



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

% **Date of order: 12th September, 2022**

+ **W.P.(C) 1470/2021**

MAHABIR PRASAD Petitioner

Through: **Mr. B.R. Sharma, Advocate**
(through VC)

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: **Mr. Yeeshu Jain, Standing Counsel**
with **Ms. Jyoti Tyagi, Advocate for**
R-1 alongwith **Mr. Sameer**
Vashisht, ASC (Civil) for GNCTD
with **Ms. Sanjana Nangia,**
Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“1. Directing the respondents to allot the alternate plot to the petitioner.

2. Quash the impugned Order dated 18/03/2020 Annexure P-1 as passed by the respondent Government.



3. To award the cost of the petition.

4. Any other relief which the Hon'ble court deem fit and appropriate in the facts and circumstances of the case may please be passed in favor of the petitioner."

2. The entire agricultural land of the petitioner, ad-measuring 11 Bighas 17 Biswas in Khasra No. 16/18/2(2-03), 19/1 (3-18), 22/2 (3-15), 23/1 (2-01) in Village Mundka, Delhi was acquired by the respondent under the Land Acquisition Act, 1894, vide award No.3/DCW/2005-06 dated 27th January 2006 and possession of the same was taken by the respondent on 20th January 2007.

3. The petitioner applied for allotment of alternative plot under the Scheme dated 2nd May 1961 for "Large Scale Acquisition Development & Disposal of Land in Delhi" (hereinafter "Scheme of 1961") vide application dated 10th December 2017 which came to rejected by the respondent vide impugned Order F. No. 31(61)\23\2007\L&B\Alt\1652 dated 18th March 2020 on the ground that his entire land was not acquired.

4. The petitioner is aggrieved by the said rejection order.

5. Learned counsel appearing on behalf of the petitioner submitted that the respondent has allotted the alternative plot to the farmers of Village Mundka, Delhi where the land of the petitioner also situates which was acquired by the Government of NCT/ Respondent. Hence, the petitioner is also entitled for the allotment of the alternative plot on the ground of parity.



6. It is submitted that the finding of the respondent that the entire agricultural land of the petitioner has not been acquired and the petitioner is still in possession of agriculture land is factually incorrect, without any basis or record. It is submitted that the entire agricultural land of the petitioner has been acquired by the respondent Government and no agricultural land of the petitioner is left unacquired. Hence, the ground taken by the respondent in the impugned order is erroneous and not sustainable in the eyes of the law.

7. *Per Contra*, learned Standing Counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that there is no error in the impugned order passed by the respondent while rejecting the application of the petitioner for allotment of alternative plot.

8. Reliance has also been placed upon ***Ranjeet Singh vs. Government of NCT of Delhi, LPA 173/2017*** decided on 27th September 2017.

9. As per the report of the Halqa Patwari, the entire land of the petitioner was not acquired and hence, he was not rendered landless upon acquisition of his land. In light of the above finding, he was not eligible and entitled for allotment of alternative plot as per the Scheme of 1961. It is submitted that the instant petition is, therefore, liable to be dismissed.

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

11. 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. 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 18th March 2020. Now, it is deemed significant to examine the objective of introduction of the Scheme of 1961 and the provisions for alternate plot in lieu of acquisition.

12. The subject matter of the Scheme of 1961 was '*Control of land values in the Urban Areas of Delhi- Acquisition, development and disposal of land*' which came into force on 2nd May 1961 and has been modified from time to time. The Scheme for Large Scale Acquisition Development & Disposal of Land in Delhi 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.

13. 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"



14. 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 Viriley 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”

15. 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.”

16. In ***State of M.P. vs. Narmada Bachao Andolan***, (2011) 7 SCC 639, the Hon’ble Supreme Court elaborated on the general principle and provisions for rehabilitation and observed as under:

“Land acquisition and rehabilitation : Article 21

26. It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.

27. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of



employment, housing, investment opportunities, and identification of alternative lands.

“10. ... A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.” (Mahanadi Coalfields Ltd. case [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] , SCC p. 273, para 10)

For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide State of U.P. v. Pista Devi [(1986) 4 SCC 251 : AIR 1986 SC 2025] , Narpat Singh v. Jaipur Development Authority [(2002) 4 SCC 666 : AIR 2002 SC 2036] , Land Acquisition Officer v. Mahaboob [(2009) 14 SCC 54 : (2009) 5 SCC (Civ) 297] , Mahanadi Coalfields Ltd. v. Mathias Oram [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] and Brij Mohan v. HUDA [(2011) 2 SCC 29 : (2011) 1 SCC (Civ) 336] .) The fundamental right of the farmer to cultivation is a part of right to livelihood. “Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.” India being a predominantly agricultural society, there is a “strong linkage between the land and the person's status in [the] social system”.

