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

+ W.P. (C) 8135/2013

OMBIR & ANR

..... Petitioners

Through: Mr. Rambir Yadav and Mr. P.
Raj Yadav, Adv.

versus

HONBLE LT. GOVERNOR OF NCT OF DELHI
& CHAIRMAN OF DELHI DEVELOPMENT
AUTHORITY AND ORS

..... Respondents

Through: Mr. Dhanesh Relan, SC for
DDA with Ms. Komal Sorout,
Adv.
Mr. Rajesh Gogna, CGSC for
UOI with Mr. Kamaldeep and
Mr. P. Upendra Sai, Adv.
Mr. Naushad Ahmed Khan,
ASC for GNCTD

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
10.10.2019

1. Ombir and Dharambir, the petitioners before this Court, are the sons of Surjan, who expired on 2nd December, 2011.

2. In 1961, the Delhi Development Authority (DDA) notified the Large Scale Acquisition, Development and Disposal of Land in Delhi Scheme (hereinafter referred as the “1961 Scheme”). Under the said Scheme, (i) persons, whose lands were acquired, were entitled to be provided alternative plots (ii) each such person would be offered three

chances for allotment of an alternative plot, if the acquisition had taken place prior to 3rd April, 1986 and (iii) where the acquired land was over 10 *Bighas* in area, the owner of the land was entitled to be allotted a plot admeasuring 400 sq. yards. Though the 1991 Scheme is not on record, the averment, in the writ petition, to the above effect, has been accepted by Respondent No. 1 [the Delhi Development Authority (DDA)], in its counter-affidavit, as well as in communication, dated 19th March, 2009 *infra*, from the DDA to Surjan.

3. Surjan owned a plot of land, admeasuring 32 *Bighas* 17 *biswas*, in Kondli Village.

4. The said plot was acquired by the DDA, under the 1961 Scheme, for the New Kondli Project.

5. On 1st April, 1991, the Land and Building Department, Delhi Government, issued a letter, recommending allotment, to Surjan, of an alternative Plot No.47, Pocket No.16, Sector- 20, Rohini, admeasuring 200 sq. mts.

6. According to the DDA, pursuant to the above recommendation, of the Land and Building Department, a draw of lots was held, to consider the case of the petitioner, nearly 11 years later, on 27th March, 2002. There is no specific reason or justification adduced in the counter-affidavit, to explain this delay. This fact was intimated to Surjan, by the DDA, more than 11 years later, *vide* letter dated 4th

April, 2002, which also informed him that the plot of land, in respect of which allotment had been recommended, was less, in size, than his entitlement, on account of non-availability of sufficient plots of 400 sq. yards area. The plot was allotted at a pre-determined rate of ₹ 3320/- per sq. mtr., as approved by the Vice Chairman, DDA, for the year 2001-2002. The letter also set out the manner in which the premium was to be paid.

7. As Rohini was distant from Kondli, where Surjan was residing with his family (including the petitioners), at the request of Surjan, the aforesaid offer of allotment, of Plot No.47, Pocket No.16, Sector- 20, Rohini was cancelled.

8. The next draw of lots took place on 25th August, 2004. Consequent thereto, Plot No.135, Pocket No.16, Sector- 20, Rohini, admeasuring 200 sq. mts., was allotted in favour of Surjan. Once again, owing to its distance from Kondli, where he resided, Surjan requested the DDA *vide* an undated letter, to cancel the allotment of Plot No.135 made in his favour, and consider his case for allotment in the next draw of lots.

9. As per the aforesaid request of Surjan, the offer, dated 27th September, 2004 of Plot No.135, Pocket No.16, Sector- 20, Rohini was cancelled, by the DDA, *vide* letter dated 9th June, 2005. The said letter contained a positive assurance that Surjan's name would be considered, once again, for allotment of an alternative plot, after the

expiry of a year from the date of cancellation, i.e. from 9th June, 2005, as per the terms of the then extant policy for alternative allotment.

