

Man Singh vs.dda and Anr

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SooperKanoon Citation : sooperkanoon.com/1224479

Court : Delhi

Decided On : Aug-02-2019

Appellant : Man Singh

Respondent : Dda and Anr

Advocate for Def. : Ms. Shobhana Takiar, Ms. Rachana Srivastava, Ms. Umme Salma

Advocate for Pet/Ap. : Mr. Adarsh. B. Dail, Mr. Iqbal Singh, Mr. Shekhar Kumar Bajaj

Judgement :

\$~S-1 * + IN THE HIGH COURT OF DELHI AT NEW DELHI REV.PET.530/2012, C.M. APPL.11668/2012 IN W.P.(C) 6036/2010 MAN SINGH Through : Mr. Adarsh. B. Dail, Sr. Advocate with Mr. Iqbal Singh and Mr. Shekhar Kumar Bajaj, Advocates.

... Petitioner

versus DDA AND ANR.

... RESPONDENTS

Through : Ms. Shobhana Takiar, Advocate, for DDA. Ms. Rachana Srivastava and Ms. Umme Salma, Advocate, for GNCTD. CORAM: HON'BLE MS. JUSTICE HIMA KOHLI %

ORDER

0208.2019 REV.PET.530/2012, C.M. APPL.11668/2012 (for condonation of delay in filing the review application) IN W.P.(C) 6036/2010 1. The present review application has been filed by the respondent No.1/Delhi Development Authority (DDA), stating inter alia that the order dated 08.02.2012, whereby the writ petition was disposed of, requires to be reviewed. Accompanying the review application is an application for seeking condonation of delay of 152 days in filing the said application.

2. A brief glance at the facts of the case and the sequence of events is considered necessary. The petitioner had filed the present writ petition praying inter alia for issuance of a writ of mandamus to the respondent REV.PET.530/2012 Page 1 of 9 No.1/DDA, for releasing plot No.A-76, Kalkaji Extension, New Delhi, in favour of the legal heirs of late Sadhu Singh, who had expired in the year 1987, leaving behind nine legal heirs, including the petitioner, as an alternative allotment in lieu of acquired land. Pleadings were completed in the petition qua the respondent No.1/DDA and the respondent No.2/Govt. of NCT of Delhi (GNCTD).

3. In its counter affidavit, respondent No.1/DDA stated that a parcel of land measuring 11 bighas 14 biswas comprised in Khasra No.440 was acquired by the Land & Building Department vide Award No.1651. Possession of the said parcel of land was handed over to the DDA by the acquiring department on 19.12.1963 and it was placed at its disposal vide Notification dated 03.01.1968. Another parcel of land measuring 5 bighas 5 biswas comprised in Khasra No.441 of Village Kilokari was acquired through a separate Award No.10/83-84. Out of 5 bighas 5 biswas, physical possession of 5 bighas 1 biswa was handed over to the DDA on 19.08.1997. The remaining 0-4 biswas comprised in Khasra No.441 was not handed over to the DDA on the ground that the same was built-up. On 03.09.1982, a letter was sent by the respondent No.1/DDA to the petitioner for allotment of an alternative residential plot in A-76, Kalkaji Extension in lieu of the subject land comprised in Khasra No.441, but he refused the above allotment vide letter dated 07.06.1991.

4. In para 9 of the counter affidavit, respondent No.1/DDA went on to state that vide letter dated 04.06.2009, the petitioner was requested by the DDA to contact

the Land and Building Department of the GNCTD for handing over physical possession of 0-4 biswas of land comprised in Khasra REV.PET.530/2012 Page 2 of 9 No.441 and thereafter request for a fresh alternative allotment. It was also averred that plot No.A-76, Kalkaji Extension was never allotted to the petitioner as he had refused the terms and conditions of allotment.

5. When the matter was listed in court for arguments on 08.02.2012, learned counsel for the petitioner had stated that during the pendency of the writ petition, one of the legal heirs of the deceased petitioner, namely Mr. Kirpal Singh had submitted an application to the respondent No.1/DDA under the Right to Information Act, 2005 (RTI Act), seeking information pertaining to the allotment of an alternative plot in Kalkaji Extension and vide letter dated 03.08.2011, DDA had asked the applicant to approach the Land Acquisition Collector, (South), Land and Building Department, GNCTD, for purposes of handing over possession of the subject land and only thereafter, could DDA take steps to hand over the plot at Kalkaji Extension to the successors of late Sadhu Singh. It was further stated by learned counsel for the petitioner that on receiving the said reply, late Kirpal Singh had approached the LAC with a representation dated 27.09.2011, requesting the Department to take over possession of the subject land measuring 0-4 biswas that was lying vacant.