17. 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.

18. The relevant portion of the impugned order dated 18th March 2020 is reproduced hereunder:-

“Whereas, the Scrutiny Committee had examined the case on the basis of available record and the government guidelines. In the matter, a report from concerned Halka Patwari was called and placed before the committee. As per the report of Halka Patwari the entire land of applicant was not acquired. Unacquired agriculture land was remaining in the name of Applicant.

Whereas, the Hon'ble Supreme Court in the judgement in Civil Appeal No. 8289/2010, 8290/2010 of Delhi Development Authority Vis. Jai Singh Kanwar has held that "the object of the scheme is that when the land owned by a person is taken away in entirety and he is left without any house or plot, he should be allotted a plot. The Scheme therefore provided that only a person who does not own a house/residential plot/flat will be entitled to apply.”

Whereas, the Hon'ble High Court of Delhi in WP© no. 12306 /15 titled as Sunder Singh Mann V/s Govt. of NCT of Delhi decided on 25.08.2017 that “The policy of the Government as is evident from the scheme was to provide residential plots to farmers whose land has been acquired. It was a rehabilitative measure; meaning thereby that it was to rehabilitate those farmers whose land has been acquired as they have become homeless or landless. In the instant case the applicant was not homeless or landless.



In view of the Government Guidelines/Hon'ble Supreme Court order/Hon'ble High Court order mentioned above, documents/records placed on the file the Scrutiny Committee has decided not to recommend the case of Sh. Mahavir Parsad S/o Sh. Karan Singh and therefore, the recommendation or Scrutiny Committee and the record on file has been considered by the Recommendation Committee and it is decided to reject the case for allotment of alternative plot.”

19. Upon perusal of the impugned order, it is found that the respondent while passing the impugned order observed that the entire land of the petitioner was not acquired, as was reported by the Halqa Patwari. While the petitioner has challenged the ground taken by the concerned authority while rejecting their applications, he has failed to place on record any document or other pleading to show that their entire land was acquired and an Award to that effect was also announced. The question whether or not the entire land of the petitioners was acquired remains a disputed question of fact which, as discussed above, cannot be adjudicated upon under the writ jurisdiction of this Court. The respondent while passing the order took into consideration the report of the most competent authority for the ground in consideration, which was the Halqa Patwari and relying upon his report passed the impugned order.

20. 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.



21. 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.....”

22. The 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.”

23. 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:-

“3. Clause 10 stipulated further conditions for allotment of alternative plots to individuals. These were:



(i) that the person being allotted the alternative plot should not own any other residential plot in Delhi,

(ii) that a building should be constructed thereon within two years of the allotment and thirdly that the plot cannot be transferred for a period of ten years from the date of allotment except with the permission of the Chief Commissioner.

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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.”

24. The conditions stipulated in this matter 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.

25. An examination of the objective of the Scheme read with the observations made in the abovementioned judgments of the Hon'ble Supreme Court as well as this Court, definitively and unambiguously indicate that the Scheme of 1961 is targeted to those individuals, villagers, farmers etc. who may be rendered homeless or landless upon their land being acquired by the Government, or any Authority under it, for the purposes of development. The very structure of the Scheme suggests that it is a welfare and rehabilitative measure for those affected by the actions taken in the process of development of the State of NCT of



Delhi. Being considered for compensation, whether monetary or in the form of alternate plot, is an entitlement which is available to individuals who fulfil the criteria provided for under the Scheme. Those who lose their homes or their agricultural lands, that are the only source of their livelihood, are the custodians of schemes like these and rightly so need to be facilitated as soon as possible. Such individuals, owners, villagers, farmers and their families cannot and should not be left remediless after their land is acquired. However, it should also be borne in mind that in garb of such welfare schemes, those who have alternative and effective means of sustaining a life do not take unfair advantage of the schemes and welfare provisions of the Government and its Authorities. Keeping in mind the objective of the Scheme, it is found that enforcing an eligibility criterion for consideration of application of allotment of alternate land is not unreasonable or unfair and is in fact required for ensuring that the active and effective measures reach those who are in need.

26. Keeping in view the aforesaid facts and circumstances, this Court finds that the concerned authority appreciated the facts and record before it in light of the established principles of law and in accordance of the scheme of provisions and conditions under the Scheme of 1961. With the modifications brought about in the Scheme over the course of time, the bar to allotment of alternate land to those who have a plot/land/flat in their name or in the name of their dependents etc. has remained a part of the Scheme throughout.

27. Accordingly, the instant petition is dismissed since this Court does not find any cogent reason to interfere with the impugned order F. No.



NEUTRAL CITATION NO: 2022/DHC/003694

31(61)\23\2007\L&B\Alt\1652 dated 18th March 2020.

28. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 12, 2022
dy/ms

