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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 03.07.2012

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WP(C) 4804/2011

SMT.HARKAUR CHADHA AND ANR.. Appellant

Vs

NCT OF DELHI AND ORS. Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Saurabh Kirpal & Mr. Jayant Mohan, Advocates

For the Respondent: Mr. Arun Birbal, Advocate for R-1/NCT of Delhi
Mr.Dhanesh Relan and Ms. Sweta, Advocates for R-2/DDA

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. By virtue of this writ petition, the petitioner seeks allotment of an alternate plot of land in lieu of the land of their predecessor-in-interest, that is, one Sh. Jagjit Singh Chadha, having been acquired by respondent no.2 under a scheme, known as, Large Scale Acquisition Development and Disposal of Land in Delhi, 1961 (hereinafter referred to as the scheme). There are several prayers made in the present writ petition. For the sake of convenience, the main prayers are extracted hereinbelow :-

“(a). Direct the respondent no.1 to allow the representation dated 10.03.2011; and /or

(b). Certiorari setting aside the order/application dated 10.02.1998; and /or

(c). Mandamus direction respondents to allow the representation of 10.03.2011 (Annexure P-17); and /or

(d). Mandamus directing the respondents to allow the application for allotment of alternative land dated 21.08.1986 made by the predecessor-in-interest Sh. Jagjit Singh Chadha of the petitioners herein and to direct the respondents to allot alternative land as per the scheme of 1961; and /or”

2. Notice in this writ petition was issued on 12.07.2011. On a reading of the order dated 12.07.2011, it appears that even on that stage, the respondents seem to have raised an objection (having appeared on advance notice) that the request of the petitioner for allotment of an alternate plot was rejected on 10.02.1998 and hence, a writ petition filed in 2011, was marred by delay and latches. A direction was issued on the said date for production of record of despatch of communication dated 10.02.1998 and proof, if any, of the service of the said communication. The record, it appears, was examined by the court at its hearing held on 19.10.2011 when, the respondents produced only a despatch register for the period 18.12.1997 to 31.03.1998 wherein, it appears there was a reference at serial no.22984 to a communication sent to the predecessor-in-interest of the petitioners i.e., late Sh. Jagjit Singh Chadha. I have referred to the aforesaid aspect at the very outset as one of the main objections in the writ petition is with regard to the delay and latches in approaching this court by way of the present writ petition. I shall deal with the same in the course of my judgment.

3. Coming back to the narrative, it appears that the predecessor-in-interest of the petitioners i.e., Sh. Jagjit Singh Chadha had purchased a plot of land measuring 1000 sq. yds. in Khasra no.372/189 in Village Chilla Saroda Bangar from one Universal Colonisers Ltd. vide a registered sale deed dated 17.03.1959. A section 4 notification dated 13.11.1959, was issued under the Land Acquisition Act, 1894 (in short the Act). Consequent thereto, upon

compliance of the provisions of the Act, possession of Sh.Jagjit Singh Chadha's land was taken over by the Delhi Administration on 20.03.1977 under the aforementioned scheme.

4. Since, the ownership of Sh. Jagjit Singh Chadha to the said land was disputed, an application was filed by him on 20.03.1977 under section 30 and 31 of the said Act. The said application was allowed on 30.05.1986. By this order, it was held that Sh. Jagjit Singh Chadha was the owner of the acquired land and that, he was entitled to compensation under the aforementioned scheme.

5. It is not in dispute that under the said scheme, persons whose land were acquired were entitled to allotment of an alternate plot. Consequently, Sh. Jagjit Singh Chadha preferred an application for the said purpose on 21.08.1986 before respondent no.1. It is also important to note that Sh. Jagjit Singh Chadha had also filed a reference under section 18 of the Act for enhancement of compensation qua his acquired land which was allowed vide order dated 31.08.1987.

6. The issue which, therefore, remained outstanding as between Sh. Jagjit Singh Chadha and respondents was qua the allotment of an alternate plot. Correspondence in this regard was exchanged by Sh. Jagjit Singh Chadha with the respondents between 1987 and 1992. As a matter of fact, it is averred that several representations were also made in this regard by Sh. Jagjit Singh Chadha between 1996 and 2005.