10. The petitioners' claim, in these circumstances, to have been shocked to receive a communication dated 1st November, 2006, addressed by the DDA to Surjan, stating that, as he had availed the maximum number of permissible chances for alternative allotment, as per Resolution No. 52/2004, of the DDA, no further chance of alternative allotment would be granted to him. It is asserted by the petitioners – and not denied by the DDA – that Resolution No. 52/2004 of the DDA, to which the letter dated 1st November, 2006 referred, was neither annexed to the said letter, nor was any copy of the said Resolution made available to the petitioners then, or at any point of time prior thereto.

11. It would be appropriate at this point, to reproduce the aforesaid Resolution No. 52/2004, of the DDA, thus :

“Resolution

The proposals were discussed in detail. It was felt that the existing procedure of offering three chances to the allottees of alternate plots was leading to holding up the disposal of plots for several years, in addition to resulting in long wait for the applicants. Shri Kasana suggested that the formalities and procedures required to be completed for making the payment and taking possession etc. needed further simplification.

After detailed discussions, it was decided that rather than three chances only two chances should be given to the allottees of alternate plots and the DDA officials should personally get in touch with the allottees to explain them various documentation, procedures etc., before effecting cancellation of their plots; the allottees being persons with

rural background, unaware of documentation details and the formalities. Subject to these amendments, the proposal contained in the agenda item were approved by the Authority.

The Authority also approved the amendments proposed in Rohini Residential Scheme as contained in para II of the agenda item.”

12. The aforesaid Resolution No. 52/2004 was reviewed by the DDA, *vide* Circular dated 13th October, 2005, which reads thus :

“DELHI DEVELOPMENT AUTHORITY
LEASE ADMN. BRANCH (RESDL.)

No.F.DD(LA)2/2004/July-9/10310

Dated: 13/10/05

CIRCULAR

Consequent upon decision of restricting the number of chances to two for allotment of alternative plot to the recommendees of L&B Deptt., the matter has been reviewed and the following clarifications to the Resolution No. 52/2004 has been given.

“Those who have already availed two chances upto 24.8.2004 will get one more chance. However, those who have availed one chance will get only one additional chance. Those recommendees who have not availed any chance, will get two chances for allotment of an alternative plot.”

This issues with the approval of Vice-Chairman, DDA.

Sd/-
(SANJEEV KUMAR)
DY. DIRECTOR (LA)

Copy to:-

1. O.S.D.(RL)
2. Dy. C.A.O.(LC)
3. Asstt. Director (Resdl.)
4. All concerned Dealing Assistant (LSB)Resdl.

Sd/-
DY. DIRECTOR(LA)

13. On receiving the aforesaid communication, dated 1st November, 2006, from DDA, Surjan responded on 11th January, 2007, pointing out that Resolution No. 52/2004, had not been shown, or disclosed to him, till that date. It was submitted that, had he been informed, prior to the second draw of lots held on 25th August, 2004, that he would not be entitled to have his case considered in a third draw of lots, he would not have refused the allotment of Plot No.135, Pocket No.16, Sector- 20, Rohini. In these circumstances, Surjan requested that his case be considered for allotment of an alternative plot a third time, in the next draw of lots. It was also requested that, if possible, the alternative plot be allotted in the same zone in which the plot, which was acquired, was situate. In the alternative, it was requested that the allotment of Plot No.135, Pocket No.16, Sector- 20, Rohini, in favour of Surjan, be, at least, revived.

14. The above communication was followed by reminders dated 12th April, 2007, 21th May, 2007, 29th June, 2007, 10th July, 2007, 31st March, 2008, 7th July, 2008, 26th October, 2008 and 1st January, 2009, to none of which the DDA deemed it necessary to respond.