6. It is an admitted position that possession of the subject land measuring 0-4 biswas was finally handed over to the respondent No.2/LAC only on 14.05.2012, i.e. after the date of passing of the order dated 08.02.2012 in the instant petition. However, taking into consideration the contents of the letter dated 03.08.2011, addressed by the respondent No.1/DDA in reply to an RTI query, the petition was disposed of on 08.02.2012 with liberty granted to the REV.PET.530/2012 Page 3 of 9 petitioner and the remaining legal heirs of late Sadhu Singh, to approach the LAC with their grievance and to pursue the remedies before the said department. The operative paras of the order dated 08.02.2012 is reproduced herein below for ready reference: in the 5. In view of the above correspondence, it is clear that it is for the petitioner and the remaining legal heirs of Late Shri Sadhu Singh to approach the Land Acquisition Collector with a request for taking over possession of the subject land situated in village Kilokari. It is only after the possession is

taken over by the Land Acquisition Collector, can the petitioner and the remaining legal heirs of the deceased Shri Sadhu Singh claim entitlement to the plot in question bearing No.A-76, Kalkaji Extension as mentioned letter dated 03.08.2011 (Annexure P-1 to CM199462011), as an alternative allotment in lieu of their acquired land.

6. The present petition is accordingly disposed of with liberty granted to the petitioner and the remaining legal heirs of the deceased, Shri Sadhu Singh, to approach the Land Acquisition Collector with their grievances and to pursue their remedies before the said Department as per law. If the Land Acquisition Collector accedes to their request and takes over possession of the subject land under their occupation, they may approach respondent No.1/DDA thereafter for allotment of the subject plot in their favour as legal heirs of deceased Sh.Sadhu Singh. As and when the petitioner and the remaining legal heirs of deceased Shri Sadhu Singh approach respondent No.1/DDA with adequate proof of having handed over possession of the subject land under their occupation to the Land Acquisition Collector, respondent No.1/DDA shall consider and process their its dated 03.08.2011(Annexure P-1 to CM199462011). applications terms in of letter REV.PET.530/2012 Page 4 of 9

7. The petition is disposed of alongwith the pending applications. By this review application filed by the respondent No.1/DDA in 7. August 2012, it has sought a review of the order dated 08.02.2012 on the ground that the reply dated 03.08.2011 submitted by the DDA in response to an application under the RTI Act was beyond the scope of the Act and steps were taken to issue a Show Cause Notice to the officials concerned for furnishing incorrect information. It took quite some time for completion pleadings in the review application whereafter a detailed order was passed on 30.06.2015, to the following effect: REVIEW PET. 530/2012 and CM APPL. 11668/2012 (for condonation of delay) 1. The present Review Petition has been filed by the respondent No.1/DDA praying inter alia that the order dated 08.02.2012, whereby the writ petition was disposed of, may be reviewed. Accompanying the present petition is an application for seeking condonation of delay of 152 days in filing the review petition.

2. Though the present petition has been termed as a review petition, Ms. Takiar, learned counsel for the respondent No.1/DDA states at the outset that all that the DDA seeks is a clarification of the operative para 6 of the order dated 08.02.2012, limited to the extent that when the petitioners and the remaining legal heirs of late Shri Sadhu Singh approach the DDA with adequate proof of having handed over possession of the subject land under their occupation to the Land Acquisition Collector, the DDA be permitted to consider and process their application in accordance with its policy, without any binding that only plot No.A-76, Kalkaji Extension, New Delhi would be allotted to them as mentioned in the letter dated 03.08.2011 addressed by DDA to Sh.Kirpal Singh (Annexure P-1 to CM APPL. 19946/2011) . She submits that the letter dated REV.PET.530/2012 Page 5 of 9 03.08.2011 issued by the then Deputy Director (NL) II, DDA to Shri Kirpal Singh (one of the legal heirs of late Shri Sadhu Singh), was with reference to an appeal filed under the Right to Information Act, 2005, whereunder the party was simply informed that he would have to approach the Land Acquisition Collector for handing over possession of the excess land so that necessary action can be initiated by the DDA for allotment of an alternative plot.

3. Learned counsel for the review petitioner clarifies that the then Deputy Director (NL) II, DDA had exceeded his brief by stating in the letter dated 03.08.2011 that possession of a particular plot, i.e., plot No.A-76 measuring 198 sq. yards, Kalkaji Extension would be allotted to the applicant as an alternative plot. She submits that disciplinary proceedings have already been initiated against the concerned officer and the action taken against him shall be placed on record under a separate affidavit. It is further stated that under the policy of alternate allotment framed by DDA, it is only after a recommendation for allotment of an alternative plot to a party is received from the office of the Land Acquisition Collector that the respondent No.1/DDA processes the case and priority is then accorded to the applicant under the existing wait list.

