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

Reserved on: 17th January, 2020

Date of decision: 27th April, 2020

+ **W.P. (C) 3607/2011 & CM. APPL. 7555/2011**

RAJVEER SHARMA

..... Petitioner

Through: Mr. R.K. Bhardwaj, Advocate (M-9312710547)

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, Mr. Shawrya Jain & Mr. Vinod Sharma, Advocate for UOI (M-9811418995)
Mr. Manika Tripathy Pandey, Mr. Brahm Kr. Pandey & Mr. Ashutosh Kaushik, Advocates for R-2 (M-8920666719)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. Three writ petitions being W.P. (C) 8195/2008, W.P. (C) 3271/2008 and W.P. (C) 3607/2011 i.e., the present petition, were filed in this Court in respect of 100 sq. yards of additional land located next to the properties of the Petitioners in Rampuri, Kalkaji, New Delhi. The two writ petitions being W.P. (C) 3271/2008 and W.P. (C) 8195/2008 have already been dismissed vide

orders dated 25th February, 2019 and 27th February, 2019 by a ld. Single Judge of this Court. On multiple occasions, this matter was also listed alongside W.P.(C) 8067/2015, which petition was also dismissed by this Court on 30th August, 2019. The present petition is, however, pending consideration.

2. The facts in this case are that on 30th August, 1969, a licence deed was executed in favour of one Mr. Mam Chand in respect of property bearing No. 17, Rampuri, Kalkaji, New Delhi. Mr. Mam Chand sold the said property in 1962 in favour of Ms. Gian Devi and Mr. Banarsi Lal. After the death of Ms. Gian Devi and Mr. Banarsi Lal, a conveyance deed dated 30th June, 2010 was executed by Respondent No.1 i.e., the Union of India (*hereinafter*, “*UOI*”) in favour of their legal heirs i.e., Mr. Raj Kumar Sharma, Mr. Ram Chander Sharma and Mr. Shyam Sunder Sharma. The Petitioner purchased the property from the said three owners on 12th July, 2010.

3. There were several plots in Rampuri, Kalkaji, New Delhi adjacent to which were additional strips of land measuring approximately 100 sq. yards that were under the occupation of the respective plot owners. The Petitioner's property is one such property.

4. In the year 1970, a Memorandum was issued providing additional strips of land at the rate of Rs.60/- per sq. yard to owners of corner tenements. A sum of Rs.6,000/- was directed to be deposited by plot holders within 15 days of the issue of the said circular. The plot holders are said to have requested Respondent Nos. 1 and 2 i.e., the UOI and the Land and Development Officer (*hereinafter*, “*L&DO*”), to either reduce the amount to be deposited or permit the same to be deposited in instalments. No reply was, however, received by the

plot holders. Instead, on 31st August, 1981, considering the fact that these additional strips of land were already under the occupation of the respective owners of the adjacent properties, a decision was taken to transfer the said additional strips, subject to payment of Rs.50,000/- within six weeks from the issue of the said letter. The predecessor-in-interest of the Petitioner i.e., Mr. Banarsi Lal, sought payment of the said amount in instalments which request was rejected vide letter dated 17th October, 1981. Admittedly, the said amount was never paid. The Petitioner thereafter repeatedly approached the Land & Development Officer (*hereinafter*, “L&DO”) for allotment of the said strip of land, however, the allotment was not made by the L&DO.

5. Accordingly, the present writ petition has been filed seeking the following relief:

“a. To issue a Writ of Mandamus and/or any other appropriate Writ, order or direction directing the respondent No.1 and 2 to regularize the additional strip of land adjoining to the property bearing No. 17, Rampuri, Kalkaji, New Delhi in the name and in favour of the petitioner.

b. To issue Writ of Prohibition or any other appropriate Writ thereby restraining the respondents from interfering in the peaceful possession of the petitioner and his family members in respect of the additional strip of land adjoining to the property bearing No. 17, Rampuri, Kalkaji, New Delhi.

c. Pass any such other order or direction as this Hon’ble Court deems fit and proper in the interest of justice in favour of the petitioner.”

