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

+ **Date of Decision: 03.09.2015**

% **RSA 228/2015 and C.M. No.12883/2015**

SHRI BABU LAL Appellant

Through: Mr. V. Shukla, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Rajiv Bansal, Ms. Arpita &
Mr. Anukrit Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 26.02.2015 passed by the learned Additional District Judge – 5, Central District, Tis Hazari Courts, Delhi in RCA No.9/09/2005 titled *Sh. Babu Lal Vs. Delhi Development Authority*.

2. By the impugned judgment, the First Appellate Court dismissed the appellant's/ plaintiff's first appeal preferred by the appellant to assail the judgment and decree passed by the learned Civil Judge in Suit No.207/2005 also titled *Sh. Babu Lal Vs. Delhi Development Authority*. The appellant/ plaintiff had filed the said suit to seek a decree of mandatory injunction,

thereby seeking a direction to the defendant/ DDA to allot an alternative plot to the plaintiff in lieu of the land acquired by the defendant/ DDA. The plaintiff claimed that he had purchased a piece of land/ plot situated in Khasra No.546/17 in village Kondli, Delhi by means of a sale deed dated 17.05.1972 for consideration of Rs.500/-. Later on, the plot in question was acquired by the defendant/ DDA vide Award No.84A/72-73. The plaintiff claimed that after acquisition of the plot, he had applied for grant of alternative plot in lieu of his acquired land to the DDA on the ground that he does not have any residential accommodation in Delhi. The plaintiff claimed that despite the assurance given to him for the allotment of an alternative plot, needful had not been done. Consequently, he issued a legal notice dated 21.03.1991 to the defendant/ DDA but to no avail. Resultantly, the suit was filed.

3. The claim of the plaintiff was opposed by the defendant/ DDA by filing the written statement. The DDA stated that the land in question falling in Khasra No. 545 to 547 /17 measuring 6 Bighas and 6 Biswas stand acquired vide award No. 84-A/1972-73 supplementary. The possession of the land was acquired by the Government and transferred/ placed at the disposal of the respondent/ DDA through a notification dated 01.02.1979 which has been transferred to J.J. Residential Scheme. The defendant also denied having given any assurance to the plaintiff for allotment of alternative plot. The defendant also stated that allotment of alternative plots is made by the defendant/ DDA only on the basis of recommendation made by the Land & Building Department, Delhi Administration.

4. The only relevant issue framed was: whether the plaintiff was entitled to the relief, as claimed by him. The plaintiff and defendant both led evidence. The plaintiff examined four witnesses, whereas the defendant examined one witness. Before the Trial Court, the policy dated 10.02.1993 was produced, which was marked as Ex.DW-1/D1. As aforesaid, the suit of the plaintiff was dismissed. The reasoning contained in the judgment of the Trial Court dated 24.10.2005 is as follows:

*“It is well settled law that the suit against the DDA is not maintainable if there is no allegation regarding the act done being mala-fide, and/or deliberate one. It will not be out of the mention after consideration of examination the plaintiff and the documents Ex.PW-2/4 to 8 & 10, I am of view that the defendant DDA has been acting properly in a routine manner after receiving the representations of the plaintiff from time to time and surprisingly nothing has been placed on record to warrant conclusion that there had been any malafide on the part of the defendant or conferring any right upon the plaintiff for the alternative plot. Here it will not be out of place to mention that as and when any correspondence was made by the defendant with the L&B Department a copy of the same had been endorsed to the plaintiff thus apprising him of the movements **but surprisingly no document has been placed on record by the plaintiff to substantiate that he ever took any interest or contacted the office of the L&B Department to ascertain the movements, if any, on the letters sent by the DDA.** There is no denial on the part of the DDA as well that the plot is to be allotted by it **but the recommendation from the L&B department is the sine qua non for the DDA to proceed further with the matter.** Further during the course of cross-examination DW-1 has placed reliance on a letter dated 17.8.2005 Ex. DW 1/P 1 issued by the office of Land & Building Department with regard to the case of the applicant plaintiff, according to which the plaintiff for allotment of the alternative plot should be recorded owner of the land prior to issuance of*

*the notification and that in the cases of awards announced prior to the dated 3.4.1986 the land area acquired(belonging to the applicant) should not be less than 150 sqyds and further he is required to have received the compensation form the LAC or the Court as the circumstances may be. In the last line of the letter it has been clearly mentioned that the land of the applicant plaintiff being only 100 sq. yds. he is not eligible for allotment of alternative residential plot and further that **he had never applied in the office of the L&B Department for alternative plot in lieu of the acquired.** In view of the conditions mentioned in the letter dated 17.8.2005 (Ex.DW-1/P-1)I am of the view that the plaintiff has failed to establish a case for mandatory injunction. The issue is answered accordingly.”*

