

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

+ **W.P.(C.) No.14453/2005**

% **Date of Decision: 03.09.2009**

Rupendra Grewal Petitioner
Through Mr.Ram Ekbal Roy and Mr.M.P. Jha,
Advocates.

Versus

V.C, Delhi Development Authority Respondent
Through Mr.M.K. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. Petitioner seeks a direction to the respondent DDA to allot alternative site to him after demise of his father in view of the general policy regarding allotment by the respondent after demolition of automobile workshop of his father in 1967.

2. The petitioner has asserted that his father Sh.Ajaib Singh was in occupation of land measuring 378 sq.yards and another piece of land measuring 170 sq.yards for commercial use thus having total 548 sq.yards at Upper Bela Road, New Delhi since 1955 after being displaced from West Pakistan. According to the petitioner his father

started a motor workshop under the name and style of M/s. Ajvendra Motor Works, Bela Road, New Delhi. The workshop of the father of the petitioner was demolished by respondent on 17th June, 1967 and a demolition slip No.25 dated 17th June, 1967 was issued in the name of the father of the petitioner after completion of the eviction proceedings under the Public Premises Act.

3. The petitioner contended that in accordance with letter dated 10th September, 1978 regarding allotment of alternative plot in Mayapuri, the executive officer required documentary evidence. By another letter dated 13th August, 1990 the coordinating officer demanded arrears of outstanding damages of Rs.3,979.65/-. According to the petitioner pursuant to letter dated 13th August, 1990 an amount of Rs.3,980/- was deposited by his father by receipt No.242029 vide book no.2421 on 20th August, 1990.

4. The petitioner has contended that his father was discriminated in not allotting an alternative plot, as other evictees whose structures were demolished along with workshop of the father of the petitioner, were allotted alternative plot in Jhandewalan vide File No.TN-16(60)63 but the case of his father was not considered. The father of the petitioner is alleged to have written letters to the Vice Chairman of the respondent No.1, however, no reply was received.

5. The petitioner had also represented his case to permanent Lok Adalat of DDA which recommended the case of the petitioner on 21st October, 2003, a copy of the order of permanent Lok Adalat had been filed by the petitioner.

6. The grievance of the petitioner is that the recommendation was made by the permanent Lok Adalat by order dated 21st October, 2003, therefore, the petitioner stopped appearing before the permanent Lok Adalat as his case was to be considered by the Vice Chairman of the respondent. However, later on Lok Adalat dismissed the claim of the petitioner by order dated 14th December, 2004 but while dismissing the claim of the petitioner, liberty was given to him to approach the appropriate forum and consequent thereto the petitioner has filed the present petition on the ground that his case has not been recommended on account of not submitting the relevant documents which included, valid municipal license; whether the petitioner industry was functional or not in the conforming area; whether the unit was engaged in manufacturing activities of industrial goods and that the unit of the petitioner was registered under the Delhi Shops and Establishment Act. The petitioner has contended that after 37 years the DDA could not have asked for these documents and for non submission of these documents, the allotment of alternative plot should not have been denied to him.

7. The petitioner in the circumstances has sought allotment of an alternative plot on the ground that his father was in unauthorized occupation of the Government land comprising of 378 sq.yards plus additional 170 sq.yards for commercial purposes who was evicted in general demolition on 17th June, 1967 and damages were paid with effect from 1st January, 1952 to 17th June, 1967, Rs.780/- were paid in 1975 and the balance of Rs.3980/- was paid in 1990.

8. The petition is contested by the respondent DDA contending inter-alia that the land which was under the unauthorized occupation of the father of the petitioner was required for widening of the road and though he had 548 sq.yards in his occupation, however, a demolition slip of 350 sq.yards of the commercial land was issued on 17th June, 1967. The respondent DDA also admitted that the father of the petitioner had paid Rs.780/- during 1985 and the balance of Rs.3980/- was paid in the year 1990.

9. The respondent also relied on letter dated 10th August, 1978 sent by Estate Officer (Commercial) in response to the PUC received from the Ministry of Works and Housing demanding from Ajaib Singh to furnish certificate from the demolition authority and the name of the authority; documentary evidence regarding existence of business showing municipal license, Sales Tax Registration, Income Tax Registration Certificate, Factory License and registration under Shops and

Establishment Act, detailed site plan of the demolished premises showing the covered area under the occupation of the father of the petitioner and photocopies of the receipts showing damages paid to DDA.

10. The respondent admitted that in reply to the said letter dated 10th August, 1978 Sh.Ajaib Singh father of the petitioner submitted photocopies of the demolition slips issued by demolition authority in the year 1967 and attested copy of the identity card dated 9th November, 1955 and 10 photocopies of the receipts about payment of damages and photocopy of the letter issued by DDA. It is contended that in respect of remaining documents the petitioner even had communicated that he does not have MCD license nor was registered under the Shops and neither Establishment Act nor he was an Income Tax or Sales Tax payee.

