

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

% Date of decision: 23<sup>rd</sup> July, 2018

+ W.P.(C) 1716/2015

SUNDER LAL AND ANR. .... Petitioners  
Through: Mr. Sushil Kumar Singh, Adv.

versus

GOVT. OF NCT DELHI ..... Respondent  
Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,  
Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

1. The present petition has been filed by the petitioners with the following prayers:

*“In light of the aforesaid facts and submissions, the petitioners herein most respectfully pray that this Hon’ble Court may be pleased to:*

- (i) *Issue a writ in the nature of Mandamus directing the respondent to consider the claim of the petitioners and allot alternative plot against acquired land vide its letter No.f32(28)/28/95/l&b/alt./7708-09 dated 24.08.1998*
- (ii) *Pass such order and any further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”*

2. It is the case of the petitioners that a Notification dated June 23, 1989 was issued for acquisition of land for the purpose of challenging of Yamuna River. The father of the petitioners was a shareholder of  $\frac{1}{4}$  of land ad-measuring 10 Bigha 19 Biswas of Khasra No. 972 and 974 situated at Village-Kilokri. Petitioners' father made an application dated April 4, 1995 for allotment of alternative plot against his acquired land in Village-Kilokri. A communication dated August 24, 1998 was sent to the petitioners' father stating that the following defects have been noted in the application (i) supporting revenue record of acquired land has not been furnished / is not attested by the competent authority (ii) Food Card / Election I Card, Passport size photographs and specimen signatures attested by the Gazetted Officer (iii) certified copy of the award / judgment of ADJ is to be submitted. The petitioners were not aware of such communication until 2013. On March 23, 2005, father of the petitioner died. Between 2006-2013, the petitioners could not have the knowledge in respect of acquisition and the litigation as the petitioners' father was the sole person responsible in dealing with such matters. According to him, on coming to know about the fact that the plot was sanctioned for petitioners' father name through some persons, petitioners made an application dated July 24, 2013 under the RTI Act, but was of no avail. On November 25, 2013, petitioners made a representation to the respondent inter alia submitting the relevant documents required for

allotment. On such representation, petitioners received a letter dated December 9, 2013 addressed to the petitioners' late father whereby respondent dismissed the claim of the petitioners' father for allotment of alternative plot. Reference is made to another representation dated January 17, 2014 of the petitioners. Learned counsel for the petitioners has urged that the petitioners' father was a "Gair Marusi" who was cultivating the land and had also been given compensation pursuant to acquisition. In this regard, he has drawn my attention to a certificate dated April 3, 1995 issued by the Office of the Deputy Commissioner, Delhi (running Page 49 of the paper book). According to him, as a recognized cultivator, not being owner, petitioners shall be entitled to an alternative plot. According to him, the ground on which the respondent has rejected the application of the petitioners' father for allotment of alternative land on the non-submission of requisite documents is incorrect as the petitioners had submitted all the documents relevant for the purpose of consideration. According to him, the so-called revenue record prior to the issuance of the Notification under Section 4 of the Land Acquisition Act, 1894 is the "Fard" which was tendered by the father of the petitioners vide his letter dated September 17, 1999 (running Page 59 of the paper book). According to him, there was no impediment for the allotment of alternative plot in favour of the father of the petitioners. The reasoning given by the Recommendation Committee is

totally untenable and is a malafide action. He would also rely upon the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to contend that the agricultural labourers, tenants are the affected parties and are entitled to compensation. If the compensation is admittedly has been given to the father of the petitioners, there is no reason to deny the alternative plot to the petitioners.

