



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 27th September 2022**

+ **W.P.(C) 2946/2018 & CM APPL. 11838/2018**
VIKAS JAIN Petitioner

Through: Mr. Aditya Kumar Choudhary, Mr.
Gurmejhar Vaan Singh and Mr. M.
Bhardwaj, Advs.

versus

UNION OF INDIA & ORS Respondents

Through: Ms. Saroj Bidawat, Sr. Panel
Counsel with Ms. Priti and Ms.
Anupriya, Advs. for UOI.
Mr. Anupam Srivastava, ASC for
GNCTD with Ms. Sarita Pandey
mand Mr. Dhairya Gupta, Advs.
for R-2.
Ms. Shivani Pruthi proxy for Mr.
Sanjay Dewan, Adv. for R-3.
Mr. Anish Dhingra and Mr. Nakul
Bhuja, Advs. for R-4/DDA.
Mr. Sanjay Kumar Patnaik proxy
for Ms. Rini V. Tigga, Adv. for R-
5/LAC

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India
has been filed on behalf of the petitioner seeking the following reliefs:-

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“a) issue a writ, order or direction in the nature of mandamus directing the Respondents to allot an alternative plot to the petitioner in pursuance of the application submitted by the late grandmother of the Petitioner;

b) issue a writ, order or direction in the nature of certiorari thereby quashing the letter/order No. F.30/5/1/95/Alt./L&B/4026 dated 19.06.1998;

c) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper on the facts and circumstances of the present case and to meet ends of justice.”

2. The facts of the case reveal that vide Notification dated 13th November 1959, the plots situated in Village Gharonda Neemka Bangar, wherein the plot of Smt. Parbhavati, grandmother of the petitioner, and his predecessor-in-interest (hereinafter “applicant”) was also situated, were acquired vide Award 6-C/71-72. The said plot was bestowed upon the petitioner by virtue of the Will of his grandmother dated 4th October 1988. The compensation in lieu of the acquisition was paid to the predecessor-in-interest to the tune of Rs. 1207.31/- on 26th October 1994.

3. The petitioner’s predecessor-in-interest applied for allotment of alternative plot in lieu of acquisition of his land under the Scheme dated 2nd May 1961 for “Large Scale Acquisition Development & Disposal of Land in Delhi” (hereinafter “Scheme of 1961”) vide application No. 000232 dated 9th May 1995, which was pursued by the petitioner herein.



4. On the said application, the letter dated 19th June 1998, bearing No. F.30/5/1/95/ALT/L&B/4026 was received by the applicant vide which her case for allotment of an alternative plot was rejected on the ground that she was not the recorded owner in the land records prior to the issue of notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter “LA Act”).

5. Upon receiving the rejection letter, the applicant made her representation to the Land & Building Department vide communication dated 2nd July 1998, however, no response was received by her or, after her death, by the petitioner herein.

6. The petitioner is before this Court aggrieved by the order of rejection dated 19th June 1998 and is also seeking a writ of Mandamus to the respondents for allotment of alternative plot in his favour in lieu of acquisition of the aforesaid land bestowed upon him.

7. Learned counsel appearing on behalf of the petitioner submitted that the order passed by the respondents was illegal, arbitrary and bad in the eyes of law. It is submitted that the applicant was the legal owner of the plot admeasuring 300 sq. yards situated in Village Gharonda Neemka Bangar at the time of issuance of the Notification dated 13th November 1959 under Section 4 of the LA Act as well as at the time of issuance of the Notification under Section 6 of the LA Act. The applicant was also in legal possession of the said plot at time of acquisition which she purchased from the Delhi Housing Company on 10th February 1959,



which was much prior to the issuance of notification dated 13th November 1959.

8. It is further submitted that the applicant furnished all documents such as ownership of the property, payment receipts and registered deed, with an affidavit stating that she had no plot or house within the territory of Delhi but the respondents failed to consider the same at the time of her application for allotment of alternative plot, whereas the same documents were considered for awarding compensation. It is further submitted that the error is on the part of the respondents who failed to maintain and update the records of the land.

9. Learned counsel for the petitioner, therefore, submitted that the rejection letter dated 19th June 1998 is bad in law and is liable to be set aside.

10. *Per Contra*, learned counsels appearing on behalf of the respondents vehemently opposed the instant petition and the submissions made on behalf of the petitioner and submitted that the rejection order dated 19th June 1998 was passed in accordance with the law and the Scheme of 1961.

11. It is submitted on behalf of the respondent no. 3 that there is an inordinate delay of 20 years in filing of the instant petition and assailing the order of rejection of allotment of alternative plot. Therefore, at the very outset the petition is barred by limitation.



12. It is further submitted that the case of the applicant was considered by the committee constituted for allotment of alternative plot and the same was considered and rejected on the ground that the applicant was not the recorded owner in the land records prior to issue of notification under Section 4 of the LA Act. As per the policy, the petitioner was not found entitled for allotment of alternative plot.