Procedural History

6. The present petition was listed from time to time along with the other writ petitions mentioned in paragraph 1. Vide order dated 11th September, 2017, this Court had recorded that the Petitioner is willing to pay the current market value of the additional strip of land. The said order reads as under:

“1. The learned counsel for the petitioner submits that they are ready and willing to pay the current market value of the property in question. Indisputably, the property in question (a strip of land adjacent to the corner plot) was offered for allotment to the predecessor of the petitioner, but he could not pay the necessary amount at the relevant time.

2. It appears that strips of land adjoining corner plots were offered because there was no other alternative use for the said property and was otherwise in the possession of the allottees of respective the adjoining plot.

3. The learned counsel for the petitioner states that the property in question has been in occupation for about 67 years and the petitioner is ready and willing to pay the current market value of the said property.

4. The learned counsel for respondent no.1 and 2 seek time to take instructions in this regard.

5. List on 07.12.2017.”

7. In response to the said order, ld. counsel for the Respondents submit that instructions were obtained on 17th July, 2018 where it was clearly conveyed by the competent authority that the additional strips of land cannot be allotted to the Petitioner and similarly placed persons. The said letter reads as under:

“Sub:- WP(C) 3607/2011, RajveerSharma Vs UOI & Ors. – reg.

Sir,

Please refer to your letter dated 13/09/2017 wherein you have enclosed a copy of the orders dated 11/09/17 of the Hon’ble Mr.Justice Vibhu Bakhru on the above-caption matter.

2. The Hon’ble Judge vide his orders dated 13/09/17 has directed to submit instructions of this office with regard to willingness of the petitioners to pay the current market value of the additional strip of land adjacent to his property.

3. In this regard it is submitted that the Technical Wing of this office has conducted a detailed survey of all the four additional strips of land and the findings are as under:-

Srl. No.	Court Case No.	Additional Strip of land adjacent to	Status Report
1	WP(C)/3607/2011	17, Rampuri, Kalkaji	Regular Plot
2	WP(C)/3271/2008	44, Rampuri, Kalkaji	Regular Plot
3	WP(C)/8067/2011	M-44, Kalkaji	The plot falls on the ‘Right of the Way’.
4	WP(C)/8195/2008	7, Rampuri, Kalkaji	The plot falls on the ‘Right of the Way’.

4. From the above report of the Technical Wing, it is evident that the additional strips of land mentioned at Srl.(3)&(4) cannot be allotted. Further, the feasibility of allotment of the additional strips of land at Srl.(1)&(2) above is being examined by this office in consultation with concerned divisions of this Ministry. It is to be noted that the issue of allotment of additional strips of land to allottees of adjacent plots is a policy matter which would require administrative as well as financial approval at the level of the Ministry.

5. As such it is requested that the Hon'ble High Court may kindly be apprised the above."

8. Thereafter, on 25th February, 2019, this Court dismissed **W.P. (C) 3271/2008** titled ***Dharam Raj v. UOI & Ors.*** The said writ petition related to property bearing No. 44, Ram Puri, Harijan Colony, Kalkaji, New Delhi. The Id. Single Judge held that the reliefs sought for cannot be granted as at the time when the Respondents had called upon the extant owners to pay the amount for transfer, the amounts were not paid. For various other reasons, including the above, the Court held that the additional strip of land belongs to the Government. The writ was accordingly dismissed. The order in W.P. (C) 3271/2008 was followed in ***Gian Chand Tuteja v. Union of India and Ors***[WP(C) 8195/2008, decided on 27th February, 2019]. In W.P.(C) 8195/2008, the property in question was property bearing No. 7, Ram Puri Colony, Kalkaji, New Delhi. **W.P. (C) 8067/2015** titled ***Amarjeet Kaur Mavi v. UOI & Ors.*** related to property bearing No. M-44, Kalkaji, New Delhi. This petition was dismissed by the Id. Single Judge *inter alia* on the ground that the

additional strip of land had been encroached by the Petitioner and, in any case, the same could not be allotted as it was meant for public use being a right of way.

