal heirs of recorded owner are entitled to allotment. The counsel for the respondents no.2&3 in response to query whether the Delhi Land Reforms Act, 1954 applied to acquired land has replied in the negative and stated that the acquired land was not agricultural but abadi land.

14. The petition therefore succeeds. The allotment letter impugned in this petition is quashed and the respondent no.1 DDA is directed to issue a fresh allotment letter with respect to the plot in the name of all the legal heirs of Shri Chandgi.

15. The respondent no.2&3 in their counter affidavits have also stated that they have sold the plot. However no particulars in this regard have

been produced. No purchaser also has come before this Court seeking impleadment. It will also have to be considered whether the respondents no.2&3 had any rights which could be so sold/transferred and whether the terms & conditions of allotment permitted the respondents no.2&3 to so transfer the allotment in their favour. However all the said questions cannot be gone into these proceedings and the remedies therefor would be by way of a suit.

16. The allotment to be now made as per the undisputed list of legal heirs in para 4 of the writ petition. The counsel for the petitioners states that the petitioners will furnish full particulars of all the legal heirs to the respondent no.1 DDA within two weeks of today.

The petition is disposed of. No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 29, 2011/pp