

08.

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 806/2012

%

Judgment dated 05.10.2012

MAHENDER KUMAR

..... Petitioner

Through : Mr.R.K. Saini, Adv.

versus

DDA

..... Respondent

Through: Ms.Manika Tripathi Pandey and
Mr.Ashutosh Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Present petition has been filed by petitioner under Article 226 of the Constitution of India with the following prayers:

- (a) A writ of certiorari calling for the records of the case for perusal.
- (b) A writ of certiorari quashing the action on the part of the DDA in depriving the Petitioner of the allotment of an alternative plot (in lieu of acquisition of his agricultural land), by cancelling the allotment made to him on third and final chance of erroneous, unavailable and untenable grounds and then refusing to restore the same, being illegal, arbitrary, unjust, unwarranted, without jurisdiction and in violation of the Rules, Regulations and Policy and principles of equity, justice, good conscience;

7

(c) A Writ of Mandamus commanding the Respondent to forthwith make allotment of an alternative plot of 250 sq. yds. in a developed Sector in Rohini to the Petitioner, towards third chance for allotment, at the rates of 2011-2012 and adjust the amounts already paid by the Petitioner with interest thereupon, towards premium of the plot and give him possession and execute lease deed in respect thereof in favour of the petitioner.

3. Pleadings in this matter are complete.
4. The necessary facts, to be noticed for disposal of the present writ petition, are that agricultural land measuring 7.13 bighas in Village Nimari, Delhi, owned by the petitioner, was acquired under the Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961. Award No.2045 was made on 16.12.1967.
5. The name of the petitioner was recommended by the Land and Building Department, Government of NCT of Delhi, to the DDA for allotment of an alternate plot of land in favour of the petitioner, measuring 250 sq. yds., vide letter dated 22.6.1988. As per the petition, in view of the Policy of the DDA, such recommendees were given three chances towards allotment of an alternative plot. In the year 1993, DDA allotted a plot measuring 250 sq. yds. in Narela to the petitioner. Petitioner deposited the first installment of Rs.52,303/- on 24.2.1993, however, he made a request to the DDA for cancellation of the said plot as he found that the area was not suitable.
6. In the year 2000, the petitioner was allotted another plot by the DDA in Rohini. The petitioner deposited the first installment of Rs.1,83,446/- with respect to the said plot with the DDA on 1.9.2000, but on account of the location of the plot, which was not suitable to the petitioner, the petitioner prayed to the DDA for cancellation of the said plot.

7. On 4.4.2002 another plot was allotted by the DDA to the petitioner in Sector 20 Rohini, Delhi, measuring 200 sq. mts. As per the petition, although a demand-cum-allotment letter was not received by the petitioner, petitioner received a show cause notice dated 26.8.2002 from the DDA on account of the fact that the petitioner had not made the payment to the DDA with respect to the plot allotted to the petitioner. By the said show cause notice the petitioner was also cautioned that in case no satisfactory reply is received from the petitioner, the allotment made in his favour would be cancelled without any further opportunity. The petitioner vide communication dated 9.9.2002 replied to the show cause notice issued by the DDA. In the said reply, the petitioner, while stating that he had not received the demand-cum-allotment letter, pointed out that the amount of demand, as stated in the show cause notice dated 26.8.2002, was far in excess; the demand so raised should be revised; and the amount already deposited towards earlier allotment i.e. Rs.1,83,446/- in the year 2000 be adjusted. Since no response was received by the petitioner, the petitioner sent a reminder to the DDA on 24.10.2012, wherein he reiterated his earlier stand but also mentioned that he had not received the demand letter. Thereafter various communications were exchanged between the petitioner and the respondent. Finally DDA issued a communication dated 18.12.2003 to the petitioner informing him of the cancellation of the allotment made in his favour.

8. Learned counsel for the petitioner submits that being aggrieved by the communication dated 18.12.2003 issued by the DDA to the petitioner whereby the allotment made by DDA in favour of petitioner was cancelled, the petitioner made a representation to the Lieutenant Governor of Delhi on 14.2.2004, *inter alia*, with a prayer to allot an alternate plot bearing no.72, Pocket 16, Sector 20, Rohini Residential Scheme. The

petitioner also prayed that letter dated 19.12.2002, whereby the request of the petitioner for allotment of an alternate plot in Shalimar Bagh or Pitampura was not acceded to by the DDA, be withdrawn. Copy of the representation dated 14.02.2004 has been filed along with the petition. Another representation was made by the petitioner to the DDA. In response to the representation made to the DDA, the petitioner received a communication from the DDA informing him that his request had been considered but the same could not be acceded to.

