

\$~20

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

+ W.P.(C) 13571/2018

JAI PRAKASH

..... Petitioner

Through Mr.Siddhant Asthana and Mr.Rachit
Batra, Advs.

versus

LAND & BUILDING DEPARTMENT

..... Respondent

Through Mr.Sanjay Kumar Pathak, Mr.Sunil
Kumar Jha and Mr.M.S.Akhtar, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

04.02.2020

1. This writ petition is filed seeking a writ of certiorari to quash the letter dated 11.09.2018 of respondent Land & Building Department, Through its Secretary, Government of NCT of Delhi, and also the Minutes of Meeting held on 11.04.2018 qua the decision of the petitioner's claim whereby the petitioner's claim for allotment of alternative residential plot was rejected.
2. Land measuring 11 bighas 2 biswas owned by Sh.Kuria was acquired by the respondents vide award dated 31.10.1968. Sh.Kuria received the compensation. Sh.Kuria filed an application under section 18 of the Land Acquisition Act, 1984 for enhancement of compensation alongwith other persons in a petition titled 'Ram Singh & Ors. v. Union of India'. Sh.Kuria was unmarried and living with the petitioner. Sh.Kuria executed a Will dated 28.02.1974 in his life time in favour of the petitioner. Sh.Kuria passed away on 28.01.1975 during the pendency of the application for enhancement of compensation.

3. The petitioner moved an application for substitution in the pending proceedings being legal heir of late Sh.Kuria. The application was filed on 23.07.1975 and the same was allowed on 22.11.1978. Compensation was also paid to the petitioner.

4. It is pleaded that there was a policy that the persons whose land was acquired would be given alternative plots besides compensation. The alternative plots were to be given by DDA on the recommendations of the Delhi Administration (now known as 'Land & Building Department, Govt. of NCT of Delhi'). It is stated that the petitioner applied on 04.02.1986 for allotment of an alternative plot and filed an application on the prescribed performa provided by respondent No.1 being a legal heir of late Sh.Kuria.

5. Having applied for allotment of alternative plot, the petitioner kept on waiting for his turn. In 1996, the petitioner came to know that the alternative plot was allotted in the name of late Sh.Kuria. It was also revealed on inquiry that someone impersonated as Sh.Kuria. The petitioner wrote to DDA on 05.12.1996 informing that the petitioner is the legal heir and that DDA has allotted the alternative plot to a wrong person in a fraudulent manner. Thereafter, the petitioner filed a writ petition being W.P.(C) No.7007/1999, title 'Jai Prakash v. DDA & Anr.'. The said petition was disposed of on 07.02.2003. This court issued a mandamus directing the respondents to consider the application of the petitioner as a legal heir of late Sh.Kuria taking into consideration the date of application of the petitioner in accordance with the policy of the respondents for allotment of alternative plot. An appeal being LPA No.784/2003, title 'Delhi Administration v. Jai Prakash & Anr.' was filed by the respondents. The Division Bench in the said appeal on 10.01.2011 passed the following orders:

“14. We note that respondent No.1 has furnished no proof to us that he had submitted any application on 4.2.1986 but counsel claim that he could establish said claim with reference to the record of the appellant and since this would require an adjudication on facts, we dispose of the application by directing the appellant to hear respondent No.1 and look into such record as respondent No.1 desires to determine whether respondent No.1 had filed an application on 4.2.1986. Further, if respondent No.1 establishes having filed an application on 4.2.1986; then admittedly the said application being incomplete would require the same to be treated as a complete application on 5.12.1996 for admittedly on said date respondent No.1 claims to have made good the deficiencies. If respondent No.1 fails to establish having submitted any application on 4.2.1986 then obviously the claim would have to be treated as of 5.12.1996 and in said view of the matter issue of eligibility with reference to limitation would be decided by the appellant. In said situation necessary orders would be passed and needless to state respondent No.1 would be entitled to remedy as per law.”

Hence, the Division Bench modified the order of the Co-ordinate Bench to the effect that there is no proof available that an application was submitted as claimed by the petitioner on 04.02.1986. It noted the claim of the learned counsel for the petitioner that he could establish the contention with reference to the record of the appellant. A direction was passed to the appellant therein (respondent No.1 herein) to pass appropriate orders based on the record that may be submitted by the petitioner.

6. Thereafter, it is the case of the respondents that they have written several letters to the petitioner but have received no response from the petitioner. The respondents passed the impugned order dated 11.09.2018 and noted as follows:

“Respondent through various notices dated 24.05.2016, 22.07.2016, 22.02.2017, 05.09.2017, and 06.03.2018 had given opportunities to the applicant to submit documentary evidence in support that he has filed an application for allotment of alternative plot on 04.02.1986, though he failed to do so.

