

\$~1

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

+ LPA 699/2018

RAJ KUMAR SHARMA

..... Appellant

Through

Mr. Atul Batra, Mr. Khyati Malik,
Advocate.

versus

UNION OF INIDA & ANR

..... Respondent

Through

Mr. Amit Mahajan, CGSC/UOI with
Mr. Arjun Dev, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

%

21.11.2019

1. The appellant/petitioner is aggrieved by the judgment dated 01.10.2018, passed by the learned Single Judge, dismissing a writ petition filed by him for issuance of a writ of mandamus to the respondent No.2/L&DO directing that it allots/regularises a parcel of land measuring 204 sq. yards adjacent to plot No.13/15, Tihar-I, Subhash Nagar, New Delhi, in his favour.

2. By the impugned judgment, the writ petition filed by the appellant/petitioner, has been dismissed on the ground that the same is barred by the principle of *res judicata* for the reason that before filing the subject writ petition, the appellant/petitioner had filed W.P.(C) No. 106/2003, which was dismissed vide order dated 12.08.2004 alongwith another writ petition filed by Sh. R.D. Sharma, nephew of the original allottee, Late Sh. Parmanand (sister's son), registered as W.P.(C) No.

2899/2001.

3. We may first recapitulate the facts of the present case. One Mr. Parmanand was allotted the subject plot measuring 103 sq. yards and a lease deed was executed in his favour in the year 1967. Sh. Parmanand expired on 25.11.1985. He was succeeded by his wife, son and a daughter. It is the case of the appellant/petitioner that Sh. Parmanand had disinherited his wife and a daughter during his life time and had executed a Will bequeathing all his movable and immovable properties in his favour. During his lifetime, the appellant/petitioner was residing with Sh. Parmanand along with his family members. In the year 2001, Sh. R.D. Sharma (nephew of late Sh. Parmanand) approached the High Court by filing a W.P.(C) 2899/2001, stating *inter alia* that he had commenced construction over an adjacent parcel of land measuring 204 sq. yards that was under his occupation and had completed the said construction in the year 1971-1973, on an assurance from the respondent that the said parcel of land would be allotted to him on payment of requisite charges. However, the respondent/L&DO did not stand by its assurance and in April, 2001, Sh. R.D. Sharma was threatened with dispossession, thus compelling him to file the writ petition.

4. During the pendency of the captioned petition, the appellant/petitioner filed an application for impleadment (CM No. 10262/2002) claiming *inter alia* that Late Sh. Parmanand had executed a Will dated 06.07.1981, bequeathing all his properties in his favour and there were civil disputes pending between him and Sh. R.D. Sharma including probate proceedings. Besides filing an impleadment petition, the appellant/petitioner also filed an independent petition (W.P.(C) No. 106/2003) for seeking regularization of the plot adjacent to plot No.13/15, Tihar-I, Subhash Nagar, New Delhi,

measuring 204 sq. yards.

5. The abovesaid petition was heard together with W.P.(C) No. 2899/2001 and vide judgment dated 12.08.2004, the learned Single Judge passed a speaking order in W.P.(C) No. 2899/2001, holding that Sh. R.D. Sharma had failed to establish his right in respect of the additional triangular parcel of land adjacent to plot No.13/15, Tihar-I, Subhash Nagar, New Delhi and that the ownership of the said land vested with the respondent No.2/L&DO. By a separate order passed on the same date in W.P.(C) No. 106/2003 filed by the appellant/petitioner, learned Single Judge dismissed the said petition by noting that the reasons recorded for dismissing W.P.(C) 2899/2001, would be applicable in the said case as well.

6. It is not in dispute that the appellant/petitioner did not file an appeal against dismissal of his writ petition. However, the legal heirs of Sh. R.D. Sharma, filed an intra-court appeal against the judgment dated 12.08.2004 (LPA No. 1021/2004), which was dismissed by the Division Bench by a detailed judgment dated 15.05.2007. The view expressed by the learned Single Judge was that the legal representative of Sh. R.D. Sharma, did not have any right much less a legal right to stake a claim on the disputed plot of land owned by respondent No.2/L&DO. The first round of litigation concluded in May, 2007. It is the version of the appellant/petitioner that after one year from May, 2007, the probate petition filed by him (Probate Case No. 55/06), seeking probate of the Will dated 06.07.1981 was granted in his favour on 02.05.2008 and by virtue of the said order, the appellant/petitioner had become the beneficiary of the subject plot. We may add here that the legal heirs of Late Sh. Parmanand had objected to grant of probate in favour of the appellant/petitioner but the said objections were

finally dismissed.

