

\$~20

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24.10.2019

+ **W.P.(C) 7307/2012 & CM APPLs. 2076/2013 & 5/2014**

RAJA RAM

..... Petitioner

Through: Mr. Lalit Kumar Rawal with
Mr. Ram Kumar, and Mr. Aditya
Awasthi, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Dhanesh Relan, Standing
counsel with Ms. Gauri Chaturvedi,
and Mr. Paritosh Dhawan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. This is a writ petition via which the petitioner effectively seeks allotment of an alternate plot in a specific area described as Sector-18, Pocket 3, Block-H, Rohini, New Delhi.
2. The record shows that the petitioner had sought amendment of the writ petition which was allowed by this Court vide order dated 22.12.2015. This order was passed in CM No. 1081/2014.
3. Therefore, what is required to be noticed are the prayers made in the amended writ petition.
- 3.1 These prayers read as follows:-

" i. To direct respondent to allot land in Sector 18, Pocket 3, Block-H, Rohini under the scheme of large scale acquisition, 'development and disposal of land in Delhi in the same manner as

*has been allotted to his brothers since the petitioner's and his brother's land was acquired at the same time and he cannot be treated differently from his brothers many manner,
ia) To partly quash circular No. f2(39)95/AO/pt/141dt-24-11-05 to the extent that it provides that developed land cannot be allotted as an alternative site and alternative site can be allotted only in undeveloped further the circular No. f2(39)95/AO/pt/141dt-24-11-05 may be quashed to the extent that plots in development sectors can be disposed of by auction only."*

Background:

4. In order to adjudicate upon the writ petition, the following broad facts are required to be noticed:-

4.1 The petitioner along with his siblings (i.e. two brothers) owned a parcel of land which was acquired in 1969.

4.2 In consonance with the policy which was in force at that point in time, the petitioner and his siblings made an application on 17.10.1986 for allotment of an alternate plot.

4.3 Concededly, while alternate plots were allotted to the petitioner's siblings, no allotment was made in favour of the petitioner.

4.4 This propelled the petitioner to prefer a writ petition. This writ petition was numbered W.P. (C) 4761/2003.

4.5 The said writ petition was allowed by a Single Judge of this Court on 13.10.2004.

4.6 Via this judgment, the DDA was directed to include the name of the petitioner in the next draw of lots to be held thereafter for allotment of plots along with other recommendees. Recommendations in that behalf had to be made by the Land and Building Department.

4.7 The judgment dated 13.10.2004 was assailed right upto the Supreme Court.

4.8 The DDA was unable to have the judgment dated 13.10.2004 reversed.

4.9 In this behalf, it would be relevant to note that the appeal was dismissed by the Division Bench on 01.05.2008. This order was passed in L.P.A. 1663/2005.

5. The Special Leave Petition preferred by the Government of National Capital Territory of Delhi, as indicated above suffered the same fate and was dismissed on 09.07.2009. This order was passed in Special Leave Petition (Civil) -09 (CC 7449/2009).

5.1 Pursuant to dismissal of the SLP on 21.10.2009, the Land & Building Department recommended petitioner's name for allotment of an alternate plot admeasuring 250 sq. yards.

5.2 Resultantly, on 25.11.2010, the DDA informed the petitioner that it would consider his case for allotment of an alternative plot "***as and when the draw is held as per the petitioner's seniority and eligibility***".

5.3 Aggrieved by this stand of the DDA, the petitioner approached this Court once again by the way of a writ petition. This writ petition was numbered W.P. (C) 521/2011.

5.4 On 15.03.2011, the Learned Single Judge after hearing the submissions which were advanced on behalf of the petitioner concluded that the petitioner's seniority could be no different from that of his siblings.

5.5 The Court observed that merely because the Land & Building Department had recommended the petitioner's name on 21.10.2009, it would not mean that the petitioner's seniority will be counted from that date.

5.6 In sum, the Court put the petitioner's seniority at par with those of his siblings, in whose case, recommendation letters for allotment

of alternate plots were sent in April, 1994.

5.7 The other issue which was touched upon by the Learned Single Judge in his order dated 15.03.2011 concerned the location of the alternate plot.

5.8 In paragraph 11 of the order dated 15.03.2011, the learned Single Judge observed as follows:-

" As regards the availability of plots, the Petitioner has in CM application No. 1113 of 2011 pointed out that plot Nos. 10 and 11 in Block H, Pocket-3, Sector-18, Rohini are vacant and one of them could be allotted to him. On this aspect Mr. Singh, learned counsel for the DDA states that he will seek instructions and file an affidavit within two weeks."

5.9 Thereafter, the next substantive order in W.P. (C) 521/2011 was passed on 13.09.2011 when the Court qua the issue concerning allotment of plot to the petitioner in a specific area heard submissions.

6. After hearing the submissions in the matter, the Court ruled that the petitioner had no right to seek allotment of an alternate plot at the particular site.

6.1 The relevant part of the order is extracted hereafter:

"7. It is thus to be decided today as to whether the petitioner can claim any right to the said two plots.

