

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.10.2018

+ **W.P.(C) 5966/2010 & CM Nos. 11746/2010 & 38144/2018**

RAJ KUMAR SHARMA

...Petitioner

Versus

UNION OF INDIA AND ANR

...Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Atul Batra and Ms Shreya Mathur.

For the Respondents: Mr Amit Mahajan, CGSC.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying that writ in the nature of mandamus be issued directing respondent no.2 (hereafter 'L&DO') to allot/regularize the plot measuring 204 sq. yards adjacent to plot no.13/15, Tihar-I, Subhash Nagar, New Delhi. The petitioner claims that the said area, measuring 204 sq. yards (hereafter referred to as 'the adjacent plot'), forms a part of the plot of land bearing no.13/15, Tihar-I, Subhash Nagar, New Delhi (hereafter 'the plot in question'). It is the petitioner's case that similar strips of land, which are adjacent to various plots located in Tihar-I, Subhash Nagar, New Delhi, were

allotted to allottees of those plots. The petitioner states that this was an exercise to correct the area as originally allotted, as the plots allotted were always meant to include such areas.

2. The petitioner has based his case on a circular dated 14.12.1973 issued by the Settlement Commissioner, Ministry of Supply and Rehabilitation (Department of Rehabilitation), which permits such further allotment/regularization. The said Circular is set out below:

Ministry of Supply and Rehabilitation
(Department of Rehabilitation)

New Delhi, the 14th December, 1973

To

The Regional Settlement Commissioner
(Central), Jamnagar House, New Delhi

Subject: Disposal of additional strips of land in the
Rehabilitation Colonies, in Delhi.

Sir,

The question of disposal of additional strips of land in the Rehabilitation Colonies in Delhi and reduction in the cost of land in respect of these strips has been under consideration of this Department for some time past. The following decisions have been taken in supersession of the instructions contained in para (ii) of this Department U.O. No.21 (75)/Comm./Prop/72 dated 2/5th May, 1972.

- i) The additional strips in the various colonies may be transferred to the respective allottees of the adjoining properties at the rates fixed by the Ministry of Works & Housing,
- ii) The ground rent in such cases will be charged in

the accordance with the terms on which the original property is held, and

- iii) If the area of the strip is upto 50% of the original plot, the Regional Settlement Commissioner can decide the cases himself. In cases where the area of the strip is more than 50% of the original plot area, but less 100% of the plot area, orders of the Chief Settlement Commissioner will be obtained before transfer. Cases exceeding 100% of the plot area should be referred to the Officer on Special Duty (i) for examination and Chief Settlement Commissioner's order.

Further necessary action in the matter may please be taken accordingly.

Yours faithfully

Sd/-
Settlement Commissioner"

Facts

3. In the year 1956, one Shri Parmanand (who is since deceased) was allotted the plot in question – a plot measuring 103 sq. yards. Thereafter, on 29.06.1967, a Lease Deed for the plot in question was executed in favour of Shri Parmanand.

4. Shri Parmanand expired on 25.11.1985. Apparently, he was survived by his wife (Smt. Daulati Bai); his daughter (Ms. Kaushalya Devi); and a son (Shri Mohan Lal).

5. The petitioner herein is son of the brother of Late Shri

Parmanand. There were some disputes between the legal heirs of late Shri Parmanand and the petitioner. Whilst the legal heirs (or persons claiming through them) of Late Shri Paramanand claimed title to the plot in question and the adjacent area by survivorship, the petitioner claims rights in respect of the plot in question by virtue of the Will dated 06.07.1981 executed by Late Shri Parmanand in favour of the petitioner.

6. One Shri R.D Sharma, also claims title to the adjacent plot as a successor in interest of Late Shri Parmanand. It appears that Shri R. D. Sharma had illegally taken possession of the adjoining plot and had constructed a building on the same. This became a subject matter of controversy before a Sub-Judge, Tis Hazari, who had directed L&DO to dispose of the said land. Shri R. D. Sharma made number of requests for allotment of the adjacent plot, which was not accepted by the L&DO. On 21.01.1996, the L&DO informed Shri R. D. Sharma that the adjacent plot could not be allotted as there was no policy for allotment of additional strip of land. Thereafter, on 24.04.2001, the L&DO with the assistance of the demolition squad of Delhi Development Authority, demolished the construction raised on the adjacent plot and evicted the occupants.

7. Thereafter, Shri R. D. Sharma had filed a writ petition (W.P.(C) 2899/2001) seeking allotment of the adjacent plot in his favour and further claiming parity with other allottees. Initially, an ad interim order directing status quo in favour of Shri R. D. Sharma, was passed by this Court on 08.05.2001. However, the said petition was dismissed

in default on 05.03.2002. Although the writ petition was subsequently restored, the request for an interim order was declined. This was carried in appeal before the Division Bench of this Court. The Division Bench also examined the instances of allotments cited by the petitioner therein (Shri R.D. Sharma) and found the said cases to be materially different. Accordingly, by an order dated 11.02.2003, the appeal was rejected by the Division Bench.