7. Thereafter, on 22.06.2009, the subject plot was mutated in favour of the appellant/petitioner and a conveyance deed was executed on 30.07.2009. In the year 2010, the appellant/petitioner filed the writ petition, which has been dismissed by the impugned judgment. The impugned judgment notes the claim of the appellant/petitioner that the triangular parcel of land measuring 204 sq. yards forms a part of the plot No.13/15, Tihar-I, Subhash Nagar, New Delhi, for the reason that the respondents had been regularly allotting such adjacent parcels of land to allottees in the locality and therefore he should also be extended the same benefit. The appellant/petitioner had premised his case on a Circular dated 14.12.1973, issued by the Ministry of Supply and Rehabilitation (Department of Rehabilitation), on the subject of disposal of additional strips of land in the rehabilitation colonies in Delhi.

8. Noting the facts of the case as adverted to by us above, including the fact that Sh. R.D. Sharma had also claimed title of the adjacent triangular plot of land as a successor-in-interest of Late Sh. Parmanand that was repelled by the judgment dated 12.08.2004, duly upheld by the Division Bench vide judgment dated 15.05.2007, the learned Single Judge opined that in the second writ petition filed by the appellant/petitioner, he had claimed a similar relief in respect of the adjoining plot, which had been rejected in the earlier round of litigation. It was observed that not only was the earlier writ petition filed by the appellant/petitioner (W.P.(C) 106/2003) even the writ petition filed by Sh. R.D. Sharma (W.P.(C) 2899/2001) were dismissed on the ground that they were not the original allottees.

9. The judgement dated 12.08.2004, passed in W.P.(C) 2899/2001 had

taken into consideration the policy dated 23.05.2000, issued by the Ministry of Urban Development, Government of India and held that the object of the said policy was that vacant strips of land due to defective lay outs that were being encroached upon, may be considered for allotment, though the said parcels of land should preferably be retained as green areas. The learned Single Judge also noted the fact that in LPA 758/2002, filed by Mr. R.D. Sharma aggrieved by an order passed in W.P.(C) 2899/2001, vacating an interim order operating in his favour, vide order dated 11.02.2003, the Division Bench had considered instances that were cited by Sh. R.D. Sharma and found that they were not similar to his case.

10. Noting all the above facts, the impugned judgment records the fact that the writ petitions preferred by the appellant/petitioner as also by Sh. R.D. Sharma had not only been dismissed on the ground that the benefit of the policy dated 23.05.2000, could not be extended to persons other than the original allottees, but also on the merits of their case. With these observations, the writ petition filed by the appellant/petitioner was dismissed as meritless.

11. Mr. Batra, learned counsel for the appellant/petitioner submits that the learned Single Judge has erred in passing the impugned judgment by relying on erroneous observations made by the Division Bench in LPA 758/2000; that the learned Single Judge ought to have examined the effect of several letters and policies of the respondent No.2/L&DO, as set out in the writ petition; that the learned Single Judge failed to take into consideration the fact that the appellant/petitioner was not a party in LPA 1021/2004 filed by the legal heirs of Sh. R.D. Sharma, which was dismissed by the Division Bench vide judgment dated 15.05.2007 and that the policy dated 23.05.2000

of Ministry of Urban Development, Government of India regarding allotment of vacant strips of land due to defective layout, has been misread and wrongly relied upon by the learned Single Judge.

12. *Per contra*, Mr. Mahajan, learned counsel for the respondents has supported the impugned judgment and stated that once the appellant/petitioner had elected to accept the judgment dated 12.08.2004 passed in W.P.(C) 106/2003 and he did not take the matter in appeal, he is disentitled from maintaining a fresh petition on the same cause of action. He states that the subsequent developments sought to be highlighted by the learned counsel for the appellant/petitioner, i.e., grant of a probate petition in his favour or the mutation of plot No.13/15, Tihar-I, Subhash Nagar, New Delhi, in his favour can hardly be treated as a fresh cause of action for the reason that the basis of assailing the decision of the respondents of declining to allot him the adjacent triangular parcel of land, remains the same as was urged in the previous writ petition.

13. We have perused the impugned judgment as also the earlier decisions, namely the judgment dated 12.08.2004, passed in W.P.(C) 2899/2001 and W.P.(C) 106/2003 and the judgment dated 15.05.2007, passed by the Division Bench in LPA 1021/2004, as also the other documents placed on record. We have also given our careful consideration to the submissions made by learned counsel for the parties.

14. Having examined the reasons that have weighed with the learned Single Judge in passing impugned judgment for refusing to grant any relief to the appellant/petitioner, we see no reason to interfere with the conclusion arrived at. It is not in dispute that almost two decades ago, the appellant/petitioner had approached the court for seeking identical relief as

has been prayed for in W.P.(C) 5966/2010, which was declined by a speaking order passed on 12.08.2004. Though the legal heirs of Sh. R.D. Sharma had elected to file an intra court appeal against the judgment dated 12.08.2004, the appellant/petitioner did not do so and instead, let the matter rest there. For him to claim now that he could have approached the court for relief only after the probate petition filed by him was allowed and the subject plot mutated in his favour, would be of no consequence for the simple reason that even if the property stands mutated in favour of the appellant/petitioner, he is not a direct descendant of Late Sh. Parmanand, the original allottee of the subject land.