(Emphasis supplied)

5. The first appeal preferred by the appellant/ plaintiff too has been dismissed. The First Appellate Court while referring to the said policy Ex.DW1/D1 observed as follows:

“3. In the policy Ex. DW1/D1 two categories were defined. The first category is for awards announced before 03.04.1986 and the second category is for the awards announced after 03.04.1986. Appellant claims that this policy is not applicable to him. In the plaint he did not mention the policy by which he is covered. During appeal also no prayer was made to summon the record in respect of any specific policy which according to the appellant was applicable to his case. It was the duty of the plaintiff to disclose the policy in the plaint under which he claims the right. There is no evidence on record that plaintiff was discriminated vis a vis similarly situated persons. In absence of disclosure of the law/rule/policy which creates a right in favour of the appellant and in absence of allegation of discrimination, appellant was not entitled to relief claimed in the suit. I do not find any infirmity in the impugned judgment and decree. The appeal is dismissed with cost. Decree sheet be

prepared. Copy of the judgment be sent to the Ld. Trial Court with trial court record.”

6. While assailing the appellate judgment and decree, the appellant has moved the aforesaid application under Order XLI Rule 27 CPC, i.e. C.M. 12883/2015. By this application, the appellant seeks liberty to lead in additional evidence the policy of the Government of India, Ministry of Home Affairs dated 02.05.1961. The appellant claims that he learnt of this policy on perusal of a judgment of this Court in the case of ***Rashmi Nagrath Vs. Sarva Priya Cooperative Housing Building Society Limited***, W.P.(C.) No.1631/1998, of which he obtained certified copy on or about 26.05.2015. The appellant claims that he was not aware of the said policy earlier and, therefore, could not produce the same. However, the said policy is an unimpeachable document, since it is the policy of the Government of India, which finds mention in several decisions of the Courts. The relevance of the said policy, according to the appellant, is that the land of the petitioner was acquired by a notification dated 13.11.1959 issued under Section 4 of the Land Acquisition Act, and the said policy in express terms is made applicable to lands acquired, *inter alia*, by the said notification.

7. Reliance has also been placed on paragraph 8 of the said policy, which reads as follows:

“(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 charge mentioned in sub-paragraph (7) above:-

*(i) to individual whose land had been acquired as a result of the Chief Commissioner's notification dated the 7th March, 1957, the 3rd September, 1957, the **18th November, 1959**, the 10th November, 1960 other such subsequent notifications provided that this concession will not be available in the case of individuals affected by the notifications dated 7th March, 1957, and the 3rd September, 1957. If acquisition proceedings have been completed and payment made or deposited in Court by the 1st January, 1961, in these cases.*

(a) If a residential plot is to be allotted, the size of such plot, subject to the ceilings prescribed may be determined by the Chief Commissioner, taking into consideration the area and the value of land acquired from the individual and the location and value of the plot to be allotted; and

(b) if an industrial plot is to be allotted, its size may be determined with reference to the requirement of the industry to be set up, provided that the setting up of such an industry is in accordance with the Master Plan and the industrialists concerned has the capacity to establish and run such industry and provided further that the extent of land allotted at predetermined rates should/ not exceed the area acquired from the industrialist concerned. In making such allotments for industries, the Chief Commissioner will be advised by an Advisory Committee to be nominated by him.

(ii) to industrialists who are being asked to remove their factories from their present locations. Such allotments will be subject to the condition that the location of the industry concerned within the urban area is in accordance with the Master Plan. The Advisory Committee referred to in the previous sub-paragraph should be consulted in making such allotments;

(iii) to individuals in the low-income group. These allotments will be made by drawing of lots under the supervision of an Advisory Committee to be nominated by the Chief Commissioner. A suitable percentage of the area developed for

private housing by the Delhi Development Authority may be reserved for this purpose.

(iv) to co-operative house building societies and co-operative societies of industrialists and manufacturers.”

(Emphasis supplied)

8. Learned counsel has placed reliance on the Full Bench judgment of this Court in ***Shiv Devi Vs. Lt. Governor***, 1986 Rajdhani Law Reporter 557; and ***Rajender Kumar Vs. Union of India & Others***, 47 (1992) DLT 130 (DB) in support of his submissions.

