

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 6113/2018 & CM No.23727/2018

Date of decision: 30.01.2020

SATISH KUMAR

..... Petitioner

Through : Ms. Ujala Vishnoi and Mr. Randeep
Singh, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for R-2.
Mr. G.S. Oberoi and Mr. Ankur
Sharma, Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. Despite opportunity being given to the DDA to file a counter affidavit vide order dated 17.09.2019, *albeit*, subject to payment of costs, DDA has failed to show alacrity in the matter. Neither was cost paid to the petitioner nor was a copy of the counter-affidavit served on the counsel for the petitioner.
2. Mr. Oberoi says that he has brought a cheque of Rs.20,000/- to the court towards payment of costs. Mr. Oberoi also states that the counter-affidavit was filed on 28.01.2020.
3. Ms. Vishnoi, who, appears, for the petitioner says that these are tactics employed only to delay the matter. It is stated that the matter is bound to get adjourned if the court were to direct that the copy of the counter

affidavit be served on the counsel for the petitioner.

4 Given the past track record of the DDA, I tend to agree with Ms. Vishnoi. Therefore, Ms. Vishnoi, who appears on behalf of the petitioner, is requested to accept the cheque towards cost offered by Mr. Oberoi in court today.

5. Since, I find that the counter affidavit has been scanned and uploaded, I asked Ms. Vishnoi whether she was ready to proceed with the matter. Ms. Vishnoi said she wanted the matter to be heard. Given this position, I have decided to proceed with the hearing in the matter.

6. The substantive prayers made in the writ petition are as follows :

“(a) Issue a Writ of Certiorari quashing the impugned letter dated 23.03.2015, issued by Respondent no.3, to the extent of reduction of size of plot from 250 Sq. Yds. to 40 Sq.Yds.

(b) Issue a Writ of mandamus directing the respondent no3 specifically to make allotment of residential plot measuring 250Sq.Yds. in South Zone, in favour of the petitioner in compliance of letter issued by respondent no.2, dated 01.08.1984, issued in pursuance of Policy of alternative Plots under the scheme of Large Scale acquisition development and Disposal of Land in Delhi -1951.”

7. As would be evident from the prayers, the petitioner seeks a direction that the letter dated 23.03.2015 issued by the DDA be quashed. The relevant portion of the letter is extracted hereafter as it sets out in brief the controversy which has arisen in the matter :

“With reference to your letter dated 03.02.2015 on the subject noted above. I am to inform you that consequent upon the death of Shri Hari Ram s/o Smt. Asarfi Devi, the recommendee of 40 sq.yards alternative residential plot in West Zone and on the basis of documents furnished by you & other

legal-heirs including copy of relinquishment deed duly registered as document No.6075 in Book No. 1 Vol.No.837 On page 69 to 74 dated 12.11.2014 in the Office of Sub-Registrar, SR VA- Hauz Khas, New Delhi, the name of Shri Satish Kumar is substituted in place the name of her deceased Grand Father late Shri Hari Ram in the recommendation letter'No.F.32 /5/101/80/L&B/Alt./400l 1 dated 30.11.1983. It may be worth mentioning here that your recommendation has been received for 250 Sq.Yds but Jt. Secretary (Land & Building) vide her letter dated F.37(39)1/882-L&B/Alt./370 dated 1.4.87 addressed to Commissioner (Lands) DDA clarified that in case where land acquired is upto 1000 Sq.Yds and awards have been announced upto 3rd April 1986 a plot size of 40 Sqyds is to be allotted in Rohini Residential Scheme.

The substitution is allowed subject to verification of genuineness of recommendation from Land & Building Department, GNCTD. Now onwards you are the recommendee of the alternative plot under reference. The other terms and conditions of allotment/lease deed shall remain unchanged and binding upon you.”

8. A perusal of the aforesaid extract would show that the only short issue which arises for consideration before this court is: could a policy change which arose after a letter of recommendation was issued in favour of the predecessor-in-interest of the petitioner for allotment of an alternate plot of 250 sq.yds. be applied and the plot size be reduced to 40 sq.yrds.?