8. The aforesaid writ petition filed by Shri R. D. Sharma was, subsequently, dismissed by the Coordinate Bench of this Court by an order dated 12.08.2004.

9. The petitioner also filed a writ petition (W.P. (C) 106/2003), *inter alia*, claiming rights over the adjacent plot on the basis of the Circular dated 14.12.1973. The said petition (W.P.(C) 106/2003) was also dismissed for the reasons recorded in the judgment dated 12.08.2004 rendered in W.P.(C) 2899/2001.

10. The petitioner did not file any appeal against the order dismissing his writ petition. However, the legal heirs of Shri R. D. Sharma (who had since expired), preferred an appeal – ***LPA 1021/2004*** captioned ‘***Asha Lata Sharma &Anr. v. Union of India & Others***’ – before the Division Bench of this Court. The said appeal was also dismissed by an order dated 15.05.2007.

11. In the meanwhile, the petitioner filed a petition for grant of Letters of Administration PC No. 55/2006 before the Additional District Judge on the basis of the Will dated 06.07.1981 executed by

Late Shri Parmanand. The said petition was allowed by a judgment dated 02.05.2008. Thereafter, the petitioner applied for substitution of Shri Parmanand, which was allowed and the L&DO substituted the petitioner's name in the Lease Deed, which was communicated to the petitioner by a letter dated 22.06.2009.

12. Thereafter, the L&DO also executed a conveyance deed in respect of the plot in question in favour of the petitioner.

Reasons and Conclusion

13. As is apparent, this is the second petition filed by the petitioner claiming similar relief in respect of the adjoining plot. Mr Batra, learned counsel appearing for the petitioner contended that the petitioner's earlier writ petition (W.P.(C) 106/2003) was rejected on the ground that the petitioner was a third party, who was not entitled to allotment of any additional area. He contended that such relief was available to original allottees and not the third parties. He contended that since the petitioner had stepped into the shoes of Late Shri Parmanand and L&DO had accepted the said substitution, the petitioner was now entitled to claim such relief as an original allottee.

14. The aforesaid contention is misconceived. The fundamental premise that this Court had rejected the earlier writ petitions (W.P.(C) 106/2003 and W.P.(C) 2899/2001) only on the basis that the petitioners therein were not original allottees, is erroneous. As noticed above, the writ petition preferred by the petitioner (W.P.(C) 106/2003) was rejected for the reasons as stated in the judgment dated

12.08.2004 rendered in *Shri Remal Dass Sharma v. Union of India &Ors: W.P.(C) 2899/2001*. A plain reading of the said decision indicates that the Court had considered the policy dated 23.05.2000 of the Ministry of Urban Development (which was also relied upon by the petitioners) and had held that the object of the said policy was that vacant strips of land due to defective layouts, which were being encroached upon, may be considered for allotment though preference should be given to keep these strips as green areas. The said policy also provided that in case the particular strips can be put to independent use, then a different view for auction or the utilization may be taken. The Court also noted that the Division Bench, in LPA 758/2002, had considered the instances cited by the petitioner and had found the same to be not similar to the case of the petitioner. It is, thus, clear that the writ petition preferred by the petitioner was dismissed not only on the ground that the benefit of the policy could not be extended to persons other than the original allottee, but also on merits.

15. Although, the petitioner did not challenge the decision dismissing his writ petition (W.P.(C) 106/2003), the legal heirs of Shri R. D. Sharma filed an appeal (*LPA 1021/2004* captioned '*Asha Lata Sharma &Anr. v. Union of India & Others*'). The said appeal was dismissed by an order dated 15.05.2007. Any controversy that remained was put to rest by the said decision, as the Court had examined both the questions relating to the Circular dated 14.12.1973 (which is relied upon by the petitioner) as well as the petitioner's claim for parity with other allottees. The relevant extract of the said

decision is set out below:-

“8. Mr. R.D.Sharma took the matter in appeal but the Division Bench refused to grant any stay in favour of Mr.R.D.Sharma. One of the contentions raised before the Division Bench by Mr. R.D.Sharma was that in several other cases, additional strips of land had been allotted, even though the additional strips of land had exceeded the area of original allotment. The Division Bench noticed these cases and held that in the said cases on inspection of the sites, actual area of the plot was found to be different. These cases were not cases where additional strips of land were allotted. These details have been mentioned in para 10 of the impugned order dated 12th August, 2004 passed by the learned Single Judge. We need not go into these aspects as the said allotments have already been examined by the Division Bench in detail though while deciding the appeal for grant of interim injunction. Nothing persuades us to take a different view from the one taken by the Division Bench of this Court in order dated February 11, 2003. No new facts or circumstances have been pointed out to re-examine these aspects and hold differently.

