

Balkishan Thapar Vs. Dharmendra, Principal Secretary, Govt. of Nct of D

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Court : Delhi

Decided On : Nov-19-2014

Judge : V.K.Shali

Appellant : Balkishan Thapar

Respondent : Dharmendra, Principal Secretary, Govt. of Nct of D

Advocate for Def. : Mr. Yeeshu Jain, Ms. Zubeda Begum, Ms. Sana Ansari

Advocate for Pet/Ap. : Mr. R.P. Luthra

Judgement :

* + HIGH COURT OF DELHI AT NEW DELHI Cont. Cas (C) No.677/2013 & C.M. No.15162/2014 Decided on :

19. h November, 2014 BALKISHAN THAPAR Through: Petitioner Mr. R.P. Luthra, Advocate. Versus DHARMENDRA, PRINCIPAL SECRETARY, GOVT. OF NCT OF DELHI & ORS. Respondents Through: Mr. Yeeshu Jain, SC for R-1 to 3 & 5. Ms. Zubeda Begum, SC with Ms. Sana Ansari, Advocate for R-4. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

1. This is a contempt petition filed by the petitioner against the respondents on account of the alleged wilful disobedience of the order dated 27.7.2012 passed in Cont. Cas (C) No.120/2012. A direction has also been sought in the contempt petition for allotment of an alternative plot in lieu of the acquired plot of land.

2. I have heard Mr. R.P. Luthra, the learned counsel for the petitioner. So far as the prayer of allotment of an alternative plot in contempt proceedings is concerned, that prayer cannot be allowed. It has to be by way of an independent writ petition. The only thing to be considered by this court is as to whether there has been any disobedience in complying with the directions passed by the court and if so, whether it is wilful. It may also be pertinent here to mention that the petitioner has been repeatedly filing the writ petitions/contempt petitions only with a view to get an alternative plot.

3. Before dealing with the submission made by Mr. Luthra, it may be pertinent here to mention that on 13.1.1959, a notification was issued under Section 4 of the Land Acquisition Act for Revenue Estate of Village Gharaonda Neem Ka Bangar, Patparganj, Shahadra, Delhi, in which plot No.24-A, Janata Garden Colony, Khasra No.252-253 measuring 1500 square yards allegedly belonging to one Vasudev Thapar, father of the petitioner, was also included. The land was acquired on 4.3.1972 and Vasudev Thapar had received a compensation of Rs.6933.33 in the year 1989. On 17.11.1989, Vasudev Thapar applied for an alternative residential plot in terms of the policy of the Government of NCT of Delhi. No action was alleged to have been taken by the Land & Building Department of Govt. of NCT of Delhi.

4. On 7.1.1998, before the death of Vasudev Thapar, a will allegedly dated 7.2.1978, was made in favour of the petitioner. The petitioner filed a writ petition bearing No.789/2006 titled Balkishan Thapar vs. GNCTD, which was disposed of vide order dated 16.4.2007. The court had directed the respondents to process the application for allotment of an alternative plot within a period of eight weeks on filing of the affidavit by the petitioner.

5. The Land & Building Department vide its order dated 10.7.2007 rejected the application of the petitioner on the ground that the father of the present petitioner, Balkishan, was not the recorded owner of the land after issue of notification dated 13.1.1959. Still not being satisfied by this action, the petitioner filed another writ petition bearing No.148/2008 for setting aside the order dated 10.10.2007 which disposed of the representation of the petitioner for allotment of an alternative plot.

This writ petition was also decided vide order dated 25.8.2010 directing the respondents to examine the genuineness of the application of the petitioner, copy of which was allegedly attached at page No.82 of the paper book. The genuineness with regard to the mutation of the names of legal heirs of Vasudev Thapar on 3.8.1958 was to be considered. The entire process was to be completed within a period of three weeks.