4. Mr. Singh, learned counsel for the petitioner states on instructions from his clients that they have already handed over to the Land Acquisition Collector, vacant peaceful possession of the remaining 4 biswas of land comprised in Khasra No.441, Village Kilokari on 14.05.2012 but his clients are unaware as to whether

their case has been recommended to the DDA for allotment of an alternative plot of land. He submits that his clients may be permitted to verify the present status of the recommendation, if any, made by the Land Acquisition Collector for allotment of an alternative plot.

5. Pertinently, Govt. of NCT of Delhi is a co-respondent in the writ petition and it was duly represented through a counsel, who had filed a counter affidavit in response to the writ petition on REV.PET.530/2012 Page 6 of 9 12.07.2011. It would therefore be appropriate to obtain a response from the respondent No.2 as well before passing any order on this application.

6. Issue notice to the respondent No.2/GNCTD through Ms. Rachana Srivastava, Advocate on the review petitioner filing the process fee by ordinary process and speed post, returnable on 14th August, 2015.

7. The notice shall indicate that counsel for the respondent No.2/GNCTD shall obtain necessary instructions from the office of Land Acquisition Collector with regard to the present status of the pending application for allotment of an alternative plot of land in lieu of the acquired land submitted by the petitioner and his siblings.

8. In the meantime, an affidavit shall be filed by the respondent no.1/DDA placing on record the action taken against the delinquent officer, as noted in para 3 above. Pursuant to the aforesaid order, an affidavit dated 15.09.2015 was 8. filed by the Director (Land Management), DDA stating inter alia that three separate Show Cause Notices (SCNs) dated 14.08.2012 were issued to the officers dealing with the matter, including Mr. D.K. Rathi, Director (Survey) Planning, calling upon them to explain why correct information as per the records was not supplied to the applicant under the RTI Act.

9. After perusing the replies given to the SCN by Mr. D.K. Rathi, Director (Survey) Planning, and the other subordinate staff, the Commissioner (Land Management), DDA arrived at a conclusion that the reply given by the Public Information Officer (PIO) appeared to be a reasonable one.

10. Mr. Adarsh. B. Dail, Senior Advocate appearing for the petitioner submits that once the Commissioner (Land Management), DDA had arrived REV.PET.530/2012 Page 7 of 9 at the conclusion that the reply given by the PIO was a reasonable one, then the inference is that plot No.A-76, Kalkaji Extension, New Delhi mentioned in the letter dated 03.08.2011, addressed to late Kirpal Singh ought to be allotted in favour of the petitioner and other legal heirs of late Sadhu Singh. He states that though the respondent No.1/DDA had filed a counter affidavit opposing the writ petition, at the time of arguments, no such plea was raised before the Court which has resulted in the passing of the order dated 08.02.2012. He adds that during the pendency of the review petition, learned counsel for the respondent No.1/DDA has filed several documents which the petitioner has not had an opportunity to rebut, the writ petition itself having been disposed of on 08.2.2012.

11. The said submission is however refuted by Ms. Takiar, learned counsel for the respondent No.1/DDA. She states that once the petitioner admits to having handed over possession of 0-4 biswas of land comprised in Khasra No.441, Village Kilokari to the respondent No.2/LAC as late as on 14.05.2012, there is no question of his insisting on the respondent No.1/DDA acting on its letter dated 03.09.1982, which was an allotment of an alternative plot conditional on the petitioner handing over vacant possession of the entire parcel of land measuring 5 bighas 5 biswas, acquired by the respondent No.2/LAC.

12. There is no doubt that during the pendency of the review application, both sides have filed several documents, which this court did not have the benefit of examining at the time of passing the order dated 08.02.2012. In a limited jurisdiction like the present one, the relative merits/demerits of the REV.PET.530/2012 Page 8 of 9 said documents or the pleas sought to be taken on the basis of the said documents, cannot be examined. At the same time, this court cannot ignore the fact that several documents have emerged after 08.02.2012 that require consideration. In all fairness, it is only appropriate to recall the order dated 08.02.2012 and restore the writ petition to its original position for a fresh hearing. This will afford an opportunity to both sides to make their submissions on merits in the light of the documents that have subsequently been

filed by them. Ordered accordingly.

13. The present application is allowed and disposed of along with the HIMA KOHLI, J pending application. AUGUST02 2019 ajk REV.PET.530/2012 Page 9 of 9

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