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

Date of Decision: 02.05.2018

+ W.P.(C) No.5647/2014

LALIT KUMAR & ORS. ... Petitioners
Through Mr.Sumit Bansal, Adv. with
Ms.Sumi Anand, Adv. &
Mr.Ankit Banati, Adv.
versus
GOVERNMENT OF NCT OF DELHI Respondent
Through Mr.Yeeshu Jain, Adv. with
Ms.Jyoti Tyagi, Adv. for L&B.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Petitioners seek quashing of the order dated 23rd July, 2014, issued by the Respondent, whereby the Petitioners' request for allotment of alternate plot had been rejected.

2. The brief facts as set out in the petition are that the Petitioners' mother Smt. Simla Devi, was the owner and in possession of Khasra No.53/16 in Village Shahbad, Daulatpur, Delhi, admeasuring an area of 1 Bigha 4 Biswas. The aforesaid land was acquired pursuant to a Notification bearing number F.11(16)/93/L&B/LA issued under Section 4 of the Land Acquisition Act (hereinafter referred to as the "Act") on 23rd December, 1994. The physical possession of the land was taken

by the Respondent from Smt.Simla Devi on 24th January, 1995 in the presence of its various officials. Upon the Award being pronounced, Smt.Simla Devi received the compensation amount on 6th March, 1997 and on 1st July, 1998, applied for an alternative plot in accordance with the Rehabilitation Policy of the Respondent, providing for grant of alternate plots to those agriculturalists whose land was acquired by the Government. Even though Petitioners are the legal representatives of Smt. Simla Devi, for the sake of convenience any reference to the Petitioners hereinafter would include Smt. Simla Devi as and when the context so requires.

3. It appears that the aforesaid application was initially rejected by the Respondent on 29th October, 1999 on the ground of being time barred. Aggrieved by the rejection of her application, a representation was submitted by Smt. Simla Devi, which was kept pending. The Petitioners had then approached this Court and vide order dated 20th October, 2003, this Court had directed the Respondent to decide the Petitioners' representation.

4. The Petitioners' representation was, thereafter, rejected compelling them to once again approach this Court by way of WP (C) No.16425/2004 and vide order dated 28th March, 2007, this Court while quashing the Respondent's order dated 29th October, 1999 rejecting the Petitioners' application for alternate plot, further directed the Respondent to consider the Petitioners' application on its merits within two months and in any event, not later than 31st May, 2007.

5. The aforesaid order was challenged by the Respondent by way of LPA No.1209/07, which was dismissed vide order dated 28th July, 2008, whereafter the Respondent sought a report in respect of the Petitioners' application. The said report, while enumerating various relevant factors, also had a column for built-up area, if any. A perusal of the report shows that the aforesaid column contains a specific endorsement 'Nil' in respect of built-up area on the Petitioners' land. The Petitioners were, thereafter, asked to submit various documents from time to time and finally, vide letter dated 13th June, 2013, Smt. Simla Devi's request for grant of alternate plot was acceded to and she was informed that the Recommendation Committee in its meeting held on 25th April, 2013, had allotted a plot measuring 80 square yards to her. It appears that before the said letter dated 13.06.2013 was issued, Smt. Simla Devi had already expired and her husband had issued a Relinquishment Deed in favour of the three children, who are the Petitioners in the present petition. While the Petitioners were anxiously waiting for the allotment of a plot in accordance with the recommendations made on 25th April, 2013, the Respondent in supersession of its letter dated 13th June, 2013, issued the impugned order dated 23rd July, 2014, whereby the Petitioners were informed that Smt. Simla Devi was not eligible for allotment of alternate plot as it had now been found that the acquired land was being used by her for residential purposes and not for agricultural activities, which was a pre-condition for allotment of

alternate plot. In these circumstances, the Petitioners have approached this Court, impugning the order dated 23rd July, 2014.

