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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8627/2015**
ARUN AGGARWAL

..... Petitioner

Through: Mr. S.C. Jain, Adv.

versus

D.D.A., THE SECRETARY, LAND & BUILDING DEPTT.

..... Respondent

Through: Ms. Ruchika Rathi, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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07.02.2018

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

“In view of the foregoing, it is, respectfully prayed that this Hon’ble Court may kindly be pleased to;

(a) to issue an appropriate writ(s), direction(s) and order(s) in favour of the petitioner and against the respondent thereby directing the respondent to allot an alternative plot to the petitioner in lieu of the acquired land of the petitioner, in the interest of justice, equity and circumstances of the case;

(b) Issue necessary direction/order/writ to consider the case of the petitioner and pass an appropriate order on the representation of the petitioner, in the interest of justice;

(c) any other order/direction as deemed fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner.”

2. It is the case of the petitioner, an agricultural land measuring 2 bigha, 2 bishwa situated in Khasra No. 95, Village Khichri Pur, Delhi belonging to late Brij Bhushan Lal Aggarwal, the father of the petitioner was acquired and a compensation of Rs.38,641.17 was finally paid on March 26, 1991. It is his case that his father late Shri Brij Bhushan Lal Aggarwal applied for allotment of an alternative plot on March 25, 1979 and the same was processed and the deceased father of the petitioner received a letter dated April 24, 1980 advising him that a demand for alternative plot be made on the prescribed performa along with requisite fee and same was duly complied with as per advise.

3. It is his case that his mother renewed the request for alternative plot on different dates specifically on July 08, 2000, which representation was duly received by the Land and Building Department. However, the department i.e Land & Building Department, Govt. of NCT of Delhi had stated that neither the father nor the mother of the petitioner had applied for an alternative plot with the department. The petitioner has referred to a letter dated April 20, 2015 in that regard. According to the petitioner, the fact that the petitioner's father had applied for an alternative plot in the year 1979, which was duly processed and a communication in that regard was

sent on April 24, 1980, as such the stand of the Land & Building Department in that regard is contradictory and depriving the petitioner of his legal rights. A reference is made to the legal notice dated July 15, 2015. It is also stated that the petitioner had made several visits to the office of Land & Building department for allotment of an alternative plot but was not successful.

4. The Land & Building Department / respondent No.2 has filed a counter affidavit, wherein apart from taking a preliminary objection with regard to the maintainability of the petition, it is also stated on merit that the father of the petitioner had not made any application for allotment of an alternate plot in the prescribed format. Insofar as the reliance placed by the petitioner on the application submitted by the father for an alternative plot on March 25, 1979, it is the case of the respondent No.2 that it has no basis. Reference to the concerned file is also denied by them stating that the same pertains to other persons namely Raj Pal Singh and Munish Ram. Alternatively, it is contended that the alleged letter dated April 24, 1980 specifically refers to the petitioner's deceased father's application dated nil and requests the petitioner's deceased father to make an application in the format attached with the said letter. It is also stated that there is no record of

any such application having been made in the attached format or the requisite declaration made on a non-judicial stamp paper. It is also stated by the respondent No.2 that vide letter dated August 09, 2000 issued in response to the representation made by the petitioner's mother on July 08, 2000, it was brought to the notice of the petitioner that there is no record of any application for allotment of an alternative plot in the name of petitioner's mother or in the name of petitioner's deceased father and no action could be taken to recommend issuance of an alternative plot.

5. The DDA has also filed reply to the writ petition, wherein it is stated that the DDA has not received any recommendation from the Land & Building Department, Govt. of NCT of Delhi for allotment of an alternative plot under Large Scale Acquisition and Development Scheme. It is also stated, unless such a recommendation is received from the Land & Building Department, the name of the petitioner cannot be considered for alternative allotment.

6. A rejoinder has been filed by the petitioner, wherein the petitioner has primarily reiterated the stand taken by the petitioner in the writ petition. It is also stated, pursuant to letter dated April 24, 1980, due to the death of the father of the petitioner and thereafter his mother, he could not pursue with

the matter earlier. It is also stated that mere non filing of judicial stamp paper on Rs.2/- along with an application will not disentitle the petitioner, his legal rights. It is contended at the most it is an irregularity but not an illegality and for which he cannot be punished. The stand of the petitioner in the rejoinder is a fresh application has since been filed on November 18,2015, which had been duly received and acknowledged by the Land & Building Department, GNCTD.