15. Ultimately, on 5th February, 2009, Surjan addressed a legal notice to the DDA.

16. On 12th February, 2009, the DDA condescended to respond, at long last, to Surjan. Predictably, the response relied on Resolution No. 52/2004 read with the clarificatory Circular dated 13th October, 2005 *supra*. Based on the said circular, and clarification, it was sought to be

contended that, as Surjan had availed his first chance for allotment of alternative plot before 24th August, 2004, he was entitled only to one more chance for allotment of alternative plot after 24th August, 2004, which, too, he has availed on 25th August, 2004. Resolution No. 52/2004, read with the circular dated 13th October, 2005, therefore, it was asserted by the DDA, proscribed granting, to Surjan, of any further chance for allotment of an alternative plot.

17. In response to further representations, from Surjan, the above stand was reiterated by the DDA, in its communications dated 19th March, 2009 and 30th April, 2009.

18. On 2nd December, 2011, Surjan expired.

19. Surjan's widow, i.e. the petitioners' mother, represented, to the DDA, requesting for allotment of an alternative plot, on 27th December, 2011, but the said representation was again rejected by the DDA, on the same grounds as had been cited by it in its earlier responses, *vide* communication dated 10th May, 2012.

20. On 12th February 2013, the petitioners' mother also expired.

21. The petitioners, thereafter, again represented to the DDA on 22nd February, 2013, requesting that their case for allotment of an alternative plot, consequent on the acquisition, of the land held by Surjan in 1981, be considered in a third draw of lots. There was no response from the DDA, to the said communication.

22. It is in these circumstances, that the petitioners have moved this Court, by means of the present writ petition, praying that the DDA be directed to consider the case of the petitioners, for allotment of an alternative plot, in a third draw of lots. The petitioners have also prayed that Resolution No. 52/2004 be quashed, insofar as the DDA seeks to apply the Resolution to the petitioners, to their prejudice.

23. I have heard Mr. Rambir Yadav, learned counsel appearing for the petitioners and Mr. Dhanesh Relan, learned Standing Counsel appearing for the DDA, at length.

24. The petitioners advance the following contentions:

(i) Their land had been acquired in 1981, prior to Resolution No. 52/2004. Their right, to be considered thrice, for allotment of an alternative plot, already stood vested in them in 1981 itself. Resolution 52/2004 could not, therefore, operate to divest the petitioners of the said vested right.

(ii) The second draw of lots had been held on 25th August, 2004, exactly one day after the cut-off date of 24th August, 2004, only so as to deprive the petitioners of a third chance for consideration of their case for allotment of an alternative plot.

(iii) The DDA was estopped by the assurance, contained in its letter dated 9th June, 2005 *supra*, that the case of the petitioners (i.e., at the time, of Surjan) would be considered a third time,

for allotment of an alternative plot, in one more draw of lots, to be held after the expiry of a year from the date of cancellation.

25. The petitioners placed reliance on the decisions in *K.S. Paripoornan v. State of Kerala*¹, *Shyam Sunder v. Ram Kumar*² and *Garikapati Veeraya v. N. Subbiah Choudhry*³.

26. The DDA, arguing *per contra*, contends that

(i) Resolution No. 52/2004 had been issued in public interest, as it was found that giving three chances for allotment of an alternative plot was a cumbersome and futile exercise, which led to loss of valuable time,

(ii) The assurance, in the letter dated 9th June, 2005 *supra*, that the case of Surjan would be considered for allotment of an alternative plot, one more time, had been entered by inadvertence, as was clarified by the very next communication, dated 1st November, 2006, from the DDA to Surjan,

(iii) As per the existing policy, it was impossible to grant, to the petitioners, a third chance for consideration of their case for allotment of an alternative plot, and

¹ (1994) 5 SCC 593

² (2001) 8 SCC 24

³ AIR 1957 SC 540

(iv) the Circular, dated 13th October, 2005 *supra*, being in the nature of a policy decision, was not amenable to interference by this Court.