9. Attention has also been drawn to the communication dated 06.03.1986 (Ex. PW-2/10) sent to the Joint Secretary, Land and Building Department, Delhi Administration by the DDA on the appellant's application for seeking allotment of alternative plot, and Ex.PW-2/11 dated 22.06.1989 whereby the Land and Building Department of the DDA forwarded to the Commissioner (Lands), DDA the complaints/ representations/ suggestion received from the public, which included the representation of the appellant. The same was shown at serial number 74.

10. The appellant has also drawn attention to Ex.PW-1/1 – a letter dated 21.03.1991 addressed to the Vice-Chairman, DDA seeking allotment of an alternative plot.

11. On the other hand, learned counsel for the respondent has submitted, firstly, that the appellant did not implead Land and Building Department of Delhi Administration as a party defendant, even though the said entity was a necessary party to the suit. The stand taken by the DDA before the Court

was that the DDA allots alternative plots in lieu of the acquired land only upon the recommendation being made by the Land & Building Department of Delhi Administration to which the application has to be made by the applicant. Mr. Bansal submits that once an application is made, it is for the Delhi Administration/ GNCTD to examine the eligibility of the applicant for allotment of alternative plot under whichever policy is applicable, and then to recommend the making of the allotment, if the applicant is found eligible. The recommendation is sent to the DDA, which then makes the allotment as per seniority.

12. Mr. Bansal submits that the policy of 02.05.1961, in any event, cannot be sought to be invoked since the application was, firstly, never made by the appellant/ plaintiff to the Land and Building Department of Delhi Administration/ GNCTD, and in any event, even if the communication of the DDA (Ex. PW-2/10 dated 06.03.1986) is treated as an application of the appellant made to the Land & Building Department of Delhi Administration, it is the policy which was governing as in March 1986, which would be applicable, and not the policy of 1961.

13. In this regard, reference is made to the judgment of the Supreme Court in *Howrah Municipal Corporation and Others Vs. Ganges Rope Co. Ltd. and Others*, (2004) 1 SCC 663; *Chander & Others Vs. Delhi Administration & Another*, 2001 (59) DRJ 68 (DB); and *Delhi Administration Vs. J.P. Goel & Another*, 2012 (131) DRJ 600 (DB).

14. Mr. Bansal submits that the policy which was applicable in the year 1986 was considered by this Court in *J.P. Goel* (supra) and the four

conditions, which were required to be satisfied – taken note of in the said decision, were as follows:

“(a) The application must have been filed within a period of one year from the date of receipt of compensation.

(b) He/she should be recorded owner of the acquired land on the date of Section 4 Notification.

(c) He must have received the compensation for the said land.

(d) Neither he nor his spouse or any of his dependent children own any residential property in Delhi.”

15. Mr. Bansal submits that the appellant/ plaintiff was not the recorded owner of the land on the date of issuance of Section 4 notification.

16. Having heard learned counsel and perused the record as well as the decisions relied upon – including the policy dated 02.05.1961, I find absolutely no merit in the present appeal and no substantial question of law arises for consideration in the facts of the present case.

17. As noticed hereinabove, the appellant/ plaintiff does not appear to have ever made an application to the Land & Building Department of Delhi Administration to seek allotment of an alternative plot in lieu of the acquired land. It appears that he directly approached the DDA for allotment of an alternative plot. The DDA forwarded the plaintiff's application to the Land & Building Department of Delhi Administration vide Ex.PW-2/10 dated 06.03.1986. A perusal of this document shows that a copy was marked to the appellant Babu Lal, with advice to contact the Land & Building Department of Delhi Administration for alternative allotment. There is

nothing to show that the appellant/ plaintiff did contact the Land & Building Department of Delhi Administration.

18. It appears that he sent a representation, once again, to the DDA, which was circulated within the said organization itself vide letter dated 22.06.1989. This communication was not addressed to the Land & Building Department of Delhi Administration. It appears that the plaintiff kept on communicating only with the DDA, as is evident from PW-1/1 dated 21.03.1991. Therefore, the appellant/ plaintiff does not even appear to have even approached the competent authority, namely Delhi Administration/ GNCTD to seek allotment of an alternative plot. Even the suit was initiated only against the DDA, and despite the DDA taking an objection that it allots plots only upon the recommendation of Delhi Administration, the plaintiff neither made an application to Delhi Administration / GNCTD for seeking alternative allotment, nor impleaded GNCTD as a party defendant. The failure of the appellant/ plaintiff to implead GNCTD as a party defendant is fatal to maintainability of the suit, since it is for the GNCTD to entertain the application seeking allotment of alternative plot and to make the recommendations, if the applicant is found eligible under the prevalent scheme. Thus, the Delhi Administration/GNCTD was a necessary party to the suit.