8.1 This issue needs to be considered in the background of the following broad facts :

8.2 On 13.11.1959, the Government of Delhi (now, Government of NCT of Delhi) [in short “GNCTD”] issued a notification for large scale land acquisition. This was followed by another notification dated 19.11.1964. Pursuant to these notifications which triggered large scale land acquisition, a parcel of land which was co-owned by petitioner’s grandfather, one, Mr.

Hari Ram was also acquired. In this behalf, an award dated 23.03.1965 was rendered.

8.3 The petitioner's grandfather was paid by way of compensation Rs.5,066.25 qua land ad measuring 1 bigha, 15 biswas. This land was located in Khasra No.8, in Village Chirag Delhi, New Delhi (hereafter referred to as "subject land").

8.4 It is the petitioner's claim that his grandfather was a co-owner of the subject land that was acquired.

9. What is not in dispute is that respondent no.2/GNCTD wrote to respondent no.3/DDA recommending allotment of an alternate plot ad measuring 250 sq.yrds, in South Zone, in favour of petitioner's grandfather under the Scheme of Large Scale Acquisition of Land in Delhi, 1961 (in short "the Scheme").

10. This recommendation was made on 30.11.1983. It is also the petitioner's case that on 01.08.1984, the Delhi Administration (Land & Building Department) addressed a letter to the DDA confirming the recommendation. Relevant part of this communication is extracted hereafter:

"Subject : Confirmation of alternative allotment.

Sir,

With reference to your letter no.F.27(129)/83 LSD® dated 20.12.83 on the subject cited above, the recommendation for allotment of an alternative plot measuring 250 sq. yds. in South Zone to Shri Hari Ram S/o Smt. Asarfi Devi R/o House No.512,Chirag Delhi in residential Scheme as contained in this department's letter of even number dated 30.11.83 is hereby confirmed."

(emphasis in mine)

11. As would be evident, the subject of the letter was "**confirmation of alternative allotment**". Furthermore, as is obvious, in the body of letter as

well reference is made to the fact that recommendation made in favour of petitioner's grandfather (i.e. Mr. Hari Ram) had been confirmed.

12. The petitioner avers that his grandfather (i.e. Mr. Hari Ram) expired on 19.02.1986.

13. According to the DDA, on 20.02.1986, the policy qua allotment of alternate plots was revised. By virtue of revision in the policy, a decision was taken that in respect of pending applications wherein plot size did not exceed 1,000 sq.yrds, the size of the alternate plot which DDA would recommend for allotment would stand reduced to 40 sqr.yds.

13.1 It was further decided that all such applicants would be allotted plots under the Rohini Residential Scheme irrespective of the location of the land which was acquired by the DDA.

14. The record shows that the deceased Hari Ram's wife, namely, Smt. Bhagwan Devi deposited Rs.3,000/- towards earnest money with the DDA on 13.06.1986.

15. Besides this, one, Mr. Ved Prakash, who is said to be the son of the deceased Hari Ram and Smt. Bhagwan Devi, also deposited Rs.3,000/- towards earnest money on the same date i.e. 13.06.1986.

16. There was obviously, at this juncture, a dispute amongst the family members as to who should be the beneficiary of the recommendation made by the Land and Building department for allotment of an alternate plot in favour of Mr. Hari Ram.

17. It is in this context that on 25.08.1986, Ved Prakash, wrote to the DDA that his interest be safeguarded and that his mother, Smt. Bhagwan Devi, had no right in the land which DDA intended to allot.

18. In view of this position, DDA, on 10.02.1987, wrote to Ved Prakash

that he needed to approach the court and have the disputes amongst the family members sorted out before he could be considered for allotment of an alternate plot.

19. Curiously, on 03.04.1989, the DDA addressed a letter to Hari Ram, who had already expired by then; a fact which was in their knowledge as they had been corresponding, as noticed above, with his son i.e. Ved Prakash). In this letter, the DDA while adverting to the letter dated 30.11.1983 which alluded to the fact that Mr. Hari Ram had been allotted a land ad measuring 250 sqr.yds., offered a land ad measuring 31.69 sq.mtrs. under the Rohini Residential Scheme.

