

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

+ LPA NO. 1041 OF 2004

% Date of Decision : 28th February, 2007.

Shri Prakash Chand Kapoor & Ors Appellants.
Through Mr. P. Chakraborty, Advocate.

VERSUS

Union of India & Ors. Respondents.
Through Mr. Sanjay Pathak & Ms. Jhumjhum Sarkar,
Advocates

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SANJIV KHANNA, J:

1. The present Appeal has been filed by Mr. Prakash Chand Kapoor and four others (hereinafter referred to as the Appellants for short)

and is directed against the judgement dated 4th August, 2004 passed by the learned Single Judge dismissing their Writ Petition.

2. It is an admitted case of the parties that in 1964, land including built up structure belonging to Mr. Manik Chand Kapoor, father of the appellant nos. 1-4 was acquired under the Land Acquisition Act, 1894. Compensation was awarded and paid to Mr. Manik Chand Kapoor towards acquisition of the land including the structures constructed on it.
3. It appears that Mr. Manik Chand Kapoor did not hand over vacant possession of the constructed building and continued to remain in occupation of about 225 sq. yds of land.
4. In these circumstances, the Delhi Development Authority in 1989 issued notices under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1975.
5. The Estate Officer passed an eviction Order on 25th March, 1996. The said Order was made the subject matter of appeal but was dismissed by the appellate authority except with regard to area of 60 sq. yds which was being used for religious purpose and was

therefore left out of acquisition in Award No. 1716 of 1964-65.

6. The Order passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 was challenged in the Writ Petition No.2863/2001. As Mr. Manik Chand Kapoor had expired in April, 2000, the said Writ Petition was filed by the appellants as his legal representatives.

7. In the said Writ Petition it was averred that Mr. Manik Chand Kapoor was entitled to an alternative plot of 500 sq.yds as per the policy and guidelines supported by Rule 2(1) of the DDA (Disposal of Developed Nazul Land) Rules, 1981. In this regard, it was stated that the respondent had formulated a scheme for allotment of alternative land under the Large Scale Acquisition, Development and Disposal of Land in Delhi. It was further stated that on 26th March, 1989 the Land and Building Department of Delhi Administration had invited applications from all persons who were left out and were not given alternative land. The appellants pleaded that their father, late Mr. Manik Chand Kapoor had submitted an application on 24th April, 1989 before the last date i.e. 30th April,

1989. It was claimed that in response to the said application, father of the appellants had received communication dated 28th August, 1989 from Land and Building Department requiring him to submit requisite information.

8. Learned Single Judge after referring to the above facts did not find any merit in the Writ Petition in so far as challenge was made to the Orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 as admittedly, the land in question had been acquired and compensation for the said land including structures on it had been paid. The appellants, it was held, were unauthorised occupants. It was also recorded by the learned Single Judge that compensation had been duly received by Mr. Manik Chand Kapoor.

9. On the question of alternative allotment, learned Single Judge referred to the records produced by the Land and Building Department of Government of NCT of Delhi. Learned Single Judge has recorded that two communications dated 9th December, 1991 and 30th December, 1991 raising certain queries and asking for

information and documents were addressed to Mr. Manik Chand Kapoor but the same remained unanswered and therefore for failure to submit requisite information and documents, the application filed by Mr. Manik Chand Kapoor was rejected on 23rd January, 1992. Learned Single Judge noticed that the appellants did not challenge the said decision rejecting their application. Accordingly, it was held that the appellants were not entitled to allotment of alternative plot and the Writ Petition was dismissed.

10. Learned counsel for the appellants, while not disputing the above facts, submitted that right to alternative land is accepted and recognised under the DDA (Disposal of Developed Nazul Land) Rules, 1981 and Section 21(2)(i) of the Delhi Development Act, 1957. A reference was made to the decision in the case of **State of U.P. Versus Pista Devi and Others** reported in (1986) 4 SCC 251 and our attention was drawn to the observations of the Supreme Court therein. It has been held that the provision for allotment of alternative land when land is acquired, is justified and is based upon wholesome principle. Reliance was also placed upon the Full

Bench decision of this Court in the case of ***Shiv Devi Viriley versus Lt. Governor of Delhi and others*** reported in AIR 1987 Delhi 46 on the question of “owner” and it was submitted that the appellants are entitled to alternative land as they were “owners” of the land which had been acquired. It was argued that the appellants or their father had never received the communications dated 9th December, 1991 and 30th December, 1991 and were not aware of the Order dated 23rd January, 1992 rejecting their father's application for allotment of alternative land. It was submitted that there are no postal receipts and A.D. cards on the file and therefore the learned Single Judge had erred in relying upon the records and the letters/communications to deny relief to the appellants. Reference was made to the office notings with reference to letter dated 30th December, 1991 wherein it was not specifically recorded that this letter was to be sent under registered post.