13. It is submitted that as per the Scheme of 1961, the landowner whose land is acquired for planned development of Delhi can be considered for allotment of alternative plot subject to the conditions laid therein. Accordingly, the applicant had to satisfy the foremost condition of being the recorded owner of the acquired land prior to the date of Section 4 notification of the LA Act. Reliance has been placed upon ***Ramanand vs. Union of India* 1993 SCC OnLine Del 397** to submit that the land owner whose land is acquired does not have the vested right to seek allotment of alternative plot in view of the law laid down and he is only entitled to be considered for such allotment if he satisfies the other conditions. The purpose of the said policy is to provide one residential plot to the person, who is in need of the same.

14. It is, therefore, submitted that there is no illegality or error in the impugned rejection order passed on the application for allotment of alternative plot and hence, the instant petition is liable to be dismissed for being devoid of merit.

15. It is submitted on behalf of the respondent no. 4 that the DDA makes allotment of alternative plot in those landowners' favour who are



recommended to it by the Land & Building Department and since no recommendation was made to it regarding the case of the petitioner and his predecessor-in-interest, DDA has no role to play.

16. Heard learned counsel for the parties and perused the record.

17. At the very outset, it is pertinent to outline the scope of writ jurisdiction under Article 226 and 227 of the Constitution of India while examining and adjudicating upon an impugned order.

18. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

19. The Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran***, (2015) 2 SCC 610, elaborating upon the extent of exercise of writ jurisdiction, held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:



- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be:”*

20. Further, the Hon’ble Supreme Court in ***Sarvepalli Ramaiah vs. District Collector, Chittoor, (2019) 4 SCC 500***, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-

“41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the



decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.”

21. Further in ***Sanjay Kumar Jha vs. Prakash Chandra Chaudhary, (2019) 2 SCC 499***, the following observations were made by the Hon’ble Supreme Court:-

“13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case....”

22. The law, as has been interpreted by the Hon’ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law and the contents of impugned order dated 19th June 1998 to see whether there is any gross



illegality or error apparent on record in the same.

23. The respondent no. 3, while passing the impugned order dated 19th June 1998 noted that the applicant was not the recorded owner of the concerned land prior to the issuance of the Notification published notifying its acquisition. The contents of the order are reproduced hereunder:-

“With reference to your application dated 09.05.95 for allotment of alternative plot, I am directed to inform you that your case was considered by the committee constituted for recommendation of alternative plots and rejected on the ground that you were not the recorded owner in the land records prior to issue of notification Under Section 4 of the Land Acquisition Act.”

24. The sole ground taken by the respondent no. 3 while rejecting the application of allotment of alternative plot was that the applicant was not the recorded owner of the land acquired prior to the issuance of the Notification under Section 4 of the LA Act.

25. To examine the validity of the ground taken by the respondent no. 3 while rejecting the application of the petitioners' predecessor-in-interest, the objectives and the background of the Scheme of 1961 may be analysed.

26. The Scheme for Large Scale Acquisition Development & Disposal of Land in Delhi, which came into force on 2nd May 1961 and has been modified from time to time, not only provided for measures for controlling value in urban areas but also largely regulated the conditions stipulated for acquisition, development and disposal of land.



27. The objective of the Scheme of 1961 suggests as under:

“The scheme of providing developed residential plots to farmers whose lands are acquired for planned development of Delhi is a rehabilitation measure”

28. This objective has also been reiterated by this Court as well as the Hon’ble Supreme Court in various cases. A coordinate bench of this Court in ***Jai Singh Kanwar vs. Union of India, 2008 SCC OnLine Del 492***, made the following observations:-

“7.2 Giving its imprimatur to the policy the Full Bench in Shiv Devi Virley explained the rationale for the policy was to see that the population of Delhi is properly housed and has the means for acquiring residential houses and further that if a person has bought a residential plot privately and the State chooses to acquire that land at a very meagre price, then surely it is the duty of the State to give an alternative plot at a moderate price to those persons who have been deprived of possible residential houses, which they could have constructed on the land they have acquired”

29. Further, in ***Surender Singh Mann vs. Government of NCT of Delhi, W.P.(C) 12306/2015***, decided on 25th August 2017, a Coordinate Bench of this Court observed as under:-

“7 At this stage, it would also be useful to extract the eligibility criteria of the Government which had been approved by the Government of NCT of Delhi in the year 1961 dealing with allotment of alternate plots. The object of the scheme reads as under:-

“The scheme of providing developed residential plots to farmers whose lands are acquired for



planned development of Delhi is a rehabilitation measure”

8 *The object thus clearly being to provide developed residential plots to farmers whose land had been acquired for the planned development of Delhi; this being a rehabilitative measure.*