27. The respondents have relied on *Mukund Swarup Mishra v. Union of India*⁴ which holds that, where the allotment of plot was itself vitiated and contrary to law, the allottee was not entitled to claim any benefit or plead equities. Additionally, reliance has also been placed on *Ramanand v. Union of India*⁵ and *Amolak Raj v. Union of India*⁶.

28. To my mind, the petitioners are bound to succeed.

29. The DDA acquired the land, of Surjan, the petitioners' father, in 1981. It is admitted, thrice, by the DDA, that the 1961 Scheme, as it continued till Resolution No. 52/2004, contemplated three chances being given, to every person, whose land was acquired, for allotment of an alternative plot. Firstly, in the letter dated 9th June, 2005 *supra*, written by the DDA to Surjan, it is stated that his "name will be considered for future allotment after a gap of one year from the date of cancellation *as per the policy of alternative allotment.*" As the allotment, which had been cancelled by the said letter dated 9th June, 2005, was the second allotment of an alternative plot to Surjan, the above extracted recital, in the letter dated 9th June, 2005, amounted to an acknowledgement that, as per the policy extant on the said date, the case of Surjan was required to be considered, for alternative allotment,

⁴ (2007) 2 SCC 536

⁵ AIR 1994 Del 29

⁶ JT 2002 (10) SC 86

one more time, albeit after a year from the date of cancellation, i.e. from 9th June, 2005, had elapsed. Secondly, in the reply, dated 19th March, 2009, by the DDA to the legal notice, dated 5th February, 2009, of Surjan, the following acknowledgement finds specific place (in para 4):

“As per policy prevailing at the time of acquisition three chances were being given to the recommendee(s) but later on a resolution passed by the Authority and as per clarification of the Authority’s resolution No. 52/2004 those who have already availed two chances upto 24.8.2004 for allotment will get one more chance.”

(Emphasis supplied)

Thirdly, in para 2 of its counter-affidavit, the DDA states thus:

“According to the 1961 Scheme, for every acquisition, for every acquisition, a person would be entitled to compensation as well as alternative allotment. In case the said alternative allotment was not suitable to the allottee, he would get 2 more chances. In other words, the answering Respondent would offer up to 3 alternative plots in lieu of the acquisition made.”

The position, on facts, that, under the 1961 Scheme, a person, whose land was acquired, was entitled to a choice of three alternative plots, i.e. to three chances of alternative allotment, is, therefore, undisputed.

30. The land of Surjan having been acquired in 1981, the right to three chances of allotment of an alternative plot vested in him *immediately consequent on the acquisition*. All prerequisites, for the vesting of such a right, stood satisfied in 1981, when the land of Surjan was acquired. The right which stood vested was in the nature of a continuum, which would abide till the third chance of allotment of an alternative plot was made, in favour of Surjan – assuming, of course, that he did not accept the first, or second, allotment. Clearly,

in my view, it was not open to the DDA to ebb, as it were, the flow of the said right midstream, by applying, to the case of Surjan, the changed policy, as manifested by Resolution No. 52/2004.

31. One may contradistinguish the vesting of a right such as this, with, for example, a right which vests, but the continued vesting of which is made dependent on certain acts being performed by the vestee. In such a case, the question may, conceivably, rise as to whether, if the conditions required to be performed, by the beneficiary of the right, were changed at a later point of time, the vesting of the right, in favour of the beneficiary, would continue, in the absence of performance of any such altered condition or conditions. This, however, is not such a case. Surjan was not required to fulfil any condition, at any later point of time, to be entitled to be considered, thrice, for an alternative allotment. The only condition, which governs the vesting of such right, was the acquisition of the land prior to 1986. Surjan's land was acquired in 1981. The investiture of the right, in him, to be granted three opportunities for being allotted an alternative plot, therefore, stood immediately crystallized in his favour. There could, therefore, be no question of this right being altered, in any manner, by Resolution No. 52/2004.