11.As far as the challenge to the orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 is concerned, there is no merit in the appeal. The appellants are in

fact taking contradictory stand. The argument raised by the appellants for claiming alternative plot is based upon acquisition of the land and structure belonging to their father, late Mr. Manik Chand Kapoor. It has been specifically admitted that the father of the appellants had received compensation. Admittedly the land has been acquired and "possession" handed over to the DDA. Concept of "possession" has been considered by a Division Bench of this Court in the case of ***Nagin Chand Godha versus Union of India and others*** reported in 2003 (70) DRJ 721. After referring to several decisions of the Supreme Court as well as this Court, it was held that symbolic or formal delivery of possession is sufficient under the Land Acquisition Act, 1894 and the person who continues to enjoy actual physical possession is merely a trustee. It has been further held that it is the duty of the person physically occupying the property to look after the property and to see that the property is not defaced or devalued. The occupant cannot come to a Court and say that he is in actual possession and therefore his possession has to be protected and the land should be denotified. Order for

eviction therefore, has been rightly passed and there is no merit in the challenge to the said orders.

12. On the question of allotment of alternative plot, we have examined the file relating to Land and Building Department of Government of NCT of Delhi. The despatch registers have also been produced before us. Application dated 28th April, 1989 filed by Mr. Manik Chand Kapoor is available on the said file. In the application, it is mentioned that 13 bighas and 3 biswas of land owned by the applicant-Mr. Manik Chand Kapoor were acquired vide Award dated 29th April, 1964 and he was awarded compensation of Rs.1,30,390/-. By letter dated 28th August, 1989, the Land and Building Department called upon Mr. Manik Chand Kapoor to furnish information on two questions. Firstly, whether physical possession has been handed over and full compensation has been paid and whether any reference in respect of the land acquired was pending. As per the records, no response to the said queries was received from the applicant-Mr. Manik Chand Kapoor and thereafter two letters dated 9th December, 1991 and 30th December, 1991

were written. By these letters certain information was again required to be furnished. The notings in the office file of the Land & Building Department of Government of NCT of Delhi shows that copies of mutation were required to be obtained from late Mr. Manik Chand Kapoor because correctness of his share could not be ascertained. The notings also show that as there was no response from father of the appellants, the application for issue of alternative land was rejected and communication dated 23rd January, 1992 was issued rejecting the application of Mr. Manik Chand Kapoor for allotment of alternative land. We have examined the despatch registers. As per the said despatch registers, on 9th December, 1991 vide Srl. No. 58626 letter dated 9th December, 1991 was issued and on 23rd January, 1992 vide Srl. No. 2792 letter dated 23rd January, 1992 was issued.

13. It appears that Mr. Manik Chand Kapoor was all along in occupation of 225 sq.yds of land. He was perhaps hoping that the said land will be denotified. He was also conscious of the fact that if he was allotted alternative land he would have to first vacate the

land in his possession including the super-structure. He was apparently contesting proceedings before the estate officer, inspite of the fact that compensation had been received. Mr. Manik Chand Kapoor took his chance. He did not reply to the letters/communications dated 9th December, 1991 and 31st December, 1991 nor challenged/questioned rejection of his application for allotment of alternative land communicated vide letter dated 23rd January, 1992. Mr. Manik Chand Kapoor expired in 2000.

14. The appellants raked up the issue of alternative allotment for the first time when they filed a writ petition after orders were passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1975 in the year 2001. There is, therefore, substantial delay and laches in approaching the Court against the communication rejecting the request for allotment of alternative land. Thus, the period of delay and laches from 1992-2001, of more than nine years, remains unexplained. No reason is forthcoming from the appellants. The stand of the appellants that they were never informed, did not receive any communication and they had no knowledge of the rejection of their application for allotment of alternative land has been rightly rejected in view of the despatch

registers produced before us. Moreover, it is difficult to believe that Mr. Manik Chand Kapoor or his children, the appellants would not have taken steps and would have remained quite all along during this period, when others whose lands had been acquired were given alternative land in terms of the Scheme. The only plausible explanation in these circumstances is that Mr. Manik Chand Kapoor took his chance and wanted to continue to occupy the land in his occupation and possession and was not interested in allotment of alternative land and therefore never chose to question and challenge the order rejecting his application for allotment of alternative land in 1992.

15. In these circumstances, we do not find any merit in the present Appeal and the same is accordingly dismissed.

No order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

FEBRUARY 28, 2007

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