9. Learned counsel for the petitioner submits that on 28.4.2005 the petitioner made a request to the DDA for restoration of his allotment keeping in mind the circumstances that the petitioner has no other DDA flat for his family members and the petitioner is ready to pay the cancellation charges and interest accrued thereon. Counsel further submits that the said representation of the petitioner was considered by the DDA and a report was sought regarding issuance and service of demand-cum-allotment letter, with respect to the third allotment, sent to the petitioner. Counsel next submits that thereafter the DDA proposed that the case of the petitioner be considered for restoration. In support of this submission counsel for the petitioner has relied upon the file notings of the DDA dated 20.3.2006, 27.4.2006 and 14.6.2006. The notings dated 20.3.2006, 27.4.2006 and 14.6.2006 read as under:

"The dispatch register and Dak sent to R/D/System register has been seen and photocopies of letters sent on 4.4.2002 placed opposite may kindly be seen. The total No. of letter were sent 38 and the letter in question i.e. 11(141)88/LSB(R)/3949 entered at Sl.No.31 has been strucked out and remaining 37 letters have been received by the then receipts clerk.

The report is submitted please.

10
Sd/-
20.3.2006
Despatcher"

"In view of above 'X' we may, as already proposed, submit the case before higher authority to obtain appropriate orders whether we may consider the case for restoration or not submitted please.

Sd/-
27.4.2006
A.D(R)

AD(R)
DD(LA)
Director (RI) "

"

Now Sh.Mahender Singh has made a request that demand letter dated 4.4.2002 was not received to him due this he could not made the payment, and requested to restore the cancel plot.

In this regard, record placed dated P/155-156/C in which letters was sent for dispatched of dated 4.4.2002 and it is seen that letter No.P11(141)188/LSB(R)/3949 dated 4.4.2002 by which demand letter issued to Sh.Mahender Kumar has been struck out (CP/155). Keeping in view of the position explained above case is resubmitted for consideration and further order in the matter. Submitted please.

Sd/-
14.6.2006
(DP Singh)

AD(R)
DD(LA) "

10.Learned counsel for the petitioner submits that file notings of the DDA dated 27.4.2006 would clearly show that the case of the petitioner was submitted before the higher authority to obtain appropriate orders to reconsider the case of the petitioner for restoration. Counsel further

11

submits that the file noting of the DDA dated 14.6.2006 would show that the case of the petitioner was resubmitted for consideration.

11. Learned counsel for the respondent DDA has opposed this petition on the ground that at no point of time the petitioner had raised the issue of non-receipt of the demand-cum-allotment letter with the DDA seriously nor any prejudice was caused by non-receipt of the demand-cum-allotment letter. Counsel further submits that in none of the representations made by the petitioner, he complained that on account of the non-receipt of the demand-cum-allotment letter he could not make the payment nor the petitioner at any point of time sought extension of time to make the payment. Counsel also contends that the grievance of the petitioner throughout was that the plot allotted to him was not suitable to him as it was the same area as the second allotment was made to him. Counsel next contends that even in the reply to the show cause notice the petitioner had not raised a grievance that he has not received any demand-cum-allotment letter from the DDA but had primarily complained that the demand raised in the show cause notice dated 26.8.2002 is in access.
12. Learned counsel for the respondent submits that in the 'subject' of the reply to the show cause notice and the communications issued by the petitioner to the DDA, the petitioner has mentioned as 'Allotment of alternative plot'. In support of his submission counsel has relied upon the reply dated 4.4.2002 to the show cause notice and the communications dated 24.10.2002 and 7.2.2011, to show that the subject of the letter was "allotment of alternative plot under Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi". Letters dated 24.10.2002 and 7.2.2011 read as under:

4.4.2002

Sub.: Allotment of alternative plot under Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi."

“

24.10.2002

Sub.: Alternate allotment of plot No.72, Pocket-16, Sector 20, Rohini Residential Scheme, New Delhi regarding reference No.- F.11(141) 88/LSB(R)/DDA/9980.”

“

7.2.2011

Sub: Allotment of alternative plot under the scheme of 'Large Scale Acquisition, Development & Disposal of Land in Delhi-1961.”