19.1 *Via* this letter, it was communicated that Rs.3,000/- should be deposited towards earnest money by 20.04.1989. Furthermore, it was also indicated that once earnest money is deposited, the addressee would be included in the draw of lots so that a specific plot could be allotted in the addressee's favour. The terms and conditions of payment were also set out in this letter, which, *inter alia*, required remittance of money once allotment of a specific plot was made in favour of the addressee.

20. It is the stand of the DDA that earnest money was deposited and, therefore, plot ad measuring 31.69 sqr.mtrs. was allotted. This plot was allotted in a draw of lots held on 27.03.1991. The factum of allotment was conveyed vide letter dated 27.03.1991 addressed to Smt. Bhagwan Devi. The plot allotted is described as "Plot No.86, Pocket G-4, Sector-11".

20.1 The DDA also takes the stand that the demand-cum-allotment letter was not issued due to internecine disputes amongst the legal representatives of the deceased Hari Ram.

21. However, on 23.01.1996, the DDA wrote to Smt. Bhagwan Devi that

the offer of allotment made by it vide letter dated 27.03.1991 stood withdrawn/cancelled on account of her failure to pay the demanded amount within the stipulated period. The letter concluded with an advice to Smt. Bhagwan Devi that she could apply for substitution in place of her deceased husband Hari Ram qua recommendation made in his favour.

22. The aforesaid letter was followed by a letter dated 02.02.1996 whereby, Smt. Bhagwan Devi was called upon to submit certain documents, which, *inter alia*, included an affidavit giving details of the legal heirs of the deceased Hari Ram.

23. It is also the DDA's stand that on 03.02.2015, a request was received from the petitioner (i.e. Satish Sharma) to substitute his name in place of the deceased Hari Ram in the recommendation letter dated 30.11.1983, *albeit*, on the basis of two relinquishment deeds dated 12.11.2014 and 06.01.2015.

24. In a nutshell, the petitioner requested that, since the other legal heirs of deceased Hari Ram had relinquished their claim to an alternate plot, his name be substituted in the aforementioned recommendation letter.

25. Concededly, DDA complied with the request and incorporated the name of the petitioner in place of the deceased Hari Ram and this information was conveyed to him by the DDA vide communication dated 23.03.2015. The only grievance that the petitioner has qua this communication is that it reduces the plots' size from 250 sq.yds. to 40 sq. yds. It is this aspect which has propelled the petitioner to institute the instant petition.

Submissions of Counsel

26. Given this foreground, Ms. Vishnoi submitted that the policy decision dated 20.02.1986 could not be applied retrospectively. It was Ms. Vishnoi's contention that a recommendation was made in favour of the petitioner's

predecessor-in-interest i.e. his grandfather Hari Ram as far back as on 30.11.1983.

26.1 It was emphasized that this recommendation was confirmed on 01.08.1984.

27. Therefore, according to Ms. Vishnoi, the revision in policy brought about on 20.02.1986 could not retrospectively impact the recommendation for allotment of an alternate land which was confirmed in favour of the petitioner's predecessor-in-interest on 01.08.1984.

28. Ms. Vishnoi contended that this issue was no longer *res integra* as the Division Bench of this court when dealing with similar issue vide judgment 19.07.2006, passed in LPA No.2593/2005, titled ***Adarsh Sharma v. Union of India***, held that a policy change made after the recommendation for allotment of plot was made could not be taken recourse to by the DDA to reduce the plot size.

28.1. Ms. Vishnoi submits that the judgment of the Division Bench in the aforementioned case was carried in appeal by the DDA to the Supreme Court. The Supreme Court vide order dated 19.07.2013, passed in SLP(Civil)No.2172/2006, dismissed the appeal and while passing the order, observed as follows :

“We find no merit. The special leave petition is dismissed.”

