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

% *Judgment delivered on: 14th August, 2014*

+ **W.P.(C) 417/2013**

AFTAB AHMED

..... Petitioner

Represented by: Mr. Sameer Jain,
Mr. Sandeep Bajaj and Mr. Siddharth
Jain, Advocates.

Versus

**LT. GOVERNOR-CUM-ADMINISTRATOR
& ORS.**

..... Respondents

Represented by: Ms. Manika Tripathy
Pandey and Mr. Ashutosh Kaushik,
Advts. for DDA.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner is seeking quashing of the impugned letter dated 04.12.2012 whereby the application of the petitioner for allotment of an alternative plot has been rejected which reads as under:-

“The matter was placed before the plot recommendation committee vide minutes dated 09.11.12 after due consideration has rejected the case on the ground that the application for allotment of alternative plot was filed by Sh. Aftab Ahmed on 17.11.88 on the basis of the acquired land which gifted early to him by one Sh. Mohd. Smileth in 1970. Notification u/s 4 in this case was issued on 13.11.59 therefore Sh. Aftab Ahmed should have been recorded owner

of the acquired land process to issue of section 4 notifications as per policy compensation was received on 06.2.87 but application was filed on 17.11.88 after 1 year recently compensation and it is time barred.”

2. On perusal of this order it appears that the respondent nos. 1&2 have rejected the application of the petitioner on the following two grounds:-

(i) That he application for allotment of alternative plot was filed by Sh. Aftab Ahmed on 17.11.88 on the basis of the acquired land gifted earlier to him by one Sh. Mohd. Smileth in 1970.

(ii) That notification u/s 4 in this case was issued on 13.11.59 therefore Sh. Aftab Ahmed should have been recorded owner of the acquired land.

3. The issue of time barred by three months came before this Court in the case of ***Sunder Pal vs. Land & Building Department*** in ***WP(C) 7123/2013*** in which this Court held as under:-

*“4. Mr. N.S. Dalal, Ld. Counsel appearing on behalf of the petitioner submits that similar issue came before this Court in the case of **Simla Devi Vs. Secretary & Ors. 140(2007) DLT 474** wherein in Paragraph 3 facts of that case recorded as under:-*

“3. It is stated by the respondent that the petitioner received land acquisition compensation as determined by the land acquisition Award on 6.3.1997 and that she applied for allotment of alternative land on 1.7.1998. The application was rejected by the impugned order dated 19.10.1999. The reason for rejection of the petitioner’s

application is that pursuant to a public notice stated to have been issued on 30.11.1993 in the newspaper individuals whose lands had been acquired after 31.12.1998 were required to apply for allotment of an alternative plot latest by 31.1.1994 of “within one year from completion of acquisition proceedings whichever is later.” Since in the present case the petitioner received compensation on 6.3.1997, it is contended that the application for alternative allotment should have been submitted latest by 5.3.1998 whereas it was submitted on 1.7.1998. Therefore, the only reason for rejection of the petitioner’s application for being considered for alternate allotment was that it was “time barred case”.

In paragraph 5 of the said judgment, this Court held as under:-

“5. This Court is of the view that the reason adduced by the respondent for not considering petitioner’s application for allotment of an alternative plot is not tenable. Even earlier this Court had passed an order on 20.10.2003 directing the respondent to consider the petitioner’s application. Pursuant thereto the respondent rejected the said representation by the impugned order only on the ground that it was “time barred”. The so-called public notice is neither a statutory notice nor is a gazetted notice which is presumed to have been known by everyone. On the contrary the notice was published, if at all, in the newspapers only once in 1993. In the circumstances, to contend that someone in 1997 applying for allotment of alternative land should be presumed to know the time limit that is stipulated in a notice printed in the newspaper four years earlier is being unrealistic and impractical. There is nothing so immutable about the time limit set in the notice

that the respondent should be precluded from considering an application which is delayed by about four month. Since this is a time limit set by the respondents themselves, surely in deserving cases like the present, where the applicant cannot be presumed to know of the time limit, such a delay ought to have been condoned. On the contrary thee refusal to condone the delay would result in injustice.”

6. Admittedly, against the acquired land of the petitioner, he received compensation on 30.01.1990 and an application was moved in June, 1990, i.e., within six months of the compensation received.

7. In view of the facts of the case in hand and the afore-noted dictum of this Court, the impugned order dated 16.08.2013 is hereby quashed.

8. Consequently, respondent department is directed to consider the application of the petitioner for allotment of alternative plot within two months.”