Thus on the basis of available records on file, which suggest that the applicant only submitted the letter to claim his right on 05.12.1996 and thus in view of order of the Hon'ble High Court the application has to be treated as received only on 05.12.1996, which is beyond the prescribed time limit of one year from the date of compensation i.e. 21.02.1972. Hence, the committee decided that the application for allotment of alternative plot of Sh.Jai Prakash is REJECTED, being time barred.”

7. It becomes clear that the controversy in the present writ petition is narrow. It is the case of the respondents that despite several communications to provide/submit documentary evidence in support of the fact that an application for allotment of alternative plot was made on 04.02.1986, the petitioner has failed to do so. The Committee rejected the application of the petitioner for allotment of alternative plot being time barred.

8. I have heard the learned counsel for the parties.

9. The learned counsel for the petitioner has placed on record two documents, namely, a response to an RTI application dated 27.01.2004 and a copy of the letter dated 02.08.1986 submitting enclosures to the application for alternate plot bearing a stamp allegedly indicating receipt by the office of the respondents. He submits that in view of these documents, it is manifest that the petitioner had moved an application on 04.02.1986 for allotment of alternative plot and hence the application is well within limitation.

10. The learned counsel for the respondents has denied the contention of the petitioner. He submits that RTI response dated 27.01.2004 was available when the Division Bench passed its order on 10.01.2011. It is also pleaded that the manner in which the application dated 04.02.1986 was delivered to the office of the respondents is not stated.

11. I may first note that the impugned order dated 11.09.2018 to the extent it says that no response has been received from the petitioner despite various notices dated 24.05.2016, 22.07.2016, 22.02.2017, 05.09.2017, and 06.03.2018 to the petitioner, appear to be factually incorrect as the responses have been sent by the petitioner to the respondents which are placed on record at pages 146, 149 and 159 of the writ petition. To that extent the impugned order is erroneous. The issue is as to whether the communication dated 04.02.1986 seeking allotment of alternative plot was filed by the petitioner.

12. A perusal of RTI response filed by the petitioner dated 27.01.2004 makes interesting reading. The same reads as follows:

“Kindly refer to your application ID No.77 dated 5.1.2004 on the subject cited above. In this connection I would like to inform you that your application for alternative plot dated 4.2.1986 received from Sh. Kuria/ LR is reported to be misplaced by the Alternative Plot Branch as well as the Record Keeper of the Central Record Room. It may be mentioned that is land matter which is not covered by the Delhi Right to Information Act, 2001.”

13. Hence, as per the said response, it is stated that the application for allotment of alternative plot dated 04.02.1986 as received from Sh.Kuria, is reported to be misplaced by the Alternative Plot Branch. This document clearly admits that the application was received by the respondents.

14. The petitioner has also placed on record a copy of the communication, which is purportedly received on 02.08.1986. The said letter bears a stamp of the office of the respondents and states that the petitioner is submitting his application for allotment of alternative plot in North Zone and has enclosed application form No.250 in duplicate; affidavit; and LR4 attested by the Tehsildar Delhi. It is pleaded that this letter supports the contention that the application had been filed earlier.

15. I may also note that in the writ petition a categorical claim is made that the petitioner had applied for allotment of alternative plot on 04.02.1986. There is no categorical denial about this claim by the respondent.

16. In the above facts and circumstances, I also cannot help noticing that the petitioner has been following up regarding the application dated 04.02.1986. A letter was written to DDA about the fraud done by a third party who was impersonating Sh.Kuria on 05.12.1996. Thereafter, the petitioner has filed a writ petition before this court challenging the inaction of the respondents. This was done in 1999. It is clear that the petitioner has been following up regarding the application for allotment of alternative plot.

17. In my opinion, in the facts and circumstances and based on the two documents placed on record it can be concluded that the petitioner moved an application on 04.02.1986 for allotment of alternative plot. There is no reason to disbelieve this fact.

18. I, accordingly, *set aside* the impugned order dated 11.09.2018 and hold that the petitioner has applied for allotment of alternative plot on 04.02.1986.

19. The respondents are directed to deal with the said application dated 04.02.1986 of the petitioner for allotment of the alternative plot as per law based on the facts. Needful be done within three months from today. I may note that the Division Bench of this court on 18.02.2014 in LPA No.784/2003 had directed the DDA to reserve one plot ad measuring 400 sq.yds in any colony in Delhi.

20. With the above direction, the present petition stands disposed of.

JAYANT NATH, J.

FEBRUARY 04, 2020/v