7. Mr. S.C. Jain, learned counsel for the petitioner reiterates the stand of the petitioner in his pleading, as referred above, in his as submissions also. He states that the petitioner having now applied for an alternative plot, cannot be precluded from consideration of the said application as the land of the petitioner has been acquired.

8. On the other hand, learned counsel for the respondent No.2 would submit in alternative that even if the petitioner's father had applied in the year 1979, it was made clear to him that he had not applied in the requisite format with the necessary documents. No follow-up action has been taken after 1980 till 2000, when a letter was written by the mother of the petitioner on July 08, 2000, to which the respondent No.2 had already written a letter to her whereby it was made clear that neither she nor her late husband had

applied for an alternative plot. Even thereafter, no steps were taken by the mother of the petitioner/the petitioner till 2015 to apply for an alternate plot. Insofar as the application of 2015 is concerned, she states, it is quite late in the day for the petitioner to apply for an alternative plot, as the cause for the same had arisen way back in the year(s) 1979-1980 or 1991.

9. Having heard the learned counsel for the parties, it is the case of the petitioner and contended by Mr. Jain that the father of the petitioner had applied in the year 1979. On a specific query whether such an application has been filed on the record of the petition, the answer is in the negative. Mr. Jain may be correct in stating had the petitioner not applied in the year 1979, there was no occasion for the Land & Building Department to write a letter to the petitioner's father on April 24, 1980. The said letter clearly stipulates that the application need to be submitted in a prescribed format along with a declaration. It is a conceded fact that between 1980 and 2000, no follow up action was taken by the petitioner or by his mother with the department seeking alternative plot. No doubt, in the letter dated July 08, 2000, the mother of the petitioner did state that the applicant i.e Smt. Dayawati and other legal heirs have applied for alternative plot in the prescribed format but no such application has been filed on record.

10. That apart, I note from the communication dated April 20, 2015, the Land & Building Department has referred to a letter dated August 09, 2000 issued by it wherein it has been stated that as per the record neither Smt. Dayawati (petitioner's mother) nor her husband late Shri Brij Bhushan Lal Aggarwal (petitioner's father) applied for allotment of an alternative plot in this department. There is no averment on the non receipt of the said letter by the mother of the petitioner in the writ petition nor any response has been placed on record to state that the contents of the letter dated August 09, 2000 of the respondent No.2 are incorrect. If that be so, the stand of the petitioner in the manner projected above cannot be accepted. No action has been taken till 2015 when the petitioner had got issued a legal notice and also submitted application with a fresh set of documents. But that would not entitle the petitioner a consideration after such a long period of time.

11. Mr. Jain has relied upon a judgment of this Court in the case of ***Government of NCT of Delhi v. Poonam Gupta and connected appeals 226 (2016) DLT 269 (DB)*** to contend that a time limit set in public notice cannot be held to be final and conclusive so as to preclude persons whose lands are acquired from being considered for allotment of alternative plot under the Scheme. In the said case, it is noted, applications were rejected as

time barred where delay was not satisfactorily explained and the delay being of 21 days and 4 months in making the applications, which were held not to be an inordinate delay so as to defeat the rights of the petitioners. Suffice to state, the said judgment is distinguishable on facts. Assuming the father of the petitioner had made an application in the year 1979, but vide a communication of April 24, 1980, the petitioner's father was called upon to make an application as per format with a declaration on a non-judicial stamp paper, which at least from the record is concluded that no such application was filed.

12. That apart, the letter dated August 09, 2000 written by the respondent No.2 was not even responded to by the mother of the petitioner or by the petitioner by stating that such an application has already been made. In other words, it is a case, where no application was made at least till 2015, which is too late in the day, as the same is not a reasonable delay but an inordinate delay much beyond the period for such application. I do not see any merit for grant of reliefs as prayed for in the present petition. The petition is dismissed.

V. KAMESWAR RAO, J

FEBRUARY 07, 2018/ak