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12 *The Policy of the Government as is evident from the scheme was to provide residential plots to farmers whose land had been acquired; it was a rehabilitative measure; meaning thereby that it was to rehabilitate those farmers whose land had been acquired as they had become homeless or landless.”*

30. Hence, it is evident that the Scheme of 1961 was introduced as a means to provide for those whose land is acquired for the purposes of development and to ensure that such persons are not rendered homeless or landless in the event of such acquisition. However, this is not an absolute right which the person handing over possession upon acquisition may have. The Scheme for alternative plot does not confer a direct and absolute right to any person whose land is acquired. The Scheme provides for conditions under paragraph 10, which were updated and modified with time and as per requirements. These conditions acted as eligibility criteria for the land owners whose lands were acquired and who became entitled to be considered for allotment of alternate plot, subject to the conditions laid.

31. These conditions which stood under paragraph 10 of the Scheme are reproduced hereunder:-



“10. The following conditions shall govern the allotment of land whether by auction or otherwise to individuals (including those whose land has been acquired):

a) No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot of land in Delhi, New Delhi or Cantonment. The question of making an exception in the case of persons living in a congested locality or whose family has out-grown should be considered after some experience has been gained of the working of the scheme.

b) The allottee of a plot should be required to construct the house in accordance with the sanctioned plans within two years of the date of allotment, failing which the land would be liable to be resumed.

c) The allottee of a plot shall not sell or transfer his rights in the plot or part thereof for a period of 10 years from the date of allotment except with the previous approval of the Chief Commissioner which will be given only in exceptional circumstances. Thereafter the permission to sell will be given to the Chief Commissioner. In both the cases, 50% of the unearned increase in the value of the plot will be paid to the Government before the transfer is permitted.....”

32. With subsequent amendments and modifications in the successive years, the Scheme ultimately provided for the following eligibility criteria for allotment of alternate plot:-

“1. The persons who are RECORDED OWNER prior to issue of notification under Section 4 of the Land Acquisition Act.



2. The persons whose lands have been acquired must have received the compensation as rightful owners from the LAC/Court and the Govt. has taken the possession of acquired land.

3. The applicants should not own a house/residential plot/flat out of village abadi in his/her dependent relation's name including unmarried children, nor he should be a member of any Co-operative Housing Society.

4. For awards announced prior to 3.4.86, the land acquired is not less than 150 square yards and for awards announced post 3.4.86, the land must not be less than one bigha."

33. Further, a Division Bench of this Court in ***Government of NCT of Delhi vs. Veerwati, 2012 SCC OnLine Del 1444***, and its connected LPAs, held that there are four requisite conditions for consideration while filing and adjudicating the application for allotment of alternative plot. The relevant portion of the judgment is reproduced hereunder:-

"3. In the year 1961 the Government formulated the scheme for allotment of alternate plots to those land owners whose land is acquired for planned development of Delhi and the land so acquired is placed at the disposal of the DDA. The allotment of alternate plot under this policy was subject to his satisfying, beside others, following conditions:—

a) The application must have been filed within a period of one year from the date of receipt of the compensation.

b) He should be recorded owner of the acquired land prior to the date of issuance of the Notification under Section 4 of the Act.



c) He must have received the compensation for the said land as a rightful owner and the possession of the acquired land has been taken by the Government.

d) Neither he nor his spouse nor any of his dependent children own any residential property in Delhi.”

34. The same have also been reiterated by a Division Bench of this Court in ***Ranjeet Singh vs. Govt. (NCT of Delhi)*, 2017 SCC OnLine Del 10794**, wherein it was observed as under:-

“10. DDA issued a printed version of the alternative plot allotment scheme outlining eligibility criteria and the norms for the sizes of plots, the procedure to be followed etc. Significantly, a reference was made to the Scheme contained in the letter of the Government of India dated 02.05.1961. It also stated that the plots are allotted by the DDA on the recommendation of the Govt. of NCT in terms of policy prescribed by the latter. There was a stipulation that those eligible, in the case of acquisition of ancestral land had to be recorded owners before the issue of the Notification under Section 4 of the Act. There was a condition that such individuals should have received compensation as rightful owners and possession of such land should have been taken by the Govt. of NCT of Delhi. The disqualifying condition stipulated was that applicants should not own a house or residential plot in their own name or name of the near and dependent relations. For awards announced prior to 03.04.1986, the land acquired was to be not less than 150 sq. yards and for post 03.04.1986 awards, it was to be not less than 1 bigha. Under the sub-heading procedure followed by the Department, there were two columns for



documents to be submitted. The first was in case of applicant being recorded owner at the time of Notification under Section 4 of the Act. The other column was if the applicant was not recorded owner, i.e. is one of the legal heirs of the deceased recorded owner. In the latter case, in addition to the documents required to be submitted by the applicants belonging to the first category, certain other documents like death certificate, heirship certificate, relinquishment deed of other legal heirs and indemnity bond have to be submitted.

