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

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Date of Decision: 05.09.2019

+ W.P.(C) 11498/2016 & CM APPL. 35901/2019

HAR KAUR CHADHA & ANR

..... Petitioners

Through

Mr.Jayant Mohan and Ms.Meenakshi
Chatterjee, Advs.

versus

NCT OF DELHI & ANR

..... Respondents

Through

Mr.Anand V.Khatri, Adv. for
R1/GNCTD with Sh.Subodh Patwari
Mr.Rajneesh Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari to quash/set aside the order dated 04.02.2016 passed by respondent No.1 whereby the application filed by the petitioners for entering the name of Late Sh.Jagjit Singh Chadha in the Record of Rights as the owner of the plot measuring 1000 sq.yds. located in Khasra No.372/189, Village Chilla Saroda Bangar, Preet Vihar, Delhi was rejected.
2. The case of the petitioners is that the petitioners' father, Late Sh.Jagjit Singh Chadha, had purchased the land measuring thousand sq. Yard from M/S Universal Colonizers (Regd.) vide registered sale deed dated 17.03.1959. The said land was subsequently acquired upon issuance of a notification under section 4 of the Land Acquisition Act on 13.11.1959. The

acquisition proceedings were completed by taking possession from the Late Sh. Jagjit Singh Chadha on 23.03.1977.

3. Since the ownership of the petitioners' father was disputed, he moved an application in 1985, under sections 30 & 31 of the Land Acquisition Act, which was allowed on 30.05.1986. The petitioners' father was thereafter paid compensation for the acquisition of his land. Based on the said adjudication of his rights, the petitioner's father had also made a reference under section 18 of the Land Acquisition Act, which was also allowed vide order dated 31.08.1987. However, respondent No.1 did not consider the petitioner's request for grant of an alternate plot, though as per their own scheme, in such circumstances, the petitioner was entitled to be considered for grant of an alternate plot. The application was rejected on 10.02.1998.

4. Upon rejection of the petitioner's application for grant of an alternate plot, the petitioner initially approached this Court by way of W.P.(C)No.4804/2011. This petition was allowed on 03.07.2012 by this Court by setting aside the communication dated 10.02.1998, whereby the petitioner's request for grant of an alternate plot was rejected. This Court took the view that the stand of the respondent was contrary to the law laid down by a Division Bench of this Court in Govt. of NCT of Delhi & Anr. V. Jai Gopal, LPA No.338/2008. The court recorded the submission made on behalf of the petitioners that even, at this stage, the petitioner was prepared to apply to the respondents to obtain mutation in respect of the acquired land in the name of said Late Sh. Jagjit Singh Chadha, who was the owner of the said land.

5. Pursuant to the above order the petitioner made an application for mutation before the Tehsildar on 25.10.2012. However, no action was taken

by the Tehsildar. The petitioner once again approached this court by way of a Writ Petition being W.P.(C)6945/2015. This court directed the respondents to consider the petitioner's application within four weeks. Thereafter the impugned order dated 4.2.2016 was passed rejecting the application of the petitioner.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the impugned order dated 04.02.2016 had been passed rejecting the petitioner's request for mutation solely on the ground that since the land stood acquired by the Government in the year 1959 itself and the entry in the Revenue Record had also been made in the name of the Government, it was not possible to issue any mutation certificate at this stage.

8. Learned counsel for the respondent has sought to urge various aspects. He firstly states that order dated 04.02.2016 should have been challenged before the appropriate authority, namely, Deputy Commissioner in terms of the Delhi Land Revenue Act, 1954. He also states that as the petitioner has an alternative remedy, this court may not exercise its jurisdiction to entertain the present writ petition. He further states that as per the revenue record for the period in question, the property was mutated in the name of Gaon Sabha. It was subsequently, on completion of the acquisition proceedings, transferred to Union of India. He also states that the sale deed issued in favour of the predecessor of the petitioner dated 17.03.1959 does not have any Khasra number.

9. I may only note that pursuant to the orders of the Tehsildar, the petitioner had approached this court by filing W.P.(C) 4804/2011, titled, 'Smt. Har Kaur Chadha & Anr. v. NCT of Delhi & Anr. Vide order dated

03.07.2012 this court had noted as follows:

“18.1 In these circumstances, I had put to Mr. Kirpal as to whether he would be able to obtain a mutation in his favour, for the relevant period, for being placed before the respondents to enable them to confer their due consideration to their request for allotment of an alternate plot. Mr. Kirpal said that the petitioners would be in a position to do the needful if an opportunity was given in that behalf in the eventuality of the matter being remitted to the respondents for a fresh examination of the issue.

