



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

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Reserved on: 1st June, 2022

Pronounced on: 25th August, 2022

+ W.P.(C) 2791/2020

SHRI NARESH KUMAR

..... Petitioner

Through: Mr. Anand Yadav and Mr.
Pradyumn Rao, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC
with Mr. Kamal Digpaul
and Ms. Swati Kwatra,
Advocates for R-1/UOI Mr.
Rishikesh Kumar, ASC with
Ms. Sheenu Priya, Advocate
for R- 3/SDM(HQ)

+ W.P.(C) 2812/2020

SHRI SUBE SINGH

..... Petitioner

Through: Mr. Anand Yadav and Mr.
Pradyumn Rao, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC
with Mr. Kamal Digpaul
and Ms. Swati Kwatra,
Advocates for R-1/UOI Mr.
Rishikesh Kumar, ASC with
Ms. Sheenu Priya, Advocate
for R- 3/SDM(HQ)



+ W.P.(C) 2816/2020

SHRI DAYANAND

..... Petitioner

Through: Mr. Anand Yadav and Mr.
Pradyumn Rao, Advocates

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr. Ajay Digpaul, CGSC
with Mr. Kamal Digpaul
and Ms. Swati Kwatra,
Advocates for R-1/UIO
Mr. Rishikesh Kumar,
ASC with Ms. Sheenu
Priya, Advocate for R-
3/SDM(HQ)

+ W.P.(C) 2817/2020

SHRI PHOOL SINGH UDAR

..... Petitioner

Through: Mr. Anand Yadav and Mr.
Pradyumn Rao, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC
with Mr. Kamal Digpaul
and Ms. Swati Kwatra,
Advocates for R-1/UIO
Ms. Shobhana Takiar,
Standing Counsel for R-
2/DDA Mr. Rishikesh
Kumar, ASC with Ms.
Sheenu Priya, Advocate
for R- 3/SDM(HQ)



CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil writ petitions will be disposed of by way of this common judgment. The petitions have been filed under Article 226 of the Constitution of India on behalf of the petitioners, seeking writ, order or direction to quash and set aside rejection/impugned orders/letters issued on their applications for allotment of alternative plots by the respondent no. 3/SDM concerned. The petitioners are further seeking directions to the respondents for allotment of residential plot in lieu of acquisition of their land acquired under the provisions of the Delhi Development Authority Act, 1957 (hereinafter "DDA Act"). The details of the corresponding writs and the rejection/impugned orders/letters are listed hereunder:-

S.No.	W.P. (C) No.	Rejection/Impugned Letter No.	Date of Rejection Letter
1.	W.P.(C) 2791/2020	F.No.31(55)/199/2003/L&B/ Alt/4064/79005	4 th November 2019
2.	W.P.(C) 2812/2020	F.No.31(55)/63/2003/L&B/ Alt/SDMHQSW/1309	6 th May 2019
3.	W.P.(C) 2816/2020	F.No.31(55)/199/2003/L&B/	4 th November 2019



		Alt/4061/78989	
4.	W.P.(C) 2817/2020	F.No.31(55)/199/2003/L&B/ Alt/4063/79000	4 th November 2019

FACTUAL MATRIX

2. The petitioners were the owners of land admeasuring in Revenue Estate of Village Dhool Siras, Delhi. A public notice was issued intimating and inviting objections to change the use from rural to residential/commercial zone of land admeasuring 1996 hectares bounded by Oil pipe line in North East, Rewari Railway Line in South East, Bijwasan Road in South and Najafgarh Drain in West and Najafgarh Road in North which included the area of Revenue Estate of Village Dhool Siras.

3. The respondents acquired the land under the provisions of the DDA Act and vide Notification no. F10(30)/96/L&B/LA/13417 dated 13th December 2000 was issued under Section 4 of the Land Acquisition Act, 1894 with respect to the area of Village Dhool Siras. Possession of the said land was taken over by the Land Acquisition Collector (hereinafter “LAC”) and handed over to DDA on 20th August 2002 before the Award in lieu of the acquisition was notified. Subsequently, on 24th October 2002, Award No. 27/2002-2003 was announced by the LAC and the awarded market value for Block A and Block B was valued at Rs. 13.82 lakhs per acre and Rs. 12.32 Lakhs per acre, respectively. Compensation in lieu of the acquisition of land was paid to the petitioners by the DDA.