28.2 Ms. Vishnoi stated that the DDA in fact preferred a review petition (i.e. Rev.P.No.447/2015 in SLP(Civil)No.272/2006), which was also, dismissed on 25.02.2014 after delay was condoned by the Supreme Court.

29. On the other hand, Mr. Oberoi submitted that since no allotment letter was issued prior to revision in policy i.e. 20.02.1986, the recommendation made in 1983 and confirmed in 1984 cannot operate against the DDA.

30. Furthermore, it is Mr. Oberoi's submission that a fresh offer was made on 27.03.1991 for allotment of an alternate plot ad measuring 31.69 sqr.mtrs. in view of revision in the policy on 20.02.1986.

31. It was also Mr. Oberoi's contention that the writ petition ought not to be entertained as there was delay and laches on the part of the petitioner in approaching this court.

Reasons

32. I have heard learned counsel for the parties and perused the record.

33. As indicated above, the issue which arises for consideration before this court is : could the DDA have reduced the plot size based on a policy decision which was taken after the letter of recommendation had been issued in favour of the petitioner's predecessor-in-interest?

34. A perusal of the relevant extract of the policy decision taken on 20.02.1986 would show that the policy applied to "*pending applications*".

"ORDER

In a meeting held at Rajniwas on 20.02.1986 regarding allotment of alternative plots under the scheme, 'Large-Acquisition Development and Disposal of the Land in Delhi' following decision have been taken :

(a) *In respect of pending applications where land acquired is upto 1000 sq. yds. the plot in size to be recommended to DDA shall be reduced to 40 sq. yds. All such applications shall be given a plot under the Rohini scheme irrespective of the area where the land acquired was allocated.*

xxx

xxx

xxx"

(emphasis in mine)

35. Insofar as the petitioner's predecessor-in-interest was concerned, his application had been acted upon and a recommendation was made on

30.11.1983, which was, confirmed on 01.08.1984. The recommendation made was that Hari Ram should be allotted an alternate plot ad measuring 250 sqr.mtrs. It is not in dispute that the land which was acquired by the DDA ad measured 890 sqr.yds. against which compensation of Rs.5,066.24 was paid to the petitioner's predecessor-in-interest.

36. Besides this, Ms. Vishnoi is correct in her submission that the instant issue is covered by the judgment of the Division Bench of this court rendered in **Adarsh Sharma's** case. The relevant observations made by the Division Bench are extracted hereafter :

"The short question which has to be determined as to whether the appellant who is entitled under the policy of 1989 or pursuant to the policy which existed prior to 1989. The letter issued by the Government of Delhi recommending the case of the appellant was as per the policy which was in existence at that time. We find force in the argument of counsel for the appellant that the Land and Building Department, Government of Delhi had recommended the case of the appellant pursuant to the policy which was in vogue at the relevant time. As a matter of fact, our attention was drawn to the policy by the learned counsel for the DDA itself which is at page 52 of the paper book. As per this policy, the issue of allotment of plots by the DDA was discussed in a meeting held in the Chamber of the Lieutenant Governor of Delhi on 22.5.86. The policy makes abundantly clear that the DDA would allot plots to all eligible claimants and the size of the plot would be the same as recommended by the department i.e. the Department of Land and Building. Apart from that, it was also made clear that the allotment should be made in the same area as far as possible. This is how the allotment of plots by DDA have to be considered (page 53, para 2). Now let us examine as to whether the finding returned by the learned Single Judge is as per the said policy of DDA and non-deposit of the amount by the appellant was futile to get the relief sought for. Vide letter dated 6th February, 1986 as reproduced above, the appellant was entitled for a plot measuring 250 square yards in the South Zone. We fail to understand as to