6. The petitioner filed a contempt petition bearing No.120/2012 alleging that the order dated 25.08.2010 was not complied with. The said contempt petition was disposed of vide order dated 27.7.2012 with the following observations :

That the Dy.Secy (Alt.) Land & Building vide letter dated 06.09.2012 addressed to SDM (Preet Vihar) has informed as under:

The case of Sh.Bal Krishan Thapar was placed before the recommendation committee in its meeting held on 27.08.2012 for consideration of allotment of alternative plot. As per record, the land of Sh.Vasudev, father of Sh.Bal Krishan Thapar measuring 1500 square yards situated at Janata Garden Colony No.24A falling in Khasra No.252-256 within the revenue state of Gaoranda, Neem Ka Banger, Patparganj, Ilaqua Shahadra, was acquired by the Government vide Award No.6-A/71, 72 dated 04.03.1972. The committee while considering the case observed that there was no mention about the mutation of the acquired land in the name of Sh.Vasudev Thapar in the revenue record made available to this office. The LAC report enclosed in the file reveals that the applicant is not recorded owner of the acquired Khasra Nos.255, min & 253 min. The Gaon Sabha has been shown as the recorded owner in LAC report whereas photocopy of revenue record and its translated copy deposited in this office show that Khasra Nos. of the land were mutated in the name of Sh. Vasudev S/o Sh.Amar Nath Thapar on 23/4/1960.

7. The case of the petitioner was again processed and considered and since the name of the petitioner or the legal heirs of Vasudev Thapar was not brought on record and it was shown to be the property belonging to the Gaon Sabha, therefore, no allotment could be made. Necessary documents have been filed along with the reply affidavit by the Government of NCT of Delhi. Similarly, so far

as the Land & Building Department is concerned, it has also observed that there is no disobedience much less it could be said to be wilful on account of the non-allotment of an alternative plot to the petitioner because of the fact that Vasudev Thapar was not the recorded owner. Thus, this is treated to be sufficient compliance with the directions passed by the court.

8. Mr. Luthra has contended that the direction of the court was to examine the genuineness of the document, a copy of which is placed at page 82, and then decide the representation of the petitioner. It has been stated by him that no effort has been made by the respondents to examine the genuineness of the said application for substitution of the legal heirs of Vasudev Thapar and, therefore, they are guilty of wilfully disobeying the orders of the court. It has also been contended by Mr. Luthra vehemently that the respondents are compelling the petitioner to repeatedly come to court by way of a writ petition or by filing contempt petition in order to get his grievance redressed for allotment of an alternative plot. It is also contended by him that substantial chunk of land belonging to Vasudev Thapar measuring around 1500 square yards was acquired and despite having taken so much of land from the petitioner, the respondents have failed to allot an alternative plot to the petitioner and thus, causing him serious prejudice.

9. I have carefully considered the submissions made by the learned counsel for the petitioner. As has already been observed that so far as the allotment of an alternative plot is concerned, that cannot be done by this court in a contempt jurisdiction. The petitioner will have to file an independent writ petition if he so desires that he has been unjustly deprived of an alternative allotment. But his court is to only consider as to whether there has been any wilful disobedience of the order. The court on two different dates had directed that the case of the petitioner with regard to genuineness of the application of the grandfather of the petitioner and the father of the petitioner deserves to be verified and thereafter, a decision be taken. The contention of the learned counsel for the petitioner that this genuineness has not been examined and thus, they are guilty of wilful disobedience, does not impress the court. The fact of the matter remains that it is not necessary that the petitioner ought to have been given a personal hearing or that the respondents were called upon to determine the genuineness of the

documents by recording evidence. One of the fundamental which has been weighing with the respondents, while considering an alternative allotment is, as to who is the owner. In the instant case, there is no doubt that the petitioners predecessor in interest at the time of acquisition of land was in possession but it is nowhere shown by the petitioner that in the subsequent khasra girdawari or in the entries, they have been shown to be the owner.

10. On the contrary, the respondents themselves have placed on record various entries purported to have been made by Tehsildar/SDM in the ordinary discharge of their duties which show that Sarkar Daulat Madar meaning thereby that the land belongs to the Government or the Panchayat. If that be so, the question of allotting an alternative plot of land to the petitioner does not arise. No doubt, in the instant case, the petitioners predecessor-in-interest has already drawn compensation to the tune of approximately Rs.7,000/-. But that was long back in the year 1989. Merely because, compensation has been drawn, does not in itself is sufficient to get an alternative allotment. There is a policy and a person before he is allotted an alternative plot of land, more so when the land is so scarce in Delhi, has to establish that he is the recorded owner before an alternative plot of land is allotted.

11. In the instant case, I feel that the respondents have done whatever was expected of them to be done by processing the case of the petitioner for allotment of an alternative land and since a definite finding has been returned on the basis of the documents that the land which was acquired is not the land belonging to the father of the petitioner and the same belonged to the Government, therefore, in my considered opinion, no case for disobedience much less wilful disobedience is made out. Accordingly, the present contempt petition is dismissed and the contempt notice is discharged. V.K. SHALI, J.

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