7. It is the case of respondent no.1 that, on 10.02.1998, the request of Sh. Jagjit Singh Chadha for allotment of an alternate plot was rejected. On the other hand, the petitioners claim that the said communication was never received by them, which is why, as noticed by me above, at the very first date when the writ petition was moved in court, a direction was issued by my predecessor for production of the record pertaining to the despatch of the WP(C) 4804/2011

impugned communication as well as proof of service, if any available with the respondents.

8. Sh. Jagjit Singh Chadha, however, expired on 31.10.2008. The battle for obtaining an alternate plot appears to have been continued, on his behalf, by petitioner nos.1 and 2, being the wife and son of late Sh. Jagjit Singh Chadha. It is the stand of the petitioners in the writ petition that they became aware of the impugned communication dated 10.02.1998 only upon receiving a response dated 04.10.2010, to an application made under the Right to Information Act, 2005.

9. On coming to know of the impugned communication, a representation was made to the respondents on 10.03.2011, to which, it is claimed they did not receive a reply. The aforementioned resulted in the petitioners approaching this court.

10. Based on the aforesaid broad facts, it is argued before me by the learned counsel for the petitioners that the impugned communication dated 10.02.1998 whereby, the petitioner's request for allotment of an alternate plot was rejected was based on a fallacious interpretation of a clause in the scheme which entitled the petitioners to claim an alternate plot.

10.1 Mr. Kirpal who appeared for the petitioners submitted that in the impugned letter, the sole reason given for rejection of the petitioner's request is that the mutation qua the acquired land was not carried out in the name of their predecessor-in-interest i.e., late Sh. Jagjit Singh Chadha prior to the date on which a notification under section 4 of the Act had been issued. The said date, as noticed by me, hereinabove is 13.11.1959.

10.2 During the course of arguments, I queried Mr. Kirpal, as to whether mutation had been obtained qua the land in issue. Mr. Kirpal categorically submitted that the relevant clause in the policy, if read closely, to which I shall make a reference hereinafter, would show that there was no requirement

to obtain a mutation prior to issuance of a section 4 notification. According to Mr. Kirpal, what was required was that, generally the mutation should be in place in favour of the claimant to the alternate plot before its allotment. According to Mr. Kirpal, what was in addition required was that those laying claim to the alternate plot should have become the owners of the acquired land prior to the date of issuance of the section 4 notification and not that in the record of owners, the mutation should also be reflected prior to the said date i.e., the date of section 4 notification.

10.3 In support of the aforesaid submission, Mr. Kirpal relied upon a judgment of the Division Bench of this court passed in LPA No.338/2008 decided on 08.07.2008 titled Govt. of NCT of Delhi & Anr. vs Jai Gopal wherein the Division Bench upheld the view taken by a Single Judge of this court on similar grounds.

11. Mr. Birbal who appeared on behalf of respondent no.1 opposed the reliefs sought for in the writ petition. The three grounds in opposition, which were raised by Mr. Birbal were as follows: firstly, the writ petition was marred by delay and laches. The petition having been filed after a delay of nearly 13 years from the date of issuance of the impugned communication dated 10.02.1998 ought to be rejected on this sole ground.

11.1 Secondly, the ownership of the petitioner's predecessor-in-interest was in doubt and hence, no claim would be laid to the allotment of an alternate plot.

11.2 Lastly, it was submitted that as per the terms of the policy, mutation had to take place before the issuance of the notification under section 4 of the Act. In support of his submissions, Mr. Birbal also relied upon the judgment of the Supreme Court in the case of SLP No.9091/2011, Delhi Administration and Ors. Vs. Kaushilya Thakur and Anr. decided on 09.04.2012 and a judgment of the Division Bench of this court in the case of Govt. of NCT of WP(C) 4804/2011

Delhi Vs. Jagdish Singh, 2012 (3) AD (Delhi) 697 : 2012 (128) DRJ 589.