15. Sh. Parmanand had expired on 25.11.1985. He was survived by his wife, Smt. Daulati Bai and his daughter, Ms. Kaushalya Devi and a son, Sh. Mohan Lal. We are informed that Sh. Parmanand had disinherited all his three legal heirs. The appellant/petitioner is the son of late Sh. Parmanand's brother and not his direct descendant. The appellant/petitioner claims a right in the adjacent parcel of land on the strength of a Will dated 06.07.1981, executed by late Sh. Parmanand, which cannot be ground for him to step into his shoes insofar as the benefit of allotment of the adjoining plot is concerned.

16. The contention of the learned counsel for the appellant/petitioner that having stepped into the shoes of Sh. Parmanand and his name having been substituted in the records of the respondent No.2/L&DO, the appellant/petitioner is entitled to the same relief as can be claimed by an original allottee of the area, cannot be permitted to be urged at this belated stage when a similar plea had been taken by him in the earlier writ petition filed by him which was turned down. Once the order passed in the said

petition was not taken in appeal, the same attained finality.

17. Moreover, a perusal of the judgment dated 12.08.2004 reveals that the learned Single Judge had taken pains to examine the instances with which the appellant/petitioner had sought parity for claiming allotment of the adjacent triangular plot of land, to conclude that all the said cases where additional land had been given, were ones where benefit was given to the original allottees and not to third parties. In its judgment dated 15.05.2007, the Division Bench had ratified the view expressed by the learned Single Judge in the judgment dated 12.08.2004.

18. A perusal of the said judgment reveals that the Court had not only taken note of the first Circular dated 14.12.1973, which learned counsel for the appellant/petitioner seeks to cite, but also a subsequent Circular dated 04.08.1976, followed by a Circular dated 13.07.1978, Circular dated 28.01.1980 and the Guidelines dated 23.05.2000 issued by the Ministry of Urban Development, Government of India and had thereafter observed that the additional triangular plot of land adjoining plot No.13/15, Tihar-I, Subhash Nagar, New Delhi, is not attached to the original plot, but is independent thereof and that the original allotment in favour of Mr. Parmanand was of a plot measuring 103 sq. yards , whereas the adjacent plot was double of the said size as it measures 204 sq. yards. Noting the directions issued in the Guidelines dated 23.05.2000, which accorded preference to keeping additional strips of land as green for utilization towards building a Community Centre or for public purpose, the Division Bench declined to grant any relief to the legal representatives of Mr. R.D. Sharma and declared that the plot of land in question was owned by the respondent No.2/L&DO to be utilized and dealt with by it in terms of its

policy.

19. We are of the opinion that in view of the extensive discussion in respect of the rights of the appellant/petitioner on claiming allotment to the adjacent parcel of land in the judgment dated 12.08.2004 passed in W.P(C) 2899/2001 and W.P.(C) 106/2003, followed by a detailed analysis by the Division Bench in the judgment dated 15.05.2007 in LPA 1021/2004, and further keeping in mind the fact that the appellant/petitioner had elected not to prefer an appeal and instead, he had accepted the findings returned by the learned Single Judge in the earlier petition filed by him in the year 2003, we see no reason to interfere with the impugned judgment as all the pleas taken by the appellant/petitioner in the subsequent petition have been duly examined and relief rightly declined to him.

20. In para 15 of the impugned judgment, the learned Single Judge has taken pains to capture the view expressed by the Division Bench in the judgment dated 15.05.2007 in LPA 1021/2004 and has gone on to conclude that the instances cited by the appellant/petitioner in the writ petition, were in respect of those allottees, who had been allotted parcels of land of a smaller size but on an actual inspection of their plots, it was found that the allotment made was of a larger size. It was on this ground that the respondent No.2/L&DO had to execute supplementary lease deeds in favour of those persons for the remaining area of land.

21. We are of the firm opinion that the adjacent plot of land measuring 204 sq. Yards, which is double the size of the plot mutated in his favour, cannot be allotted to the appellant/petitioner for the asking, more so, when he is not the direct descendant of the original allottee. Rather, the said plot can be put to better use either by maintaining it as a green area/park or for

community purposes or by building a Community Hall on it as per the policy of the respondent.

22. In view of the aforesaid facts and circumstances, the impugned judgment does not warrant any interference. As a result, the present appeal is dismissed in *limine* alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 21, 2019/MK