13. Learned counsel for the respondent submits that as per the policy, which has been framed and which is not disputed, the petitioner could have been granted three opportunities. The petitioner was allotted a plot not once but on three occasions and since he declined to accept the same at this belated stage no relief can be granted to the petitioner. Counsel further submits that the third request of the petitioner for allotment of an alternate plot was not considered by the DDA owing to the policy of alternative allotment and para 3 (vii) of the terms and conditions of allotment letter dated 4.4.2002. Counsel further submits since the petitioner failed to submit the proof of payments deposited by him towards the premium of the plot, in spite of the show cause notice, the allotment of the plot was cancelled with the approval of competent authority and the same was conveyed to him vide letter dated 15.12.2003
14. I have heard learned counsel for the parties, considered their rival contentions and also perused the documents placed on record including the annexures, which have been filed along with the pleadings, and the original record, which has been produced by counsel for the DDA in Court today. The facts of the case not in dispute that the agricultural land

of the petitioner, was acquired under the Scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961, and an Award No.2045 dated 16.12.1967 was made. The name of the petitioner was recommended by the Land and Building Department, Government of NCT of Delhi, to the DDA for allotment of an alternate plot of land. In view of the Policy of the DDA, it was proposed that such recommendees would be given three chances towards allotment of an alternative plot. In the year 1993, DDA allotted a plot in Narela to the petitioner. Petitioner deposited the first installment on 24.2.1993, however, he made a request to the DDA for cancellation of the said plot as he found that the area was not suitable. In the year 2000, the petitioner was allotted another plot by the DDA in Rohini. The petitioner deposited the first installment with respect to the said plot with the DDA on 1.9.2000, but since the location of the plot was not favourable to the petitioner, the petitioner made a request to the DDA for cancellation of the said plot. On 4.4.2002 another plot was allotted by the DDA to the petitioner in Sector 20 Rohini.

15. It is the case of the petitioner that although a demand-cum-allotment letter was not received by the petitioner yet the petitioner received a show cause notice dated 26.8.2002 from the DDA as he failed to make the payment to the DDA with respect to the plot allotted to him. The petitioner was also cautioned that in case no satisfactory reply is received from the petitioner, the allotment made in his favour would be cancelled without any further opportunity. The petitioner on 9.9.2002 replied to the said show cause notice wherein the petitioner, while pointing out that he had not received the demand-cum-allotment letter, complained that the amount of demand, as stated in the show cause notice dated 26.8.2002, is not correct, and the amount charged is in excess. DDA vide communication dated 18.12.2003 informed the petitioner about the cancellation of allotment made in his

14
favour. The petitioner thereafter made representation to the Lieutenant Governor of Delhi and the DDA. In response to the representation made to the DDA, the petitioner received a communication from the DDA informing him that his request had been considered by the same could not be acceded to.

16. The main thrust of the arguments of learned counsel for the petitioner is that since the demand-cum-allotment letter dated 4.4.2002 was not received by him, which is evident from the file notings of the DDA, the petitioner could not have been expected to make the payments. This submission of Mr.Saini, counsel for the petitioner, cannot be accepted and this stand is not borne out of the letters written by the petitioner to the DDA.
17. Mr.R.K. Saini, learned counsel for the petitioner, has strongly pleaded that the petitioner is a farmer and not an educated or literate person. The land of the petitioner measuring 7.13 bighas was acquired way back in the year 1967 and he has been living with the hope of making a house. Mr.Saini further submits that the file notings of the DDA would show that although initially the petitioner had been requesting for an alternate plot but time and again he was pleading to the DDA to reconsider his request for restoration of the plot, which has been cancelled. Counsel contends that the petitioner has neither claimed a plot at the rates when it was allotted to him and in fact even in the prayer made in the writ petition the petitioner has prayed that a plot may be allotted to him at the current rates of 2011. Counsel next contends that at this stage the petitioner would be satisfied if a direction is issued to DDA to consider his representation and the request for restoration of the allotment on such terms as the DDA may consider appropriate for the reason that the petitioner has also been making representation to the DDA for restoration of the allotment which

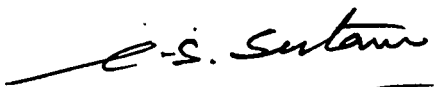
15

has not been examined by the DDA. Learned counsel for the DDA submits that all the representations made by the petitioner stands considered and rejected.

18. The argument of Mr.Saini, counsel for the petitioner the demand-cum-allotment letter dated 4.4.2002 was not received by the petitioner and thus the action of the DDA of cancellation of the allotment is unreasonable and bad in law; the same cannot be accepted as the same is not borne out from the letters written by the petitioner to the DDA; and the same only seems to be an afterthought.
19. Accordingly the writ petition is dismissed, however, keeping in view the facts of this case and having regard to the fact that petitioner is an illiterate farmer whose land has been acquired and further the petitioner is willing to pay the current cost in case a representation is made by the petitioner to the DDA for restoration of the allotment made to him, the DDA is directed to consider the same sympathetically and in accordance with law keeping in view the peculiar facts of this case within three months from the date of receipt of the representation.

OCTOBER 05, 2012

msr


G.S.SISTANI, J