4. A similar issue came before the Division Bench of this Court in the case of ***Dharam Pal and Anr. v. Delhi Administration and Anr.*** **162(2009) DLT 12**, in which the Division Bench has held as under:-

“13. The expression, "legal heir" is not defined in the aforesaid Scheme of allotment under which relief is claimed by the petitioners before us. It has however been defined by Black's Law Dictionary, 6th Edition, to mean, "persons entitled under laws of descent and distribution. Person to whom law would give decedent's property if decedent died intestate." The word "heir" has been defined under Section 3(f) of the Hindu Succession Act, 1956, which codifies the law relating to intestate succession among Hindus, to mean, "any person, male or female, who is entitled to succeed to the property of an

intestate under this Act." In other words, the expressions „heir“ and „legal heir“ carry similar meanings under certain circumstances. At the same time, however, while defining the expression "heirs", Black"s Law Dictionary, 6th Edition, also states, inter alia, as follows:

"Heirs. Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law. Word "heirs" is no longer limited to designated character of estate as at common law. Jay v. Dollarhide, 3 Cal.App.3d 1001, 84 Cal.Rptr. 538, 547."

An examination of the above would show that the expressions, "heir" and "legal heir" are also used in a popular sense to designate a successor to property either by a Will or by law. In this context, we might add that while under the Hindu Succession Act, 1956, the word "heir" has been defined with a view to securing the objects of the Statute, which is, inter alia, to provide for intestate succession. However, the Scheme of allotment with which we are concerned, has an entirely different object, which is, to provide for alternative plots under a given set of circumstances. Therefore, in our view, the meaning ascribed to the expression "heir" under the Hindu Succession Act, 1956 would not automatically be applicable to the Scheme."

5. Mr. Sameer Jain, learned counsel for the petitioner submits that the petitioner was initially adopted by Mohd. Ismail and the land in question was gifted to him in the year 1970. To this effect the Executive Magistrate Daryaganj issued a Surviving Member Certificate which is reproduced below:-

“ SURVIVING MEMBER CERTIFICATE

On the basis of the documents produced by Sh./Ms. Aftab Ahmed S/o, D/o, W/o Sh. Haji Rehmat Elahi R/o 2128 Ahata Kale Sahib Qasim Janst Ballimaran, Delhi and inquiries conducted by police station/Bailiff of this Sub-Division, it appears that Sh./Ms. Late Sh. MD Ismail expired on 23.11.1985 leaving behind the following surviving members:-

Sl. No.	Name of Member	Age	Relationship
1.	Aftab Ahmed	72	Son”

6. From the perusal of the above mentioned certificate it is established that the petitioner is the only remaining legal heir.

7. A similar issue came before this Court in the case of **Krishan Kumar Malik v. Union of India 1985 AIR (Del) 225** and this Court has held as under:-

“3. The Delhi Administration has issued a Scheme of allotment of alternative plot under the Scheme of Large Scale Acquisition and Development and Disposal of land Delhi in 1961. The relevant features of the Scheme which calls for discussion is to be found in para 8 reproduced below:

“8 As a general policy disposal of developed land should be made by auction and the premium should be determined by the highest bid, except in the following cases where land may be allotted at pre-determined rates namely, the cost of acquisition and development plus the additional charges mentioned in sub-paragraph (7) above.

(i) to individuals whose land has been acquired as a result of the Chief Commissioner's notification dt. the 7th Mar. 1957, the 3rd Sept. 1957, the 13th Nov. 1959, and the 10th Nov. 1960 or other such subsequent notifications provided that this concession will not be available in the case of

individuals affected by the notification dt. 7th Mar. 1957 and the 3rd Sept., 1957, if the acquisition proceedings have been completed and payment made or deposited in the Court by the 1st Jan., 1961. In these cases....

The petitioner's request for alternative allotment has been rejected on the ground that he had' purchased the land which was already notified under Section 4 issued on 21st Jan., 1968. This is the grievance which has brought 'the petitioner to this Court. The petitioner's counsel's main reliance is on the two judgments given by Division Bench of this Court in Uday Raj Giri v. Union of India Civil Writ Petn. No. 591/82 decided on 22nd April, 1983 which was followed in "Vinod Kumar Khanna v. Union of India" Civil Writ Petn. No. 175/84 decided on 7th August, 1984. The view expressed in the said Division Bench judgment is that para 8 gives a right to the individuals whose lands have been acquired as a result of the notification and there is no bar that if any person buys land subsequent to the date of notification under Section 4 but prior to the acquisition as a result of the said notification he would not be eligible. We have gone through the judgment. With very great respect we find ourselves unable to subscribe to the view subscribed therein. There is no discussion in the said judgments as to how an individual who was not an owner on the date of the notification under Section 4 is held to be eligible. A reference to para 8 will show that eligibility is given to individuals whose land has been acquired as a result of the notification issued under Section 4. No doubt, eligibility cannot arise till the land is acquired. That means that even if after Sections 4 & notification the Government was to give up acquisition by issue of a notification Under Section 48 of the Act the individual owner will not be entitled to alternative land. But the notification is clear that it is only an individual whose land has been acquired as a result of notification that can ask for an alternative accommodation. Admittedly, the petitioner was not a owner of the land when notification was issued in 1961 or even in 1965. It is true that he had purported to buy the land earlier than the date of the award and in that sense it

