

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 8289 OF 2010

DELHI DEVT.AUTHORITY Appellant (s)

VERSUS

JAI SINGH KANWAR & ORS. Respondent(s)

(With appln(s) for c/delay in filing rejoinder affidavit)

WITH Civil Appeal NO. 8290 of 2010  
(With office report)

Date: 14/09/2011 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE A.K. PATNAIK  
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Appellant(s) Mr. Amarendra Sharan, Sr. Adv.  
Mr. Vishnu B. Saharya, Adv.  
Mr. Viresh B. Saharya, Adv.  
Mr. A. Saharya, Adv.  
for M/s. Saharya & Co.,Adv.  
  
Ms. Rachana Srivastava, Adv.  
Ms. Ranchi Daga, Adv.  
Mr. Krutin Joshi, Adv.

For Respondent(s) Mr. V. Shekhar, Sr. Adv.  
Mr. K.L. Janjani, Adv.  
Ms. Deepakshi Jain, Adv.  
Mr. Raj Singh Rana,Adv.

UPON hearing counsel the Court made the following  
O R D E R

These appeals are allowed and the judgment dated 22.4.2008 of the High Court is set aside and the writ petition seeking allotment of a plot is dismissed in terms of the signed order.

( Ravi P. Verma )

( M.S. Negi )

AR-cum-PS Court Master  
[Signed order is placed on the file]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8289 OF 2010

Delhi Development Authority .....Appellant

Versus

Jai Singh Kanwar & Ors. ....Respondents

WITH

CIVIL APPEAL NO.8290 OF 2010

Delhi Administration & Anr.

.....Appellants

Versus

Jai Singh Kanwar & Ors.

.....Respondents

O R D E R

One Chhajju Singh was the owner of 24 bighas and 16 biswas of land in village Babarpur, Shahdara, Delhi. The said land was acquired in pursuance of preliminary notification dated 13.11.1959. An award was made in regard to the entire extent of 24 bighas 16 biswas of land on 24.11.1969. However, as the appellants were able to take possession of only 7 bighas and 1 biswas of land, compensation was disbursed only in regard to 7 bighas and 1 biswas of land to Chhajju Singh. In regard to remaining area, though the award was made, as the area was found to be built-up area and possession was not taken, compensation was not released.

2. The appellant formulated a welfare scheme to rehabilitate the agriculturists whose lands were acquired, which came into force on 2.5.1961. As per the said Scheme, any person whose land had been acquired was entitled to apply for an alternative plot, if he fulfilled the following three conditions : (a) he must have been recorded as owner prior to issue of preliminary notification; (b) he must have received compensation as original owner; and (c) he should not own a house/residential plot/flat in a village abadi in his own name or in the name of his spouse or his dependent relations, nor should he be a member of any Co-operative Housing Society. Under the said scheme, persons in whose favour awards had been announced prior to 3.4.1986 were entitled for allotment of a 250 sq.yds. plot if the land acquired was of an extent between one bigha and ten bighas,

and 400 sq.yds. plot if the land acquired was in excess of ten bighas.

3. After taking compensation in regard to 7 bighas and 1 biswas of land, Chhajju Singh did not apply for any plot under the said scheme. Chhajju Singh died in February, 1976. His widow died on December, 1978. It is stated that they were survived by six sons. Om Singh Kanwar, one of the sons of Chhajju Singh, made an application dated 4.12.1985, as legal heir of Chhajju Singh, for allotment of a plot under the said Scheme. Subsequently he produced a relinquishment deed dated 8.5.1986 executed by five of his brothers in his favour authorising him to apply and obtain a plot or shop under the DDA scheme. The said application was processed, certain queries were made and documents were obtained, but no plot was allotted. Therefore a writ petition was filed by Om Singh Kanwar in the year 1993 praying for a direction to the Delhi Administration and Delhi Development Authority to allot a plot of appropriate size within the territory of Delhi at the rates that were prevailing on the date of his application. During the pendency of the petition, Om Singh Kanwar died, and his son Jai Singh Kanwar, the first respondent came on record.

4. The writ petition was allowed by a division bench of the Delhi High Court by judgment dated 22.4.2008. The High Court held that the first respondent was entitled to an alternative plot in lieu of 7 Bighas 1 Biswas acquired by the appellants, and that he should be allotted the plot at the rates prevalent on 31.12.1995. The High Court directed the appellants to process the claim of the appellant in terms of the said judgment and also levied costs of Rs.10,000/- on the ground that appellants had delayed the matter. The said order is challenged in these two appeals by special leave, by the Delhi Development Authority and Delhi

Administration.

5. We find that the High Court has not addressed the crucial and fundamental issue relating to eligibility. Under the Scheme, only a land loser who did not own a house/residential plot/flat in his own name or in the name of his spouse or dependent relation, and who was not a member of any Co-operative Housing Society was entitled for allotment of plot. The relevant date for this purpose is the date of award, namely, 24.11.1969. Chhajju Singh did not make an application under the said Scheme even though he was alive till 1976. Among his six sons, only one son made an application on 4.12.1985 sixteen years after the award.

6. Neither the application nor the documents produced by the applicant Om Singh Kanwar averred or established that Chhajju Singh did not own a plot or flat or residential house and that he was not a member of any Co-operative Housing Society. In the circumstances, the fundamental requirement for making an application was absent. The object of the Scheme is that when the land owned by a person is taken away in entirety and he is left without any house or plot, he should be allotted a plot. The Scheme therefore provided that only a person who does not own a house/residential plot/flat will be entitled to apply. The first respondent did not deny the fact that the Chhajju Singh did own a house in the year 1969. That apparently is the reason why he did not apply under the scheme. Nearly a decade after his death, an application was made by one of his sons. But what is to be considered is the position of the land loser on the date of the award. Therefore the appellant, who is one of the grand sons of Chhajju Singh is not entitled to seek allotment of a plot under the scheme by suppressing the fact that Chhajju Singh owned a house in 1969.

7. There is however one related matter which requires to be referred. The records show that acquisition notifications were issued in regard to 24 bighas 16 biswas of land belonging to Chhajju Singh and award was made in regard to 24 bighas 16 biswas of land, but possession was taken only in regard to 7 bighas and 1 biswas of land. Compensation was also paid only for 7 bighas and 1 biswas of land. It is alleged that after issuing the preliminary notification on 13.11.1959 followed by final notification, the Government did not take steps to safeguard the land from encroachment between 13.11.1959 and 24.11.1969 when the award was made; that the land owner could not take steps to prevent encroachments, in view of the acquisition notifications; and that as a result, the remaining acquired land was occupied by encroachers and ultimately the Government did not take possession of the land, nor paid compensation. It is contended that as the award was made for the entire extent, at least the compensation for the entire land acquired ought to have been released and the Government should have taken steps to secure possession regarding the remaining land. However that is not the subject matter of these appeals. All that can be said is that the decision in these appeals will not come in the way of the legal heirs of Chhajju Singh claiming compensation for the remaining extent if they are entitled to such compensation in accordance with law.

8. Subject to the said observation, these appeals are allowed and the judgment dated 22.4.2008 of the High Court is set aside and the writ petition seeking allotment of a plot is dismissed.

.....J.  
( R.V. RAVEENDRAN )

.....J.  
( A.K. PATNAIK )

New Delhi;  
September 14, 2011.

.....J.  
( RANJANA PRAKASH DESAI )