11. The respondent has insisted that under the scheme of alternative allotment the unit is liable to meet the requirement of submitting a valid municipal license, functioning of the unit in a non conforming area, old site was required to be surrendered to DDA, unit should have been engaged in manufacturing activities of industrial goods and that the unit should be registered under the Delhi Shops and Establishment Act.

12. Regarding allotment of alternative plots to other evictees of the areas it is contended that those evictees had completed the required formalities as detailed hereinabove and since the father of the petitioner failed to furnish the required document, therefore, his request for allotment of alternative industrial plot was rejected.

13. The rejoinder was also filed on behalf of petitioner reiterating the averments made in the petition. The petitioner, however, gave the specific details of the persons who were having their motor works in the area namely M/s.Astaj Motor Works, M/s.Gulzar Motor Works, M/s.Balwant Motor Works and M/s.Salman Motor Works who have been allotted alternative site as has been allegedly noted in the file of the respondent at page 55c.

14. I have heard the learned counsel for the petitioner and the respondent. The reliance has been placed by the counsel for the petitioner on the observations of the Lok Adalat. It was noted that the file was put up before the Vice Chairman who had made a query on 17th February, 1992 as to why the assessment of damages upto June, 1957 was made only in 1990 and had directed his officials to place the file within 14 days, However, the file was not put up before the Vice Chairman. It has also been noted that a site inspection was done on 6th February, 1965 revealing that Sh.Ajaib Singh father of the petitioner was running a motor workshop in the name of Ajbindra Motor Works.

The Lok Adalat had also noted an identity card dated 9th November, 1955 issued by Delhi Improvement Trust of Sh.Ajaib Singh and a letter from Sh.Baldev Swaroop Member of Parliament dated 15th June, 1954 certifying that his car was repaired at the workshop of the father of the petitioner were produced by the father of the petitioner. It has also been noted that the damages upto date were paid and the father of the petitioner was in unauthorized occupation of Government nazul land from 1st January, 1952 upto 17th June, 1967 when the demolition was carried out for the purpose of widening of the road. In the circumstances, the presiding officer of the Lok Adalat had recommended the case of the petitioner for allotment of alternative site and the respondent was directed to produce the files of other evictees who were allotted alternative plots and the matter was adjourned to 9th December, 2003 by the Lok Adalat. However, later on the petitioner did not appear despite notice given to him before the Lok Adalat and therefore, his petition was dismissed and the liberty was given to him to file the appropriate petition.

15. The respondent though have demanded various documents from the petitioner, however, copy of the policy under which the alternative plots are to be allotted has not been produced. The respondent has also failed to show as to how the case of the petitioner is different from the other evictees who were allotted alternative plots by the DDA except alleging that the other evictees had filed the documents required under

the policy. Though the observation of permanent Lok Adalat have not been challenged by the respondent, however, the same could not be done as the petition before the permanent Lok Adalat had been dismissed and, therefore, it will not be appropriate to grant any relief to the petitioner on the basis of the observations made by the permanent Lok Adalat. The petition filed by the petitioner also lacks in some material details and particulars. Petitioner has not disclosed as to when his father died and the rights of his father, if any for allotment of alternative plot, devolved exclusively upon him or on other legal heirs. The petitioner has not disclosed as to how many legal heirs deceased Ajaib Singh had at the time of his demise, and the rights, if any for allotment of alternative plot has devolved upon him exclusively instead of on all the legal heirs of Late Sh.Ajaib Singh. It appears from the petition that the petitioner is basing his claim merely on the observations made by Lok Adalat. However, since his petition was dismissed, the petitioner will not be entitled to rely on the same to claim alternative plot.

16. The petitioner has not challenged the policy of the respondent contemplating fulfilling various terms and conditions. The petitioner has also failed to fulfill various terms and conditions as the documents demanded by the respondent has not been produced. In the circumstances, the petitioner will not be entitled for allotment of an alternative plot of land according to the policy of the respondent. If the

respondent has failed to produce the policy, it was incumbent upon the petitioner to justify his contention that according to the relevant policy the documents demanded by the respondent were not required. The petitioner has also not produced the relevant policy. The burden to establish his right was on the petitioner and in case both the parties have failed to substantiate their case, it is the petitioner, who will not be entitled for relief in the facts and circumstances. The petitioner also did not claim that the respondent should produced the relevant policy and/or documents and on the failure of the respondent to produce the said documents, adverse inference be taken against him. In the circumstances, since the burden is on the petitioner, he will fail on account of non production of relevant policy as the petitioner has failed to establish that the documents demanded by the petitioner were not required under the policy of the respondent.

17. In the totality of facts and circumstances it will not be appropriate to direct respondent to allot an alternative plot to the petitioner. The writ petition is, therefore, dismissed. However, parties are left to bear their own cost.

September 03, 2009

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ANIL KUMAR, J.