6. In support of his petition, Mr. Sumit Bansal contends that the very basis of the impugned order is erroneous and shows clear non-application of mind. He submits that the acquired land was agricultural and there is nothing to show that it was being used for residential purposes. He draws my attention to the written statement filed by the Respondent before the Reference Court wherein it has been clearly stated that there was no structure on the said land in question at the time of publication of the notification under Section 4 of the Act. Mr. Bansal also relies on the judgment dated 8th May, 2000, passed by the Reference Court, which again shows that the Petitioners were granted compensation on the basis of the said land being agricultural land. Mr. Bansal has also relied on the copy of the possession proceedings dated 24th January, 1995, to contend that even the said proceedings clearly show that the land in question was found to be vacant at the site. By placing reliance on the report of the possession proceedings, he contends that the said report clearly makes a reference to certain khasras where some construction was found and contends that even this document, which was prepared by the officials of the Respondent itself in the presence of various patwaries, clearly shows that the land was being used only for agriculture purposes. He, thus, contends that the conclusion arrived at by the Respondent is not only erroneous but is an attempt to defeat the right of the Petitioners, who have been

compelled to approach this Court repeatedly due to the Respondent's arbitrary actions.

7. On the other hand, Mr.Yeeshu Jain, learned counsel for the Respondent, while opposing the writ petition, submits that the Petitioners are not entitled to grant of alternate plot as per the policy since the khasra girdawari for the relevant period (i.e. for 1994-95), clearly shows that there is an endorsement 'Gair Mumkin Makan' in the column 'Class of land'. He submits that once the revenue record clearly shows that the land in question was a residential property, the Respondent is fully justified in rejecting the Petitioners' request for treating the same as agricultural land.

8. While refuting the claim of the learned counsel for the Petitioners, that the judgment of the Reference Court as also the possession proceedings clearly show that the land is agricultural, Mr.Jain submits that those documents are generic in nature pertaining to large pieces of land and cannot be relied upon for coming to a conclusion that the said land was being used for agricultural purposes. He submits that in view of the specific revenue record relating to the land of the Petitioners themselves, no other conclusion can be drawn and, thus, prays that the writ petition be dismissed.

9. I have heard learned counsel for the parties and with their assistance, perused the record. What emerges from the record is that while there is dispute about the fact that the land of the Petitioners was acquired and an application for grant of alternate

plot had been duly submitted, the only question which the parties have taken pains to address this Court, is regarding the nature of the acquired land since it is an admitted case of the parties that the Rehabilitation Policy providing for allotment of alternate plot, is applicable only to cases where the land was agricultural in nature. While the Petitioners contend that their acquired land was agricultural in nature, it is the contention of the Respondent that the same was residential. Both the parties have relied on different sets of documents. As noted hereinabove, the Petitioners relied on the following four documents:-

- (i) Possession proceedings dated 24th January, 1995;
- (ii) Written statement dated 10th February, 2000 filed by the Respondent before the Reference Court;
- (iii) The decision dated 8th May, 2000 of the Reference Court;
- (iv) The report dated 24th June, 2009, submitted by the Land Acquisition Collector as sent by the Respondent.

10. At this stage, I deem it appropriate to refer to the relevant extracts of the four documents relied on by the Petitioners. I may first refer to para 7 of the written statement filed on behalf of the Union of India before the Reference Court which , reads as under:-

“7. That there was no structure, tree, well or tubewell on the land in question at the time of publication of Notification under Section 4 of the LA Act.”

Thus, the specific assertion of the Respondent before the Reference Court was that there was no structure, tree, well or tubewell on the land in question. Similarly, when I examine the decision of the Reference Court, I find that the Petitioners have been paid compensation only on the basis of the price fixed over agricultural land and there is neither any reference to any built-up area nor any compensation for the same has been paid to them. Similarly, the possession report dated 24th January, 1995, which has not only been signed by eight officials of the Respondent but also by the Petitioners, also clearly shows that the land of the Petitioners which is in Khasra No.53/16, was found to be vacant and the report shows that while taking possession, the Patwari and the Kanungo had made a specific mention of the Khasras in which the same houses and constructions have been found. The relevant portion of the possession report reads as under:-