may be said that he had become an owner before the acquisition proceedings had been finalised. But this interpretation ignores completely the purpose and the object behind the issue of notifications issued in 1961. Large scale acquisitions were to be made of the land. In the normal course when the land is acquired under the Land Acquisition Act the only requirement is to provide compensation, providing any alternative land is not a part of the requirement of the statute. As, however, very large areas of land were being acquired the Government evidently considered that it would be rather harsh if having deprived large number of people of their land which was apparently being acquired for planned development of Delhi no alternative accommodation was given to them which would inevitably mean their large scale displacement with necessary serious problems. The purpose of the scheme obviously was that those who are going to be displaced by large scale acquisition should apart from the compensation be given a special benefit by giving an alternative accommodation at concessional rates. It was obviously not the object of the scheme that the individuals whose lands were the subject matter of notification Under Section 4 should be permitted an additional benefit of being able to sell their lands at a profit and still pass on this right of alternative accommodation to their vendees who had nothing to do with the land at the time of issue of Section 4 notification. The reason is that an individual whose land was being acquired is entitled to get compensation under the Land Acquisition Act. An additional benefit of alternative accommodation was being given to him by para 8 of the scheme. But if such an individual is allowed to sell his land at profit and even assuming that there was no bar to such a sale, he obviously would not be entitled to alternative accommodation because he would not be the owner at the time of acquisition of the land though he may have been an owner at the time of earlier notification, of Section 4. But if the ratio of the Udai Giri's case is accepted it would be open to such a person to have taken the profit of the sale and also pass on the benefit of alternative accommodation

to the purchaser. The Vendor thus would be enjoying double benefit which was not the object of the scheme. The scheme is meant to rehabilitate and provide alternative accommodation for those who are being displaced. The vendee does not fall in that category. According to us the correct interpretation of para 8 is that an individual will be entitled to alternative accommodation only if he was the owner at the time of issue of notification under Section 4 of the Act and was also an owner when the acquisition proceedings are finalised and the land is acquired. If in between this period an owner whose land is being acquired sells away his land he ceases to have any rights to lay a claim to alternative accommodation and as he himself could not lay a claim to such an alternative accommodation it stands to reason that he cannot pass on a better title than himself to his vendee. Of course, this position would not arise in the case of a person succeeding by inheritance or by a bona fide gift without consideration which apparently stands on a different footing from transfer by sale or otherwise.”

8. The Sub-Judge, Delhi was appointed as a Sole Arbitrator pursuant to the order dated 07.02.1975 by the court below. The following controversies in the suit were referred to him for arbitration:-

“1. The plaintiff filed a suit for declaration. Briefly the case of the plaintiff in that the defendant was owner of a plot of land of Khoti No. 1 comprise in Khasra no. 140-141 Khewat No. 27, Block C, admeasuring 1466.66 Square Yard in village Karkardooma, Shahdara, Delhi. That the defendant adopted the plaintiff as his son. He brought him up since his childhood. He out of nature love and affection gifted the aforesaid plot of land to the plaintiff in January, 1970 orally. He declared the gift the defendant accepted it and the plaintiff put him in possession of it. That the gift was complete and irrevocable according to Muslim personal law. That the defendant at the instigation of certain persons has been denying the validity of the gift on the ground that it was oral. That the plaintiff called upon

the defendant to admit that the plaintiff is absolute owner of the property but he did not do so. Hence this suit.

2. That the defendant filed his written statement. He has admitted the factum of the gift, but has contested its validity on the ground that it was oral.

3. That points for determination are:-

(i) Whether the gift of the land in suit by the plaintiff to the defendant is valid?

(ii) Whether the plaintiff is entitled to declaration as prayed for by him in the plaint?"

9. Moreover, the Sub-Judge, Delhi in his award dated 08.07.1975 has observed as under:-

"4. That I heard the parties. According to Muslim personal law, property can be gifted orally. Mriging is not necessary. According to the said law, the doner has to declare the gift, the denee is to accept the gift and possession of the property is to be delivered by the donor to the done. It is not denied by the parties that the gift was declared by the donor, the done accepted it, and that possession of the property was also delivered to the done. Gift was thus complete and irrevocable. It cannot be impeached on the ground that it was orally made.

5. I thus find that the oral gift made by the defendant to the plaintiff was legally valid.

6. Point No. 2

7. Whether the plaintiff is entitled to declaration.

8. Prayed for by him in the plaint?

Gift was valid and the title passed to the plaintiff. The plaintiff is owner of the suit property. He is entitled to declaration as prayed for by him.

I award accordingly."

10. I note, the compensation was received on 06.02.1987 but the application was filed on 17.11.1988, that is after one year. Since I have condoned the delay, if any, the respondent nos. 1 and 2 are directed to decide the claim of the petitioner.

11. In view of the above facts and the settled law, order dated 04.12.2012 is hereby set aside and the respondent nos. 1 and 2 are directed to re-consider the application of the petitioner and pass a fresh order within two months from today. Decision taken by the respondents shall be communicated to the petitioner within two weeks thereafter. If the petitioner is still aggrieved with the order passed by the respondent nos. 1 and 2, liberty is granted to the petitioner to approach the Court.

12. In view of the above, the present petition is allowed. No order as to costs.

SURESH KAIT, J.

AUGUST 14, 2014

RS/jg