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

Date of Decision- 05.04.2018.

+ **W.P.(C) 127/2013**

SH. DHANPAL

..... Petitioner

Through Mr.N.S.Dalal with Mr.Devesh
Pratap Singh, Advs.

Versus

LAND AND BUILDING DEPARTMENT AND ANR

..... Respondent

Through Ms. Rachana Srivastva with
Ms.Monika Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (Oral)

1. Vide the present petition, the Petitioner has sought quashing of the order dated 30.10.2012 as also the Minutes of the Recommendation Committee dated 12.10.2012, whereby the Petitioner's case for grant of an alternative plot has been rejected on the ground that the Petitioner was neither the recorded owner nor had received the compensation amount and was, therefore, not eligible as per the Rehabilitation Policy for allotment of an alternative plot.
2. Mr.N.S.Dalal, learned counsel for the Petitioner submits that the Petitioner's father late Shri Shiv Lal, was co-owner with certain other persons in land forming part of Khasra no.46/2 (2-15), in which he was having 1/4th share, Khasra no.36/1 (1-10), in which he was having

1/3rd share, Khasra no.43 (1-16), in which he was having 1/9th share, Khasra no.49/2/2 (1-19) in which he was having 8/207th share and Khasra no.253/1 (5-0), in which he was having 1/27th share, situated in the revenue estate of Village Chilla, Sharoda Bangar, Shahdara Delhi. He further submits that land of the Petitioner's father in Khasra no.36/1, 43, 49/2/2 & 253/1 was acquired vide award dated 30.01.1973, whereas his only remaining land, which was in Khasra no.46/2 was also subsequently acquired vide award dated 30.06.1983.

3. Mr.Dalal submits that the Petitioner's father had expired on 20.07.1982 and, therefore, even though he had received compensation in respect of the award dated 30.01.1973, whereby his land in the aforesaid four Khasra numbers, was acquired, it is the Petitioner who had, as his legal heir, received the compensation in respect of the award dated 30.06.1983, whereby the only remaining land of his father which was in Khasra No.46/2, had been acquired. He further submits that in view of the large scale acquisition, development and disposal of land in Delhi, the Respondents had, in order to rehabilitate persons whose lands were acquired, issued a scheme dated 02.05.1961, providing for allotment of alternate plots to recorded owners whose entire land stood acquired.

4. Mr.Dalal also draws my attention to para 3 of the aforesaid scheme to contend that the same also envisages allotment of alternative plot to the legal heirs. He contends that there is a specific provision in the scheme that, in cases, where the recorded owner dies, before the issuance of notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act'), the allotment

was to be made separately to each of the legal heirs of the deceased, while, in cases, where the recorded owner dies after the issuance of the notification under Section 4 of the Act, the legal heirs were entitled to only one plot of the size of which the deceased would have been entitled. He, thus, submits that the scheme clearly shows that the grant of an alternative plot also enures to the benefit of the legal heirs of the recorded owner.

5. Mr.Dalal submits that though the notification under Section 4 of the Act in respect of Khasra no. 46/2 in Village Chilla Saroda Banger, which was the only remaining land of the Petitioner's father, was issued during his life time, the award in respect thereof was pronounced only after his death and, therefore, the Petitioner, as his legal heir, received the compensation for the same only in the year 1983 i.e. much after the Petitioner's father expired. He submits that for obvious reasons, the Petitioner's father could not have applied for an alternative plot under the scheme during his lifetime, as the scheme of 1961 envisages that the application for the alternative plot has to be made within one year of receiving the compensation.

6. Mr.Dalal further submits that, since a number of eligible poor and illiterate persons were not aware of the policy dated 02.05.1961 providing for allotment of grant of an alternative plot, the Respondents took a considered decision to grant another opportunity to all those persons whose land stood acquired between 16.11.1963 and 31.12.1988 to make an application and, therefore, issued a public notice dated 27.03.1989 permitting all such eligible persons, whose land had been acquired between 16.11.1963 and 31.12.1988 to submit

applications seeking allotment of an alternative plot, on or before 30.04.1989. He contends that the said public notice clearly stated that those persons, who had already applied for grant of an alternative plot, need not apply again. He further submits that, as on the date when the public notice was issued, the Petitioner had already submitted an application dated 20.03.1989 for grant of an alternative plot and the Respondents were, in view of their public notice dated 26.03.1989, bound to consider the same in accordance with the provisions of scheme dated 02.05.1961.

7. Mr.Dalal further submits that in support of his Application dated 20.03.1989, the Petitioner had duly submitted all the requisite documents to the Respondents, from time to time. He also draws my attention to letter dated 21.08.2012 written by the Respondents to the Petitioner, requiring him to submit certain further documents as also a legal heir certificate issued by the LAC/SDM. He, therefore, contends that the Respondents were well-aware that the Petitioner was the legal heir of late Shri Shiv Lal, whose entire land stood acquired, vide award dated 30.06.1983. He, thus, submits that after the Petitioner had duly submitted all the requisite documents as also the affidavit asked for by the Respondents, he was expecting that the Respondents would consider his case favorably and recommend allotment of an alternative plot to him in consonance with their policy. However, the Recommendation Committee, in its meeting dated 12.10.2012, rejected the claim of the Petitioner, leading to the filing of the present petition.