“....out of total area 311-19, Tafagat area 3-19 is reduced, out of the remaining area of 308 bigha, 275-08 has been found vacant at the site and boundary wall has been found in Khasra no.52/7 Min (2-0), 8(4-6), 12/(1-12), 13(4-16), 14(4-16), 15 (4-16), 16 (4-16), 17 (4-16), Kothas and houses have been found in Khasra No.53/51 Min (0-4) 15 Min (0-10). From the above said area, possessing of the Khasra No.53/51 Min (0-4) 15 Min (0-10) total area 0-14 will be given after demolition with the help of police and area 31-38 Khasra no.52/7 Min, 8, 12/2, 13, 14, 15, 16, 17 with boundary wall has been given and possession of vacant area 275-08 of the total area 307-6 biswa marks have been put with Fawda (Ace) after going on all the side....”

11. Similarly, the report sent by the Land Acquisition Collector to the respondent as late as on 24th June, 2009, also shows a blank against the column of built-up area and the relevant extract thereof is reproduced hereinbelow:-

“

10. Built up area, if any	..
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12. Now when I examine the documents relied upon by the respondent i.e. Khasra Girdawari for the years 1993-94 & 1994-95, issued by the office of the Kanungo, what emerges is that as far as girdawari for the year 1993-94 is concerned, there is no entry regarding any residential house being on Petitioners' land. The khasra girdawari for the year 1994-95, however, shows that while there is a specific entry of “Gair Mumkin Makan” in respect of ‘class of land’ of one Ved Prakash, the Kanungo, instead of making any specific entry in respect of class of land of the Petitioners, had apparently endorsed the entry of ‘DO’ and it is only on this premise that the Petitioners' land has been treated to be residential.

13. Before considering the effect of the aforesaid documents, it may also be relevant to note that this is the third successive writ petition filed by the Petitioners for the same plot of land and on the earlier two occasions, the Respondent had not at all contended that the Petitioners were not eligible to apply for grant of alternate plot as has been held in the impugned order, the

admitted fact being that only a person whose agricultural land is acquired, is eligible under the policy to make an application.

14. Another vital factor which needs to be noticed is that vide order dated 13th June, 2013, the Respondent had after considering the Petitioners' application, recommended their case for allotment of alternate plot. Thus, all that needs to be considered is as to whether in the light of the overwhelming material including affidavit filed in judicial proceedings, clearly showing that there was no construction on the Petitioners' land, can a mere entry in the khasra girdawari and that too relating to a period when the possession of the land had already been taken by the Respondent, be made a ground to reject the Petitioners' application; the answer in my considered opinion is a clear 'No'. The Respondent in my view, could not have relied upon an entry for a subsequent year and too that when the entry itself as noted above, is not very clear as to whether any construction existed on the petitioner's land. I also find no merit in the plea of learned counsel for the Respondent that the documents relied upon by the Petitioners, are generic in nature and ought not to be relied upon. In my considered opinion, the documents relied upon by the Petitioners cannot be said to be generic as they clearly refer to the khasra number of the Petitioners' land and, thus, there is no reason to ignore the specific notings/averments in these documents.

15. Even otherwise, the Respondent, having themselves stated on affidavit that there was no construction on the

Petitioners' land, are now estopped from contending otherwise. I am, thus, of the view that the finding in the impugned order that the Petitioners' land was being used for residential purpose and not for agricultural activity, cannot be sustained.

16. The impugned order dated 23rd July, 2014, is quashed. As a consequence thereof, the earlier order dated 13th June, 2013, passed by the Respondent would stand revived. Subject to the Petitioners' fulfilling all other procedural formalities, the Respondent is directed to process the case of the Petitioners within three months.

17. Since it is the assertion of learned counsel for the Petitioners that all relevant documents have already been furnished by the Petitioners, learned counsel for the Respondent is granted four weeks to communicate to the Petitioners, the requirement of any other additional documents as may be needed, which would then be furnished by the Petitioners to the Respondent within four weeks thereafter. Upon the Petitioners furnishing the additional documents as demanded, the Respondent would forward the recommendation to the Delhi Development Authority for allotment of alternate plot to the Petitioners in accordance with the prescribed procedure.

18. The writ petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

MAY 02, 2018/aa