how the letter dated 9th August, 1986 was written by the DDA implementing the policy of 1989 which had not yet come in force. The DDA was bound to allot land in the same locality where the land of the appellant was acquired as per the allotment letter dated 6.2.86 and as per the policy reflected in the minutes dated 22.5.86. There is no dispute that the land of the appellant was acquired by the DDA. If the DDA has to differ with the recommendation of the Land and Building Department, that has to be pursuant to certain policy of the DDA with notice to the affected party. Not only the policy has been changed and tinkered with but altogether the size of 250 square yards for which the appellant was entitled has been reduced to 100 and 150 square yards and area from South Zone has been converted to North Zone just in a span of four months. Nothing has been placed on record as to how this change could have been done by the DDA. The decision to change ought to have been effected on account of some material either in terms of some policy or exigencies of the ground realities i.e. non-availability of the plot in South Zone or plots up to 250 square yards not being available. Nothing has been brought on record to suggest except letter of 9th August, 1986 pursuant to which the appellant has been denied a plot of 250 square yards in complete negation of its own policy of the DDA. Therefore, we set aside the impugned order and direct the respondent-DDA to allot a plot of 250 square yards pursuant to the recommendation of the Department of Land and Building in terms of letter dated 6th February, 1986. As the stay order was passed in the writ petition on 4th September, 1989 directing the respondent-DDA to reserve a plot measuring 250 square yards in South Zone and the same continued when the appeal was filed in this Court which came up for hearing on November, 2005, therefore, the respondents are directed to give the allotment letter of a plot measuring 250 square yards in South Zone at the rates of the year 1989 within a period of four weeks and on the receipt of the allotment-cum-demand letter, the appellant shall deposit the same within four weeks.”

(emphasis in mine)

36.1 As noted above, the judgment of the Division Bench was taken up in

appeal to the Supreme Court. The Supreme Court dismissed the special leave petition on 19.07.2013 and while dismissing the petition, the court observed that there was “*no merit*” in the matter.

36.2 It is also not in dispute that the DDA had filed a review petition which, like the special leave petition, was dismissed by the Supreme Court vide order dated 25.02.2014. Thus, insofar as this court is concerned, it is bound by the judgment of the Division Bench, *qua* which, both the special leave and review petition, were *dismissed*.

37. The submission of Mr. Oberoi that the petition should be dismissed on account of delay and laches does not impress me. Both the predecessor-in-interest of the petitioner and the petitioner himself had been following-up the matter with the DDA. Though, there may not be an explanation of each day’s delay, the petitioner has, broadly, explained the delay (see *Collector, Land Acquisition, Anantnag and Another versus Mst. Katji and Others*, (1987) 2 SCC 107).

37.1 As noted above, some part of the delay was on account of the dispute which erupted amongst the legal heirs of the deceased Hari Ram. Once this was sorted out, the petitioner made representations to the DDA on 25.02.2015, 01.07.2015, 26.11.2015, 29.02.2016 and 01.02.2018 wherein, *inter alia*, the DDA was requested to consider the case for allotment of plot in the light of the judgment of the Division Bench of this court in *Adarsh Sharma’s* case.

37.2 Concededly, these representations were not dealt with by the DDA.

38. Mr. Oberoi’s contention that the offer made vide letter dated 23.03.1991 for allotment of an alternate plot ad measuring 31.69 sqr.mtrs. was accepted was pivoted on deposit of earnest money by Smt. Bhagwan

Devi and Mr. Ved Prakash.

39. On being queried, Mr. Oberoi was unable to show any acceptance of the offer made by the DDA. The fact that, once again, the earnest money of Rs.3,000/- was deposited pursuant to a letter issued in that behalf would not imply that the petitioner's predecessor-in-interest had given up their claim for allotment of an alternate plot ad measuring 250 sqr.yrds.

40. Given these circumstances, the prayer made in the writ petition will have to be allowed. Accordingly, the impugned letter dated 23.03.2015 to the extent it reduces the plot size from 250 sq.yds. to 40 sq.yds. is quashed.

41. The DDA will allot in favour of the petitioner an alternate plot ad measuring 250 sqr.yrds. in terms of the Scheme. Undoubtedly, the petitioner will have to pay the current rates for the land allotted to him.

42. Since the matter has been pending for a very long period, the petitioner's case for allotment will be considered by the DDA in the mini-draw which follows hereon.

43. The captioned writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 30, 2020

aj