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23. The scope of the scheme and its raison d'être is explained in its object clause which inter alia says that it is to benefit "farmers whose lands are acquired for planned development of Delhi is a rehabilitation measure". The eligibility conditions no doubt stipulated that for ancestral lands, the concerned landowner should have been a recorded owner and in the case of transferred lands, the owner should have acquired them five years before the notification for acquisition, through a regular deed and should have mutated the property in his or her favour. There are also provisions that clearly state that if lands or houses are in the name, unacquired, in favour of the land owner, that would not be a bar for application for alternative plots."

35. The conditions stipulated as above have stemmed from the Scheme of 1961 and its subsequent amendments and hence, have to be given foremost importance while making an application for allotment of alternative plot and while its consideration by the concerned authority. Evidently, the condition of the applicant being a recorded owner of the plot in question prior to the issuance of notification under Section 4 of



the LA Act is a condition which finds mention in the first notified Scheme as well as its modified versions and has also been reiterated by the Division Benches. Therefore, there is no doubt that it is one of the crucial and indispensable condition which needs to be fulfilled while making/considering an application for allotment of alternative plot.

36. In the instant matter, the applicant was not found to be the recorded owner of the plot which was acquired by the respondent no. 3. On the contrary, it is the case of the petitioner that the applicant had purchased the land in question on 10th February 1959 by executing a sale deed. The eligibility criterion for allotment of alternative plot has been clarified by the Division bench of this Court in ***Ranjeet Singh (Supra)***.

37. As per the Scheme, for cases where the ancestral lands are acquired for the purposes of development, the applicant whose land is so acquired should be a recorded owner of the same. In the case at hand, admittedly, the land in question was not the ancestral property of applicant/ predecessor-in-interest of the petitioner. Therefore, to this extent the Scheme of 1961 was not applicable to the applicant.

38. The second situation which remains after ineligibility of the applicant for the reason of the land in question not being her ancestral property, is ascertaining her right, entitlement and eligibility keeping in view the rights of the individuals in cases for transferred properties. To this aspect, the Division Bench in ***Ranjeet Singh (Supra)*** noted that where the land acquired is not an ancestral land and the landowner is not the recorded owner of such property but has had the same transferred in



his name, such transfer by way of regular deed, should be executed five years prior to the notification for acquisition of land and be mutated in his favour, for him to be eligible for allotment of alternative plot. The petitioner herein claims that the applicant had purchased the land in question much prior to the Notification dated 13th November 1959 was issued, however, even to his claim the same was purchased only on 10th February 1959, i.e, merely nine months prior to the issuance of the Notification. Therefore, in this expansive interpretation and difference in applicability of conditions in case of ancestral property and transferred property too, the case of the applicant did fall under the Scheme of 1961 and the conditions laid therein.

39. The petitioner has also contended that compensation for plot acquired was provided to the applicant which showed that she was the rightful owner of the plot so acquired, however, the background and objective of the Scheme shows that measures like providing compensation or an alternative plot in lieu of acquisition are welfare measures for those whose lands are acquired for development purposes and to ensure that they are not rendered landless, remediless or without any relief upon such acquisition. Even the Award in favour of the predecessor-in-interest of the petitioner was in the nature of an interim and immediate welfare and relief measure to accommodate her sustenance till the time she was re-placed.

40. Hence, in light of the conditions laid down under the Scheme of 1961, the eligibility criteria interpreted by the larger benches of this



Court and after examining the case of the petitioner, without conducting a roving inquiry into the facts and evidence of the case, it is found that the claim of the applicant for allotment of alternative plot was rightly rejected by the respondents. There is no error apparent on the face of record or any gross illegality in the order passed by the concerned authority after scrutiny of the applicant's case on merits.

41. Furthermore, in the instant case, as is evident from the record, the petitioner approached the Court in the year 2018 after having the application for allotment of alternative plot rejected on 19th June 1998 and it is a well-known principle that delay defeats equity - "*Vigilantibus non dormientibus aequitas subvenit*" which means that equity assists the vigilant and not those who sleep on their rights. There is an unreasonable delay in bringing forth a claim by the petitioner which in itself is a major hurdle in granting relief to the claimant, especially when the delay is substantial, i.e, of 20 years.

42. Keeping in view the facts and circumstances, the submissions on behalf of the parties, contentions made in the pleadings, as well as observations and discussions in the foregoing paragraphs, this Court finds that the impugned rejection order dated 19th June 1998 does not warrant any interference from this Court since there is no cogent reason to set aside the same.

43. Accordingly, the instant petition is dismissed for being devoid of merits. Pending application, if any, also stand disposed of.



44. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 27, 2022

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