8. The Full Bench of this Court in Ramanand v. UOI AIR1994 Delhi 29 has held that there is no absolute right of allotment; in the face thereof, it cannot be said that there is any right to allotment of any particular land and the allotment is dependent upon the Policy of the DDA.

9. In this regard, it may be noticed that the relief claimed in the petition also is only for inclusion of the name of the petitioner in the draw to be held by the respondent DDA and the petitioner has not claimed to be entitled to any particular plot. The senior counsel for the petitioner has not been able to show any entitlement of the petitioner to any particular land.

10. The senior counsel for the petitioner has referred to **Industrial Assistance Group v. Ashutosh Ahluwalia** AIR 2001 SC 1670 but I do not find the said judgment also to be directing that the petitioner under the said Policy can be said to have entitlement to any particular plot of land.

11. The senior counsel for the petitioner at this stage refers to Rule 6 of the DDA Disposal of Developed Nazul Land Rule, 1981 but is unable to show therefrom also that there is any right to any particular plot of land.

12. The only relief which can thus be granted to the petitioner is for inclusion of the name of the petitioner in the next draw of lots to be held by the respondent DDA. The counsel for the respondent DDA is however not in a position to commit as to when the next draw of lots is to be held. He however admits that the petitioner, in pursuance to the directions of this Court is now the senior most eligible person for allotment.

13. The petition is therefore disposed of with the direction to the respondent DDA to include the name of the petitioner in the draw, of lots to be held next within three months of today. If no draw of lots is scheduled within the next three months, the respondent DDA is directed to hold a mini draw of lots for the purpose of complying with the directions issued today and to make allotment in terms of the letter of recommendation to the petitioner”.

7. The Writ petition i.e. W.P. (C) 521/2011 was, thus, disposed of with a direction to the DDA to include the petitioner's name in the draw of lots to be held within three months from the date of the order.

7.1 The learned Judge also directed that if the draw of lots was not held within three months, the DDA will hold a mini-draw so that an alternate plot could be allotted to the petitioner.

8. The petitioner being aggrieved preferred a Review Petition i.e. Rev.Pet. 342/2012 which was disposed of on 31.08.2012.

8.1 The order passed on that date reads as follows:-

"1. Notice of this review application was issued on the contention that certain plots earmarked as 'alternative plots' were still available in Sector 18 of Rohini, Delhi.

*2. Respondent No. 1 DDA, along with its reply has filed copy of the Circular dated 28.04.2006 qua allotment of alternative plots which directs allotment of such plots in developing sectors only and not in developed sectors. In the reply, it is further categorically stated that the plots earmarked at the planning stage as 'alternative plots' in Sector 18 can now only be disposed of through auction and not as alternative plots.
No other ground for review is made out.
Dismissed."*

9. Concededly, the petitioner has not assailed either the order dated 15.03.2011, passed in W.P. (C) 521/2011 or the order dated 31.08.2012, passed in the Rev. Pet. 342/2012.

10. The petitioner now seeks to collaterally assail the aforementioned judgments which have attained finality by impugning Circular No. f2(39)95/AO/pt/141 dated 24-11-05 (in short "2005 Circular").

10.1. The petitioner seeks quashing of the said 2005 Circular to the extent that it provides that an alternate plot cannot be allotted in a developed sector/site.

11. In this writ petition, the DDA has precisely taken this stand.

11.1. Counsel for the DDA says that DDA has already identified a plot in Sector 34 which is an undeveloped site.

11.2 Mr. Relan says that the petitioner cannot be allotted a plot in Sector 18, Rohini, as it is a developed site.

12. To my mind, while there may or may not be merit in the contention raised by counsel for the DDA, however, what is clear as indicated above, via this writ petition is that, the judgment dated 15.03.2011 passed in W.P. (C) 521/2011 and the judgment dated 31.08.2012 passed in the Rev. Pet. 342/2012 cannot be reopened.

13. The only way, if at all the petitioner can get relief is by having

those judgments set aside to the extent, they hold that petitioner cannot insist on allotment of a plot in developed site i.e. Sector 18, Rohini.

14. Thus, even if the petitioner were to succeed in the present proceedings, the petitioner cannot hope to get relief till such time those judgments are set aside in a proper proceeding taken out in accordance with the law.

15. I may note that at some stage in these proceedings, the petitioner, in fact, had indicated to the Court that he was willing to accept an alternate plot in a "Developing site in accordance with DDA's policy provided it is free from litigation and encroachment".

16. The petitioner thereafter appears to have continued to prosecute the writ petition based on the prayers made therein.

17. Since this matter has been pending resolution in Courts since 2004, the DDA will act with due expedition and thus allot a specific plot to the petitioner though not later than eight weeks from the date of receipt of a copy of the order.

18. I must note that Mr. Relan has indicated to me that the DDA has already identified a plot for the petitioner and it would allot the same to the petitioner on fulfilment of requisite formalities by him.

19. Accordingly, the present petition and pending applications are closed.

19.1 I have no doubt that the DDA will allot the identified plot to the petitioner at the earliest as stated by Mr. Relan on its behalf.

RAJIV SHAKDHER, J

OCTOBER 24, 2019

c