Findings

9. The facts reveal that in the present petition, the allotment which was made in favor of the predecessor-in-interest of the Petitioner i.e., Mr. Banarsi Lal, on 31st August, 1981 never fructified as Mr. Banarsi Lal did not make the payment which was demanded. Thereafter, repeated attempts have been made by the Petitioner to obtain allotment of the additional strip of land. The representations of the Petitioner have, however, not been acceded to by the authorities.

10. In the present petition, the right of the Petitioner to property bearing No. 17, Rampuri, Kalkaji, New Delhi is not in dispute. A perusal of the letter dated 18th July, 2011, which was written by the authorities in response to the representations of the Petitioner subsequent to the filing of this writ petition, shows that the L&DO took a categorical stand that the additional strip of land has never been allotted to the Petitioner's predecessor and allotment cannot now be considered. The said letter also clearly states that the Petitioner tried to encroach on Government land and that there was a complaint received by the L&DO to this effect. The content of the letter reads as under:-

***“Sub: Transfer of additional strip of land
adjoining to property No.17, Rampuri, Kalkaji,
New Delhi.
Dear Sir,***

I am to refer your letter dated 16.03.2011 on the above mentioned subject and to say that no point of time additional strip of land adjacent to plot No.17, Rampuri, Kalkaji has neither been allotted to your predecessor, nor can it be considered.

2. Further it may also be noted that as per the clause 10 of the conveyance deed "conveyance deed shall be revoked without any notice if it comes to light at any later stage that vendee have encroached upon any Govt. land/Public land or if the property is put to any use other than what is stipulated in the lease terms/Master Plan norms".

3. Complaints have also been received that you have tried to encroach upon Govt. land, copy of one such complaint dated 10.5.2011 is enclosed. Hence you are requested to desist from such action; failing which even conveyance deed in respect of 17, Rampuri, Kalkaji may be revoked as per the terms & condition incorporated therein.

4. You are, therefore, requested to immediately vacate the said land; failing which necessary action in accordance with law will be taken."

11. This stand of the L&DO has been reiterated subsequently, including in oral arguments. The Petitioner, on the other hand, has, by way of Affidavit dated 19th March, 2012 placed on record the site-plan of the additional strip of land, as also photographs of the same. The photographs reveal that there is temporary construction on the additional strip of land. In its letter dated 17th July, 2018, the L&DO has taken the stand that the allotment of the adjacent plots is an issue of policy. In any case, it is submitted that there is no policy for allotment at present.

12. An application for impleadment was also filed in the present case by the owner of the basement of property bearing No.17, Rampuri, Kalkaji, New Delhi, claiming to have purchased it from the Petitioner. He applicant claims to have filed a complaint against the Petitioner with the authorities for illegal encroachment on the additional strip of land. The reply filed by the Petitioner to the impleadment application shows that the Petitioner has raised allegations of encroachment against the applicant. Therefore it appears to be a dispute also between the Petitioner and the subsequent purchaser. In any case, the application for impleadment was dismissed as withdrawn vide order dated 22nd April, 2014.

13. The only issue that remains to be considered is whether the Petitioner is entitled to allotment of the additional strip of land adjoining property No. 17, Rampuri, Kalkaji, New Delhi. This issue has already been considered in ***Dharam Raj (supra)*** and ***Gian Chand Tuteja (supra)***, whose facts are very similar to the present case. In these two cases, the Court has categorically held that since the Petitioners' predecessors did not accept the allotment offer of the authorities, allotment cannot be directed.

14. In ***Dharam Raj (supra)***, wherein this Court has observed as under:

“18. Insofar as the petitioner’s contention that he is required to be treated at par with other allottees who have been allotted additional strips of land is concerned, the L&DO has filed an affidavit affirming that the Department of Rehabilitation had allotted additional strips of land in two cases. One pertaining to the strip of land adjacent to property No. 72 and the other

relating to strip of land adjacent to plot No. 62 in the same locality.