8. Upon notice, Respondents have filed their counter affidavit, in which the Respondents, while admitting that the Petitioner had received the compensation amount in respect of land owned by his late father in Khasra no.46/2, Village Chilla Saroda Banger and was the legal heir of late Shri Shiv Lal, have contended that since the Petitioner had received the compensation on 20.09.1983 itself, it was incumbent upon him to make an application for allotment of an alternative plot within one year therefrom i.e. on or before 19.09.1984 and, therefore, the application submitted by the Petitioner on 20.03.1989 was liable to be outrightly rejected by the Respondents

9. While refuting the contention of learned counsel for the Petitioner, that the Respondents were entitled to consider the Petitioner's application as per their public notice dated 27.03.1989, Ms.Rachana Srivastva, learned counsel for the Respondents, submits that the Petitioner, who was admittedly not the recorded owner of the land but only a legal heir of the recorded owner late Shri Shiv Lal, was not entitled to get any benefit of the Amnesty Scheme announced vide public notice dated 27.03.1989. She contends that the Amnesty Scheme, issued vide public notice dated 27.03.1989, was applicable to the recorded owners alone and the benefit thereof was not available to the legal heirs of the recorded owner.

10. Ms.Srivastva also relies on a decision dated 14.09.2011 of the Hon'ble Supreme Court in *Civil Appeal no.8290/2010* titled as ***Delhi Development Authority v. Jai Singh Kanwar & Ors.*** in support of her contention that in order to get benefit of the scheme, it was incumbent

upon the Petitioner to show that his father late Shri Shiv Lal, also did not own any house/ residential plot/ flat in his own name or in the name of his spouse or any other dependent relation and that he was not a member of any cooperative housing society.

11. Having heard learned counsels for the parties, I am of the considered opinion that, in view of the admitted position that the Petitioner's father had expired before the passing of the award dated 30.06.1983 and also could not, therefore, receive that compensation in lieu of acquisition, it was only his legal heir, the Petitioner herein, who received the compensation. There is also no denial to the fact that as per policy dated 02.05.1961, the legal heirs of the recorded owners, were also eligible to apply for allotment of an alternative plot and were in fact placed in two categories, one being those where notification under Section 4 of the Act was issued before the death of the recorded owner and the other being those where the said notification was issued after the death of the recorded owners.

12. At this stage, it may be appropriate to notice the relevant portions of scheme dated 02.05.1961 as also of the public notice dated 27.03.1989, on which both sides have placed reliance.

The relevant extract of the Scheme dated 02.05.1961 reads as under:-

“This Department is implementing Scheme of allotment of alternative plots in lieu of acquired land under “Large Scale Acquisition Development & Disposal of Land in Delhi” announced by Govt. of India, Ministry of Home Affairs vide their letter no.37/16/60-Delhi (i) dated 02.05.1961.”

(c) Other cases

a. When the recorded owner of the land acquired dies before notification u/s 4 of L.A.Act, allotment is to be made separately to all the legal heirs of the deceased separately, according to their share recognized by the LAC, but if he dies after the notification u/s 4 of L.A. Act, all legal heirs are entitled to one plot of the size to which the deceased would have been entitled.

The relevant extract of Public Notice dated 27.03.1989 reads as under:-

“ Only those persons may apply who have not applied earlier for the said purpose. For the removal of doubts it is clarified that this scheme is applicable only to those persons who were recorded owners of the acquired land at the time of notification under section 4 of the Land Acquisition Act.”

13. In my considered view, even though the public notice dated 27.03.1989 refers to only recorded owners, it cannot be read in such a restrictive manner, so as to exclude legal heirs of a recorded owner, who are in accordance with provisions of the original scheme entitled to be considered for allotment of an alternative plot. Once the Respondents vide their public notice dated 27.03.1989, gave another opportunity, by way of amnesty, to all those recorded owners whose land was acquired between 16.11.1963 and 31.12.1988, to submit applications for allotment of an alternative plot on or before 30.04.1989 and also indicated therein that all the pending applications of persons whose land was acquired between 16.11.1963 and 31.12.1988, would be considered, there is no reason as to why the pending application of the Petitioner, who was admittedly the legal

heir of the recorded owner, ought not to be considered on its own merits.

14. There is yet another reason, as to why I find no merit in the submission of learned counsel for the Respondent that the Petitioner's application was time barred and was, therefore, rightly rejected. A perusal of impugned order dated 12.10.2012, in itself shows that the Petitioner's application was rejected by the Committee, not as being barred by time, but on the ground that he was neither the recorded owner of the land nor had received compensation in lieu of acquisition, which grounds have been found to be wrong as the Petitioner is admittedly a legal heir of the recorded owner and had duly received the compensation. In fact, the record shows that the Respondents had, from time to time, required the Petitioner, to submit relevant documents and, therefore, the plea taken by the Respondents that the Petitioner's application was time barred, is merely an after thought and in any event, not maintainable in the light of public notice dated 27.03.1989.

15. I have also considered the decision of the Hon'ble Supreme Court in the case of *Delhi Development Authority (supra)*, on which reliance has been placed by the learned counsel for the Respondent. In my considered opinion, in view of the admitted position that the Petitioner had submitted an affidavit to the Respondents clearly stating that neither he nor his father owned a flat or a plot or a residential house or was a member of any cooperative housing society, the aforesaid decision is not at all applicable to the present case.

16. For the aforesaid reasons, the writ petition is entitled to succeed and the impugned order dated 30.10.2012 rejecting the Petitioner's application for grant of an alternative plot is set aside. The Respondents are directed to reconsider the Petitioner's application dated 20.03.1989 for grant of an alternative plot on its own merit, within twelve weeks.

17. The writ petition is allowed in the above terms with no order as to costs.

(REKHA PALLI)
JUDGE

APRIL 05, 2018

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