32. Furthermore, one cannot overlook the fact that, though the recommendation, for allotment of an alternative plot to the Surjan, had been made by the Land and Building Department of the Delhi Government on 1st April, 1991, intimation, thereof, was sent to Surjan 11 years thereafter, on 4th April, 2002. There is no explanation,

whatsoever, for this delay, except the holding of draw of lots prior thereto, on 27th March, 2002. The record neither discloses whether any draw of lots had been held, to consider the case of Surjan, between 1st April, 1991 and 27th March, 2002 nor, if not, the reason therefor. Having held onto the recommendation, in Surjan's favour, for 11 years, for reasons apparently recondite, it is not open to the DDA to deny, to Surjan, the third chance for an alternative allotment, on the ground that the policy had changed in 2004. Had the DDA not sat on the recommendation, of the Land and Building Department, for 11 years, there is every chance of all three alternative allotments, in Surjan's favour, having fructified before 24th August, 2004. By, therefore, applying, to Surjan, Resolution No. 52/2004, the DDA seek to capitalise on its own indolence, in having slept over the recommendation, dated 1st April, 1991, in Surjan's favour, for over 11 years. No public authority can be allowed to take advantage of, or derives any benefit from, on its own wrong. For this reason, too, I am unable to countenance the DDA's decision not to consider the case of Surjan, for allotment of an alternative plot, a third time.

33. There is merit, further, in the petitioners' stand that the DDA, effectively, led Surjan up the garden path. Prior to 1st November, 2006, there is nothing to indicate that Surjan was ever informed of Resolution No. 52/2004 of the DDA, or of the Circular, dated 13th October, 2005, whereby the said Resolution was reviewed. Surjan was, therefore, justified in his grievance that, had he been informed, prior to September, 2004, of Resolution No. 52/2004, he may not have refused the allotment, in his favour, of Plot No.135, Pocket No.16,

Sector- 20, Rohini. At the very least, therefore, the DDA was expected to show some grace in the matter and, even if it were not possible to revive the allotment of Plot No.135, to offer, to Surjan, another, equivalent, plot. Instead, the complete indifference, which the DDA chose to exhibit to the plight of Surjan, has resulted in his having died without the satisfaction of being allotted *any* plot, in recompense of the acquisition of his land in 1981. The attitude displayed by the DDA, towards Surjan – which, for all this Court knows, maybe the attitude of DDA towards other such hapless individuals, whose lands were acquired – is capricious in the extreme, and is completely unpardonable. One is tempted to believe, as did Surjan, that the holding of the second draw of lots on 25th August, 2004, just a day beyond the cut-off date of 24th August, 2004, was not a mere coincidence, but was deliberately done, so as to deny Surjan a third chance for an alternative allotment, even while keeping him in the dark regarding Resolution No. 52/2004.

34. None of these decisions, on which Mr. Dhanesh Relan places reliance, can help the DDA in this case. *Mukund Swaroop Mishra*⁴ dealt with the case of an allotment which was vitiated and contrary to law, and held that, in such circumstances, the allottee could not plead equities. No allotment, contrary to law, has been made in the present case; this judgment, therefore, is completely inapplicable. *Ramanand*⁵ merely held – insofar as it is relevant for the present case – that a person, whose land was acquired, did not have any absolute right to allotment of an alternative plot, but that such a right was conditional to an alternative plot being available. In the present case, the issue of

availability of an alternative plot does not even arise for consideration, as two allotments had, in fact, been made in favour of Surjan, and his case was never considered a third time. The DDA, too, does not seek to contend that the non-consideration of Surjan's case, for allotment of an alternative plot, a third time, was owing to non-availability of a plot. *Ramanand*⁵, too, therefore, has no application to the facts of the present case, save and except to the effect that, by virtue thereof, it would not be open to the petitioners to insist on being allotted an alternative plot in any particular area or zone.