12. In rejoinder, Mr. Kirpal reiterated his submissions made in the opening while specifically dialating on the issue of delay and latches. Mr Kirpal relied upon the judgment of the Supreme Court in the case of *M.S. Madhusoodhanan and Anr. Vs. Kerala Kaumudi (P) Ltd. and Ors.*, (2004) 9 SCC 204, to contend that mere production of the despatch register did not prove the service of the impugned communication dated 10.02.1998. Therefore, it was Mr. Kirpal's contention that, as soon as they became aware of the impugned communication, i.e., on 04.10.2008, they made a representation, and thereafter, proceeded to file the instant writ petition having received no response from the respondent. On the question of dispute with regard to ownership, Mr. Kirpal adverted to the impugned communication to demonstrate that no such issue had been raised. It was contended that rejection of the request of the petitioner for allotment of an alternate plot was on the sole ground of mutation not having been effected prior to the date of issuance of section 4 notification. Therefore, according to him, the respondents could not raise an objection with regard to the same. On the last aspect, as to whether mutation ought to precede the date of issuance of notification under section 4 of the Act, once again reliance was placed on the judgment of the Division Bench, to which I have made a reference above and, the clause incorporated in the scheme.

13. Having heard the learned counsel for the parties, one would first have to deal with the issue of delay and latches of the petitioner in approaching the court. No doubt, if as contended by the respondent, the petitioners had failed to approach this court for a period of 13 years, after having known of the rejection of their request for being allotted an alternate plot; this court would be slow in granting relief to the petitioners. In this context, the order passed by this court on 19.10.2011 attains significance. The said order, which was WP(C) 4804/2011

passed by my predecessor clearly shows, what was produced in court was only a despatch register which adverted to a communication sent to late Sh. Jagjit Singh Chadha. I had put to Mr. Birbal as to whether any other record pertaining to proof of service was produced in court. Mr. Birbal, fairly submitted that no other record was made available to the court. Undoubtedly, in these circumstances, the despatch register had no reference to the fact as to how despatch was effected or who despatched the notice [see observations in *M.S Madhusudhan (supra)* at page 237 para 105]. If that is so, then surely latches if any would have to be taken into account from the date of knowledge of the impugned communication. The assertion of the petitioners that they became aware of the impugned communication on receipt of response to an application filed under the RTI Act was not disputed before me. As a matter of fact, this assertion has been made in paragraph 7.26 of the writ petition, to which a bald response is made in the counter affidavit to the effect that its contents need no reply and that true and correct position has already been stated in the said counter affidavit. If one were to examine the earlier portion of the counter affidavit, I would imagine that the correct position is one, to which I have already adverted, that is the entry in the despatch register. In my view, to non-suit a person on such tenuous ground and, thereby deprive him of a valuable right on the plea of delay and latches would be unfair, unless the respondent is able to place its plea on a firmer ground. That not being so, this plea deserves to be rejected.

14. As regards the other issue raised by the respondent which is that even the ownership of late Sh. Jagjit Singh Chadha was in doubt, is an argument which does not find a reflection in the counter affidavit. When I had put this to Mr. Birbal, he had drawn my attention to paragraph 3 of the counter affidavit filed by respondent no.1. A perusal of the averments therein would show that once again the stress was on the fact that the predecessor-in-interest

of the petitioner was not the recorded owner of the acquired land on the date of issuance of Section 4 notification. This averment has been elaborated by respondent no.1, by averring that the said predecessor-in-interest did not get the acquired land mutated in his name in the revenue records and hence, was not eligible for allotment for an alternate plot. In my view, this averment is not the same thing as disputing the ownership of late Sh. Jagjit Singh Chadha. It is a settled principle, that entry in the land records does not confer ownership/title. Ownership is conveyed through documents of title such as a conveyance deed and / or a sale deed. This aspect had not been put in issue by the respondents in the counter affidavit filed by them. Moreover, the impugned communication dated 10.02.1998 does not advert to the aspect of the ownership of late Sh. Jagjit Singh Chadha, being in doubt. Assuming one were to read the counter affidavit of the petitioner in the manner in which Mr. Birbal wants me to read, (which in my view would be an incredible feat) I would still not accept this argument of Mr. Birbal for the reason that the respondents cannot improve upon facts which emanate from its official record, by dressing up their counter affidavit (see observations in *Commissioner of Police, Bombay V. Gordhan Das Bhanji, AIR 1952 SC 16 : (1952) 1 SCR 135 and Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, (1978) 1 SCC 405*).