3. On the other hand, Ms. Jyoti Tyagi, learned counsel appearing for the respondent would submit that it is a gross case of fraud and misrepresentation having been played by the father of the petitioners inasmuch as, in his own representation in the application form submitted by the father of the petitioners on April 4, 1994, it is seen that the father of the petitioners had represented the land being “*ancestral*”. In other words, petitioners’ father has owned the land through succession, which is factually incorrect. The land was never been in the ownership of the father of the petitioners, rather he was illegally occupying the land. In other words, the owners of the land were different persons, not the ancestors of the father of the petitioners. She would state that the policy which is in vogue for grant of alternative allotment presupposes the allotment in favour of the recorded owner. She would rely upon the scheme in vogue, more specifically in cases where the acquired land is ancestral. She also stated that it is in this regard respondent was writing to

the petitioners to submit the revenue record of the year prior to the issuance of Notification under Section 4 of the Land Acquisition Act. Unfortunately, the petitioners did not submit the same till date, rightly so, as the petitioners' father was never been owner of the land nor was his ancestors. Accordingly, she justified the issuance of the impugned notification dated December 9, 2013 rejecting the request of the petitioners' father for grant of alternative plot. She would rely upon the judgment of the Division Bench of this Court in the case of ***Govt. of NCT of Delhi v. Jangli Ram and Ors., LPA 112/2015*** to contend that the person who has not approached this Court with clean hands is not entitled to the relief as prayed for. She has also relied upon the judgment of this Court in the case of ***Prem Kala v. Land and Building Department, W.P.(C) 11128/2016*** wherein this Court had relied upon the judgment of the Division Bench of this Court in the case of ***Jangli Ram (Supra)***. She relied upon the aforesaid cases wherein this court has allowed the appeal filed by the Department challenging the action of the learned Single Judge allowing the claim of the petitioners therein after a long delay of almost 22 years.

4. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioners' father was at all eligible for allotment of alternative plot. It is not disputed by the learned counsel for the

petitioners that the father of the petitioners was “Gair Marusi” only cultivating the land as a tenant. There is no dispute that the father of the petitioners was granted compensation pursuant to the acquisition of land by the Government. The question would arise whether merely because the father of the petitioners has been granted compensation would entail consideration of his application for grant of alternative plot. Ms. Tyagi’s plea that the father of the petitioners not being the rightful owner of the land would not be entitled to an alternative plot is appealing. In this regard, I may reproduce the relevant provisions of the Scheme as under:

- 1. The persons who are RECORDED OWNER prior to issue of notification u/s 4 of Land Acquisition Act.*
- 2. The persons whose land has been acquired must have received the compensation as a rightful owners from the LAC/Court and the possession of acquired land has been taken by the Govt.*
- 3. The applicants should not own a house / residential plot / flat out of village abadi in his / her own name or in the name of his wife / husband or any of his / her dependent relations including unmarried children, nor he should be a member of any Cooperative Housing Society.*
- 4. For awards announced prior to 3.4.86, the land acquired is not less than 150 sq. yds. And for awards announced post 3.4.86, the land must not be less than one bigha.”*
5. From the perusal of the Scheme, it is clear that a person who is the recorded owner, whose land has been acquired, received compensation as a rightful owner from the LAC / Court and the possession of the acquired land has been taken by the Government is entitled to be eligible for grant of

alternative plot. It is not the case of the learned counsel for the petitioners that the father of the petitioners was a recorded owner or being the original owner has received the compensation from LAC/Court. It is his own case that the father of the petitioners was a “Gair Marusi” a tenant. Hence would not fall within the parameters of the scheme as referred above. It appears that since the petitioners have represented the acquired land being ancestral, respondent was insisting upon the revenue record to establish the ownership of the land at least through succession. As it is the petitioners’ own case that the petitioners were “Gair Marusi”, this court is of the view that the case of the petitioners being not sanctioned by the Scheme, the application for allotment of alternative land could not have been considered. That apart, the reason given in the impugned letter dated December 9, 2013 is that the petitioners have failed to furnish the documents as sought for is for non-submission of the requisite documents. Such a reasoning cannot be faulted.

I do not see any reason to interfere in the impugned order. The petition is dismissed.

**CM No. 3078/2015 (for stay)**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**JULY 23, 2018/jg**