19. In these circumstances, having regard to the discussion above, the only prayer I am inclined to grant, at this stage, is to set aside the impugned communication dated 10.02.1998 with a direction to the respondents to consider the request of the petitioners for an alternate plot if, it accords with the provisions of the policy which would include a document evidencing mutation of the acquired land in favour of late Sh. Jagjit Singh Chadha, in respect of the relevant period.”

10. It was pursuant to the above order that the petitioner applied for mutation. A perusal of the impugned order dated 04.02.2016 shows that the mutation application of the petitioner was rejected relying upon the report of the Halka Patwari to hold that Khasra No. 372/189, Village Chilla Saroda Bangar had been acquired and entry of it being government land had been made in the revenue record. What the petitioners actually wanted was mutation of the property from the date of sale deed dated 17.03.1959 till the acquisition proceedings were completed. Clearly, the impugned order dated 04.02.2016 failed to grasp the real contention of the petitioners. The order is clearly erroneous.

11. I may now deal with the contention of the respondent that the sale deed in favour of the petitioner does not contain the khasra numbers and

hence the petitioner has title to no specific land. This is a misplaced argument. A perusal of the sale deed dated 17.03.1959 would show that it refers to property being plot G-25, measuring 1000 sq.yds. in the undeveloped colony known as Friends Enclave in the revenue estate of Village Chilla Saroda Bangar in the State of Delhi. It gives the location/description of the plot.

12. Further as noted above, the proceedings have been initiated under sections 30/31 of the Land Acquisition Act as there were some disputes regarding the persons who were entitled to seek compensation. The learned Additional Sessions Judge vide order dated 30.05.1986 clearly held as follows

“14. Jagjit Singh Chadha S/o Sh.Sarup Singh IP No.178 he had purchased 1000 sq.yard of land out of khasra No.372/189 from M/s Univerfsal Colonizers vide registered sale deed dated 13.03.1959 Ex. JS-1, Shri Raj Kumar Gupta prop. had admitted the sale deed Ex. JS-1.”

13. Similarly, it is admitted fact that the petitioner had filed a petition for enhancement of compensation under section 18 of the Land Acquisition Act. This petition was also allowed on 31.08.1987. It is also an admitted fact that enhanced compensation has been duly received by the petitioner/predecessor of the petitioner.

14. The perusal of the facts reveals that the title of the petitioner to the aforementioned land till the acquisition proceedings were completed is clearly demonstrated by the sale deed dated 17.03.1959. The title is accepted pursuant to adjudication and judgment of the Additional Session Judge in the petition under sections 30/31 and section 18 of the Land Acquisition Act. It

is also important to note that the compensation and enhanced compensation has also been received by the petitioners. In my opinion, the stand of the respondents to now argue that the petitioner did not have title to the property and is not entitled to seek mutation in his name, is a misplaced argument. There is no merit in the contention of the learned counsel for the respondents.

15. Coming to the next contention of the learned counsel for the respondent about the existence of an alternative remedy. It is true that as noted above that under section 64 of the Delhi Land Revenue Act against the order of the Tehsildar, an appeal lies to the Deputy Commissioner.

16. The legal position in this regard is settled. Reference may be had to the judgment of the Supreme Court in the case of *Maharashtra Chess Association v. Union of India & Ors.*, 2019 SCC OnLine SC 932. The court held as follows:

22. This argument of the second Respondent is misconceived. The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.

23. This understanding has been laid down in several decisions of this Court. In *Uttar Pradesh State Spinning Co. Limited v. R S Pandey* this Court held:

“11. Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of

policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy.”

24. The principle that the writ jurisdiction of a High Court can be exercised where no adequate alternative remedies exist can be traced even further back to the decision of the Constitution Bench of this Court in *State of Uttar Pradesh v. Mohammad Nooh*, where Justice Vivian Bose observed:

“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

17. In view of the above legal position it is clear that a decision whether

to entertain or not to entertain an action under writ jurisdiction is a decision to be taken by High Court on examination of the facts and circumstances. However, I may only note that the land acquisition in this case took place in 1959. The petitioner has been running around since 1986 trying to get an alternative plot under the policy of the respondents. This writ petition was filed in 2016 and has now been pending for more than three years. To relegate the petitioner to an alternative remedy at this stage would needlessly cause delay and prejudice the petitioner.

18. Hence, I reject the said plea of the respondent that the petitioners have an alternative remedy to challenge the impugned order.

19. In view of the above, I quash the impugned order dated 04.02.2016. The matter is remanded back to the Tehsildar to carry out necessary mutation in terms of the sale deed dated 17.03.1959 for the period from the date of the sale till acquisition proceedings were completed. The Tehsildar is requested to ensure that necessary process is carried out within eight weeks from today.

20. The petition and all pending applications, if any, stand disposed of as above.

JAYANT NATH, J.

SEPTEMBER 05, 2019/v
corrected & released on 16.09.2019