35. As in the case of *Ramanand*⁵, *Amolak Raj*⁶, too, dealt essentially with the right of a person, whose land was acquired, to an alternative plot, and the issue of whether the person could insist on being allotted the plot in the zone in which the land, which was acquired, were situate. I am concerned, in the present case, not with these issues, but with the issue of whether Surjan was entitled, or not entitled, to a third consideration of his case, for allotment of an alternative plot. That right, in my view, cannot be denied, in view of the admitted terms of the 1961 Scheme.

36. Surjan and, after him, his widow and, after her, the present petitioner's have clearly met with a raw deal at the hands of the DDA and, in view thereof, I am of the opinion that it is not necessary to rely on any judicial pronouncements, to hold in favour of the petitioners. One only regrets that the DDA did not choose to adopt a more humane approach, especially given the fact that persons, such as Surjan, who were owners of small plots, in villages, are ill-equipped

to fight the establishment, or enter into lengthy, and lugubrious, litigation. This court is powerless to do justice to Surjan, who is no longer with us, having battled for 31 years, till his death, for vindicating his rights. It took eleven years for an alternative plot, in favour of Surjan, to be recommended, and, appallingly, another eleven years for the draw of lots, pursuant to the said recommendation, to be held, only whereafter the DDA chose to inform Surjan of the recommendation, by the Land and Building Department, in his favour, made eleven years prior thereto. Thereafter, apparently because Surjan had the audacity to refuse, twice, for accepting the alternative plot allotted to him, and had the temerity to ask for a third chance of allotment – which, admittedly, the 1961 Scheme permitted – the DDA, in a display of cavalier apathy, made him fight till his last breath, without considering his case again for allotment of an alternative plot.

37. Needless to say, however, Surjan having passed beyond the pale of jurisdiction of this court, all that I can do, terrestrially, is to render posthumous justice to Surjan, and his wife, by granting relief to their sons – the petitioners in this writ petition.

38. In view of the above discussion, this writ petition is allowed in the following terms:

- (i) The impugned Circular, dated 13th October, 2015, and Resolution No. 52/2004, which was “clarified” thereby, are quashed and set aside, to the extent they limit the number of

chances for being considered for allotment of an alternative plot, consequent to the acquisition of their land under the 1961 Scheme, to two, instead of three.

(ii) The DDA is directed to allot, forthwith, to the petitioners, an alternative plot, admeasuring not less than 200 sq. mts, as it stands acknowledged, in para 5 of the counter-affidavit of the DDA that, under the 1961 Scheme, Surjan was entitled to an alternative plot admeasuring 250 sq. yards in area which would, in fact, work out to more than 200 sq. mts.

(iii) The DDA shall not plead non-availability of an alternative plot, or expiry of the 1961 scheme, as a ground for non-compliance with the above direction.

(iv) The allotment would be made *at the pre-determined rates as approved for plots allotted in the next draw of lots which took place after 25th August, 2004, as the right of Surjan was for consideration, of his case the third time, in the said draw of lots.*

39. It has taken nearly 40 years for the right, which had crystallized in favour of Surjan, to fructify. The prejudice that Surjan, his late wife, and, now, the present petitioners, have had to suffer, owing to the misguided adherence, by the DDA, to its 2004 Resolution, and the clarification, dated 13th October, 2005, thereto, is immeasurable. The

petitioners are also, therefore, held to be entitled to costs of this petition, which are quantified, conservatively at ₹ 50,000/-.

40. Allotment of an alternative plot, as well as payment of costs in terms of the above directions, shall be effected, by the DDA, within a period of four weeks from the date of receipt by, or production before, the DDA, of a certified copy of this judgment. Non-payment of costs in terms of para 39 hereinabove would entail interest, thereon, @ 20% p.a.

C. HARI SHANKAR, J.

OCTOBER 10, 2019/kr