19. I also find merit in the submission of Mr. Bansal that it is the prevalent policy, as in force on the date when the application to seek allotment of an alternative plot is considered, which would be applicable. In the present case, though there is no application directly made by the appellant/ plaintiff to Delhi Administration for seeking allotment of an

alternative plot, even if Ex.PW-1/P6 and Ex.PW-2/10 dated 06.03.1986 were to be treated as appellants/ plaintiff's application, the policy as prevalent at the relevant time in 1986 would be the one applicable. The policy considered by the Division Bench in **J.P. Goel** (supra) was the one which was applicable in the year 1981 when the allotment of the respondent in that case was dealt with. Therefore, the policy of 1961 was not applied in the facts of that case. Since the appellant's case pertains to the year 1986, certainly the policy of 1961, sought to be relied upon, would have no relevance. Pertinently, the case of the appellant/ plaintiff in the plaint itself is that he had purchased the plot, which was acquired vide sale deed dated 17.05.1972, i.e. much after the issuance of notification under Section 4 of the Land Acquisition Act, on 13.11.1959.

20. The decisions relied upon by the appellant in the cases of **Shiv Devi** (supra) and **Rajender Kumar** (supra) do not advance the case of the appellant. **Shiv Devi** (supra) was a case where a Full Bench of this Court considered the object of the 1961 Scheme. The said case pertained to the legal position as it obtained prior to the enactment of the Delhi Land (Restrictions and Transfer) Act, 1972. Prior to the enforcement of the said Act, there was no restriction on transfer of land which were already notified for acquisition under section 4 of the Land Acquisition Act. The Full Bench, in this background, held that:

“We do not see how a person who acquires land, after the S.4 Notification has been issued, can be treated to be a non-owner for the purposes of the Scheme framed in 1961. In fact, there is nothing in the Scheme, which has been re-produced earlier,

which shows that it is restricted to owners when the land was notified as being one which the Govt. contemplated to acquire”.

21. However, after the enactment of the Delhi Land (Restriction and Transfer Act), 1972, no land which was notified for acquisition by issuance of a notification under section 4 of the Land Acquisition Act could be purchased without prior permission. The case of the appellant was covered by the said Act, namely, Delhi Land (Restriction and Transfer Act), 1972, and the appellant could not have acquired the plot post the issuance of notification under Section 4 of the Delhi Land (Restriction and Transfer Act), 1972 without prior permission. Consequently, he was not entitled to alternative allotment on the basis of the acquired land that was purportedly acquired after issuance of Section 4 notification on 18.11.1959.

22. The decision in ***Rajender Kumar*** (supra) has no application to the facts of the present case. In this case, the petitioner had made the application to the Delhi Administration. The Delhi Administration sat on the said application to the prejudice of the petitioner. In this background, the Division Bench of this Court observed that:

“10. If for nine years the Delhi Administration makes no recommendation and, consequently, the Delhi Development Authority makes no allotment, the Delhi Development Authority is under no justification to charge the present market price. Grave injustice would be caused if we were to accept the contention of Mrs. Goel in this regard. It is a well known principle that no party can take advantage of its own wrong. The respondent-Delhi Administration has acted wrongly in not recommending to the Delhi Development Authority the land which should be allotted to the petitioner. The Delhi Development Authority is also a part and parcel of the Delhi

Administration. Because of the undue delay on the part of the respondents, the petitioner cannot be penalized”.

23. The observations made by the Division Bench that the Delhi Development Authority is also a part and parcel of Delhi Administration is not the ratio of the said decision. The Delhi Development Authority (DDA) is a statutory body constituted under the Delhi Development Act, 1957, and is not a part of the Delhi Administration or the GNCTD. Moreover, there is a material difference in the factual position in the present case as already noted above. In the present case, the appellant did not make an application to the Delhi Administration at any point of time. Despite being advised so by the DDA and the appellant did not even implead the Delhi Administration/GNCTD as a party defendant in the suit even though they were necessary party to the suit.

24. Thus, it is clear that there is no patent error or perversity in the judgments of the Trial Court and the First Appellate Court, which have consistently returned findings that the appellant/ plaintiff is not entitled to any relief. No substantial question of law arises for consideration by this court in the present appeal.

25. The appeal is, accordingly, dismissed.

VIPIN SANGHI, J

SEPTEMBER 03, 2015

B.S. Rohella