*19. In this regard it is clarified that the additional strip of land adjacent to property No. 72 was allotted in compliance with the order dated 05.01.1989 passed by this Court in **C.W.P.789/1974** captioned **Smt Purnima Deb v. Chief Settlement Commissioner and Ors.** A perusal of the said judgment indicates that the petitioner therein had applied on 08.05.1970 for allotment of the additional strip of land at the reserve price pursuant to the instructions dated 23.02.1970. The petitioner's request was not acceded to as, at the material time, it was found that the strip of land was between two quarters, namely, quarter no. 72 and 73, and the petitioner was called upon to acquire the property by way of an open auction. As is apparent, the facts in that case are materially different. In the present case, the petitioner's predecessor/petitioner was offered allotment of the Additional Land on two occasions but the said offer was not accepted.*

20. The additional strip of land adjacent to property No. 62, Rampuri, Harijan Colony, Kalkaji was allotted in compliance with the decision in Suit No. 256/1988. In that case, the plaintiff had deposited a sum of ₹10,000/- pursuant to the offer made in terms of the letter dated 31.01.1981. The plaintiff had claimed that in terms of the policy instructions dated 24.10.1961 the petitioner was entitled to pay the 20% of the reserve price as an initial installment and the balance in seven equated annual installments. The plaintiff's case that he was

entitled to pay the balance of ₹40,000/- in installments was accepted. The petitioner's case cannot be treated in parity with this case as well, because he/his predecessor had not accepted the offer made by the respondent for allotment of additional land.

21. The petitioner's request for conversion of the Property from leasehold to freehold has not been accepted on the ground that the petitioner has encroached upon the Additional Land. The said decision cannot be faulted as it is in conformity with the respondent's policy not to allow conversion in cases where the lessees have encroached upon public land."

15. Similarly, in ***Gian Chand Tuteja (supra)***, the Id. Single Judge followed ***Dharam Raj (supra)*** and observed as under:

"15. There is no dispute that the Additional Land belongs to the Government of India and the petitioner has illegally occupied the same. It is apparent from the facts that on two prior occasions, respondent nos. 1 and 2 had offered to allot the Additional Land to the petitioner's predecessor – once on 07.12.1970 and thereafter, on 31.08.1981. On both occasions, the petitioner's predecessor in interest had failed to accept the said offer within the stipulated time. Having failed to accept the offer and pay the requisite cost, the petitioner can claim no right over the Additional Land.

16. The only issue that requires examination is whether the petitioner is entitled to claim allotment of the Additional Land on the basis of the current policy. It was contended on behalf of the petitioner

that the Delhi Development Authority (DDA) had issued a circular dated 07.01.2003, whereby it was recommended that any vacant piece of land which is adjacent to a plot of land allotted to any lessee may be allotted to the lessee at market rates. The petitioner contends that in view of the said Circular, the petitioner is entitled to acquire the Additional Land at market rates.

17. In addition to the above, it was also contended that respondents have allotted such additional strips of land to similarly placed allottees and, therefore, the petitioner could not be discriminated against and was required to be treated at par with such allottees.

*18. The aforesaid issue is squarely covered by the decision of this Court in **Dharam Raj v. Union of India & Ors.**: W.P. (C) 3271 of 2008 decided on 25.02.2019. In view of the said decision, the petitioner's case that he is entitled to allotment of the Additional Land is unmerited, and is thus, rejected."*

16. This Court has examined the present case. The Petitioners in the writ petitions mentioned in paragraph 1 are similarly placed. The decisions in **Dharam Raj (supra)** and **Gian Chand Tuteja (supra)** clearly cover the present writ petition. The request for allotment of additional land cannot be acceded to as the said land belongs to the Government, though the same is under illegal occupation of the Petitioner. Moreover, the Petitioner's predecessor had failed to accept the offers given by the Government on not one but two occasions. The payment not having been made at the relevant

point of time and the land admittedly not belonging to the Petitioner, no relief is liable to be granted in the present petition.

17. The present writ petition is thus liable to be dismissed. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 27, 2020
DJ/T