9. Learned counsel for the appellant during the course of arguments had referred to different Circulars issued by LandDO and enclosed with the counter affidavit filed before the learned Single Judge. It was submitted that in view of the said Circulars, the appellant is entitled to allotment of 204 sq. yds of land.

10. The first Circular is dated 14th December, 1973 and states that strips of land upto 50% of the original plot can be allotted to the original plot owners by Regional Settlement Commissioner. Strips of land between 50% of the original plot area but less than 100% of the plot area can be allotted by the Chief Settlement Commissioner. Cases exceeding 100% of the plot area shall be referred to Officer on Special Duty for examination and the Chief

Settlement Commissioner.

However, subsequent Circular dated 4th August, 1976 shows that approximately 342 strips of land had been identified for disposal in terms of Circular dated 14th December, 1973. This Circular states that strips of land should be self-contained pieces of land not exceeding 75 sq. yds. and not forming part of larger areas. The case of the appellant is not covered by the said Circular as the area in question exceeds 75 sq.yds.

11. It is also not the case of the appellants that the plot measuring 204 sq. yds. is included in 342 strips of land which had been identified. By a subsequent Circular dated 13th July, 1978 it was decided to allot strips of land, which had already been identified (approximately 342 in number) not exceeding 125 sq. yds., to adjacent allottees subject to certain terms and conditions mentioned therein. However, one of the conditions was that the strips of land should not form part of a larger area and each strip of land should be checked with reference to the approved Master Plan. By another Circular dated 28th January, 1980 it was further clarified that the strips of land cannot be used independently. Officers were also required to ensure that the land was not required in public interest and the condition that the strips of land should be self-contained not exceeding 125 sq. yds. and not forming part of larger areas was reiterated.

12. It is apparent from the Circulars that Mr.R.D. Sharma could not have been allotted 204 sq. yds. of land under the said Circulars pursuant to his request made in 1988. The plot in question measures 204 sq. yds. and exceeds the prescribed maximum limit of 125 sq.yds. Further Mr. R.D.Sharma was not the original allottee of the plot. Mr. Parmanand was the original allottee of the plot no. 13/15, Tihar-1, New Delhi. Mr. R.D.Sharma was asking for allotment of additional plot of 204 sq. yds which is more in area and almost twice the size of the initial original

allotment in favour of Mr.Parmanand. That apart, Mr.R.D.Sharma had approached the Court only in 2001 when his request for original allotment was rejected in 1996 vide letter dated 29th January, 1996. As rightly pointed out by the learned Single Judge, Mr. R.D.Sharma had not approached the Court with clean hands. He did not disclose material and relevant facts. Mr.R.D.Sharma had concealed that the unauthorised construction made by him on this plot was demolished by Land DO on 24th April, 2001 and possession of the plot had been taken. Thus, it has been rightly held by the learned Single Judge that Mr.R.D.Sharma or his legal representatives are not entitled to any discretionary relief under Article 226 of the Constitution of India.

13. Learned Single Judge has also referred to the subsequent policy decisions taken by the Ministry of Urban Development in its guidelines dated 23rd May, 2000. As per the said guidelines, L&DO had decided to consider and recommend each case or a group of cases within a colony on its own merits and use. However, preference was to be given to keep the additional strips of land as green with temporary lease/licence for green development on year to year basis. L&DO was also required to examine whether the plot can be developed into a park or utilised for construction of a community centre or for public purpose. The guidelines further stipulate that if a particular strip of land can be put to independent use then disposal by way of auction or utilisation of land can be considered. As already stated above, the plot in question measures 204 sq.yds, which is almost twice the size of the original allotment of 103 sq.yds plot in favour of Mr.Parmanand. This additional strip of land is not a strip of land attached to the original plot. It is a plot in itself.”

16. Before concluding, it is also relevant to note that the instances

cited by the petitioner are related to those allottees that had been allotted piece of land of a smaller area but on inspection of the actual plot, the same was found to be larger than the allotment made. Such discrepancy had arisen on account of irregular shapes of the plot and, therefore, the L&DO had executed the supplementary Lease Deeds for the remaining area. In the present case, the adjacent plot is capable of being used as an independent plot. This is evident from the noting produced by the respondent, which reads as under:-

“The site was visited.

The pocket of land is at the corner of two perpendicular rows of plots, with other part of the corner already allotted and amalgamated with plot no.13/16.

The pocket of land under consideration, adjoining plot no.13/15, has a limited frontage of about 1.0 m. A wider side is open towards the service lane at the rear side.

This pocket has a temple across the service lane and a 64' wide road at the end of the service land. Hence this pocket of 204 sq. yards can be put to independent use for community facilities and may be considered for allotment for milk booth, pump house etc. as permissible by prevailing policy.”

17. In view of the above, the present petition is unmerited and is, accordingly, dismissed. All pending applications stand disposed of.

OCTOBER, 2018/MK

VIBHU BAKHRU, J