15. The last objection which has been taken by the respondent, which is really the heart of the matter, is: as to whether the mutation in the revenue records had to precede the date of issuance of the notification under section 4 of the Act. For this purpose, it may be necessary to quote the relevant portion of the policy on which reliance was placed by both the counsels

“CASES WHERE LAND PURCHASED THROUGH SALE DEED

Following conditions are also to be fulfilled in addition to above :

1. For awards announced pre 3.4.1986 land should have been purchased prior to issue of notification u/s. 4 of Land Acquisition Act and mutation must have carried out in their names....”

(emphasis is mine)

16. A bare reading of the extracted clause would show that the only requirement which is stipulated herein is that the claimant to an alternate plot should have purchased the acquired land prior to issuance of the notification under section 4 of the Act. Mutation is a necessary condition but is not mandated to precede the date of issuance of a notification under section 4 of the Act. I need not go further, as this aspect is covered by the observations of Division Bench of this court in the case of Govt. of NCT of Delhi and Anr. Vs. Jai Gopal, LPA No.338/2008. The relevant observations are as follows :-

“....In our opinion, the view taken by the learned Single Judge is absolutely correct. On a plain reading of clause 1 of the eligibility conditions it is clear that words “prior to issue of notification under section 4 of the Land Acquisition Act” qualify only the date of purchase of the land and not the mutation of the name in the records. The transfer of right, title and interest of any immovable property takes place on the execution of the sale deed and the purchase while the mutation is for recording the name of the purchaser in the records of the revenue authorities. The mutation is carried out by the revenue authorities after verification of the documents relied upon by the applicant. The requirement of the rule is that the applicant should have purchased the land prior to Section 4 notification and as such sale deed had been mutated in the revenue records on the date of the application....”

17. Before I conclude I may only say that the judgment of the Supreme Court is distinguishable on facts in so far as there was no dispute with regard to the receipt of the communication rejecting the request for allotment of an alternate plot. In the present case on facts a dispute was raised which, based on material produced did not establish the receipt of impugned communication by the petitioners. As a matter of fact, a similar plea was

raised before a Division Bench of this court in the case of Govt. of NCT of Delhi Vs. Jagdish Singh (supra) wherein the observations made in para 6 and 7 clearly indicate how the factual matrix obtaining in a case can bring about an entirely different conclusion. In this case rejection letter was sent to petitioner in February, 1999. It was replied to by the petitioners in July, 1999. The petitioners chose to sleep over the matter and approached the court after 10 years in 2009. There was thus clear proof of knowledge of rejection of the request for allotment of an alternate plot.

18. In view of the above, the reasons given in the impugned communication dated 10.02.1998 for rejecting the request of the petitioner are clearly contrary to the law laid down by the Division Bench of this court. The difficulty one is faced with in this case is that the petitioners still does not have a document evidencing mutation of the acquired land in their favour. On the other hand, I had asked Mr. Birbal as to whether the scheme in issue prescribes any time frame for allotment of alternate plots or, was the scheme open ended. Mr. Birbal, fairly conceded that the scheme was open ended and that to date plots were being allotted under the said scheme.

18.1 In these circumstances, I had put to Mr. Kirpal as to whether he would be able to obtain a mutation in his favour, for the relevant period, for being placed before the respondents to enable them to confer their due consideration to their request for allotment of an alternate plot. Mr. Kirpal said that the petitioners would be in a position to do the needful if an opportunity was given in that behalf in the eventuality of the matter being remitted to the respondents for a fresh examination of the issue.

19. In these circumstances, having regard to the discussion above, the only prayer I am inclined to grant, at this stage, is to set aside the impugned communication dated 10.02.1998 with a direction to the respondents to consider the request of the petitioners for an alternate plot if, it accords with

the provisions of the policy which would include a document evidencing mutation of the acquired land in favour of late Sh. Jagjit Singh Chadha, in respect of the relevant period.

20. With the aforesaid observations, the writ petition is disposed of.

RAJIV SHAKDHER, J

JULY 03, 2012

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