

Govt. of India
National Commission for Minorities
Lok Nayak Bhawan, Khan Market, New Delhi-3

Petitioner: Shri Iftikhar-uz-Zaman, 156, Talab Gagni Shukla, Model House, Lucknow (U.P.)

Respondent: Shri Ashok Harnal, IAS, Director General, Directorate General of Defence Estates, Delhi Cantt. -110010.

File No. M/UP/30/0610/11

The Bench of the NCM consisted of:

- i. Shri Wajahat Habibullah, Chairman,
 - ii. Smt. Syeda Imam, Member
 - iii. Shri Keki N. Daruwala, Member
2. Legal Officer, NCM assisted the bench.

Brief record of hearing held in the Conference Room of the National Commission for Minorities held on 1.2.2012 at 11.00 A.M.

3. Present:

- I. Shri Ashok Harnal, IAS, Director General, Directorate General of Defence Estate, and Ms. Sundari Subramaniam Pujari, Senior Addl. DGDE, Delhi Cantt.
- II There was no representative of the petitioner present, nor had the Commission received any information from him regarding attendance.

4. It is the contention of the petitioner that during the Second World War more than 400 acres of land were acquired under DIR Rules at Amausi, in suburban Lucknow, including land measuring 9 bigha 18 biswa 9 biswasi belonging to the father/mother of the complainant. The Ministry of Defence vide letter dated 21.09.1960 declared 185.46 acres of land including mango groves owned by the father of the complainant surplus and decided to re-convey the same to its original owners. The Ministry of Defence vide letter dated 21.03.1968 informed the complainant regarding re-conveyance of 1/8th area measuring 1 bigha 17 biswas of Khasra no.916 and at the same time demanded that he produce documents to establish ownership for the remaining land. The relevant documents of the ownership of land were submitted to the Defence Estate Office, Lucknow who endorsed the title of ownership of the complainant. The complainant got the possession of 3 Biswa of land from Khasra No.916 in November, 1977 from Defence Estates Officer, Lucknow. It is further contended

by petitioner that he made a representation again on 23.5.2000 with the then Defence Minister, who took a strong view of the delay by the Department and directed handing over of the remaining land forthwith. The policy decision dated 29.09.1977 of the Ministry of Defence regarding exchange of land, is not applicable in his case, as the policy is subsequent to the re-conveyance having become due. It is also the plaint of the petitioner, in rejoinder to the response to the complaint notice received from Directorate of Defence Estates that the then Defence Minister Sardar Swaran Singh vide his letter No 81/DM/67 dated 12.9.1967 in response to a letter of Shri Chandra Shekhar, then Member of Parliament, assured the MP that instruction was being issued to hand over grove land acquired from Sheikh Sami-Uz-Zaman, father of the petitioner be Handed over to him on repayment by him of the specified amount, and on his agreeing to waive any claim to any compensation arising out of the occupation of this land by the Defence Services. It is further contended by the petitioner that the Army has vast vacant land at their disposal scattered in different villages, which they are trying to exchange with the State Government, and therefore have no use for this land.

Respondent Shri Ashok Kumar Harnal, Director General, DGDE agreed that an area of 414.61 acres of land was acquired during World War II for construction of Amausi Air Field. Out of this an area measuring 229.15 acres was transferred to DGCA in March 1946, the balance area of 185.46 was declared surplus and sanction for re-conveyance to ex-land owners on refund of acquisition cost received by them vide MoD letter dated 1.11.1960. Shri Sami-Uz-Zaman father of the petitioner approached the Government for re-conveyance of land. The Government vide letter dated 5.7.1968 approved re-conveyance of 1/8 area measuring 1 bigha 4 biswa on payment of cost of acquisition. It was also submitted that the petitioner approached the Ministry of Defence after 38 years i.e. in 1998 of the decision of reconveyance of November 1960, much after the policy decision of September 1977 wherein it had been decided not to entertain any request from the former owners of an acquired property or their successors for negotiated re-conveyance. Once the land has been acquired and compensation paid the department has become the owner and the ex-owners ceased to have rights over the land. Shri Harnal also submitted that the Govt. of India in 1997 took a decision not to alienate government land without approval of

the Cabinet. Shri Harnal submitted a copy of a decision taken on file by the then Minister, Defence in 2001, reviewing the decision of his predecessor in office, which had been cited by petitioner, wherein it was decided not to transfer the land, which he states was required for defence purposes, which had “*become necessary as an operational requirement*”¹. The same has been taken on record. Shri Harnal further submitted that the petitioner has filed a civil suit in 1998 and obtained stay. The Allahabad High Court in 1999 vacated the stay and directed both parties to conduct a joint survey but the petitioner has failed to come forward to do the same so far.

Discussion:

6. The Commission, in view of the rejoinder of the petitioner and in view of the letter of 1967 of the then Defence Minister issuing instructions to hand over grove land to the father of the petitioner, discussed how an order subsequent to an application made within the framework of declared policy, can supplant a policy decision to the detriment of the rights of the petitioner already acceded under existing policy. Copy of the rejoinder filed by the petitioner, which had not been seen by the respondent, was supplied to him in the hearing

Interim decision notice:

7. In view of the above the Commission decided to adjourn the hearing allowing thirty days’ time to DGDE from the date of this decision, to file their reply. Thereafter, the Commission will decide further course of action.

Sd/-

(Wajahat Habibullah)
Chairman

Sd/-
(Syeda Imam)
Member

Sd/-
(Keki N. Daruwalla)
Member

Authenticated true copy. Additional copies of order shall be supplied on application.

Ms. Esther Kar
(Jt. Secretary)
01.02.2012

¹ Note of Minister, Defence on file dated 27.8.2001, pp 59