4. Thereafter, the petitioners applied to the Land & Building Department, Government of NCT of Delhi, for allotment of an alternative plot for the land acquired by the DDA, vide application dated 30th June 2003 by petitioner Naresh Kumar, 29th April 2003 by petitioner Sube Singh, 13th November 2003 by petitioners Dayanand and Phool Singh. In the meantime, while the concerned LAC was neither sanctioning nor rejecting the applications of the petitioners for alternative residential plot, they, along with other villagers, filed W.P. (C) 5553/2008 seeking directions to the respondents to sanction plot in the name of the petitioners therein. The said writ was disposed of with liberty to the petitioners for seeking remedy against the respondents with the observation that the requests of the petitioners were already decided by the respondents.

5. Vide letter dated 6th May 2019 and 4th November 2019, the petitioners' applications for allotment of residential plot were rejected, relying upon the Scheme of DDA for allotment of alternative plot and '*Control of land values in the Urban Areas of Delhi- Acquisition, development and disposal of land*' dated 2nd May 1961 (hereinafter "Scheme of 1961") and subsequent decisions with respect to the Scheme as well as citing the reason that the entire land of the petitioners was not acquired. The petitioners are before this Court assailing the rejection orders/letters issued by respondent no. 3.

SUBMISSIONS

6. Learned counsel appearing on behalf of the petitioners submitted that the impugned orders/letters dated 6th May 2019 and 4th November



2019 rejecting the applications of the petitioners for allotment of alternative land was passed without application of mind and on the grounds that the respective wives of the petitioners already owned a plot in their name on the date when application for allotment was made and that as per report of the Halqa Patwari, the entire land of the petitioners was not acquired as certain part remains in Lal Dora.

7. It is vehemently submitted that the wives of the petitioner did not acquire any plot/flat/house in Delhi and neither did the respondents disclose any details of the plot allegedly acquired. The respondents failed to produce any documents or even furnish the address or other details pertaining to the alleged plot/property in the name of the respective wives of the petitioners.

8. It is submitted that in the orders dated 4th November 2019, the respondents have rejected the application of the petitioners relying upon the judgments of ***Delhi Development Authority vs. Jai Singh Kanwar C.A. No. 8289/2010*** decided on 14th September 2011 and ***Surender Singh Mann vs. Government of NCT of Delhi W.P.(C) 12306/2015*** decided on 25th August 2017, however, the same are not applicable in the facts and circumstances of the case of the petitioners. It is submitted that the judgment of ***Jai Singh Kanwar (Supra)*** is in two parts i.e. (i) entire land is not acquired and (ii) that an applicant should not own a house/residential plot in village *abadi*. As far as first part is concerned, same is based on circular issued by Delhi Administration, stating that if possession of 80% awarded land is not taken then an alternative plot will not be allotted. In case of the petitioners, entire agricultural land was



notified, awarded and taken possession of. As far as second part is concerned, DDA and Delhi Administration played a fraud and instead of “*out of village abadi*”, as mentioned in the policy, they claimed “*in village abadi*”. The said condition is contrary to the alleged policy of respondents.

9. The petitioners were holding the part of agricultural land as detailed hereunder:-

- a. Naresh Kumar- 80 bighas 1 biswa ($1/7^{th}$ share)
- b. Sube Singh- 72 bighas 4 biswa ($1/7^{th}$ share)
- c. Dayanand- 87 bighas 4 biswa ($1/6^{th}$ share)
- d. Phool Singh Udar- 72 bighas 4 biswas ($1/6^{th}$ share)

Learned counsel for the petitioners submitted that the rejection orders/letters stated that the entire land of the petitioners was not acquired, however, the petitioners were the owners of agricultural land, as aforementioned, which were lands outside Village *abadi* and the entire land outside Village *abadi* was notified for acquisition. It is submitted that Award was announced and possession of entire land of the petitioners was taken for which compensation was also paid to the petitioner. Therefore, the said ground is unsubstantiated and without merit.

10. It is submitted that the application for allotment of alternative plot was made by the petitioners in 2003 while they were rejected only in the year 2019. There is a substantial delay of 16 years in deciding the



application of the petitioner which shows the *mala fide* intention on the part of the respondents. It is submitted that the grounds for rejecting the application for the alternative plot allegedly existed at the time of filing of the application and hence, there is no reasonable explanation for delaying the decision on the applications of the petitioners.

11. It is submitted that the provisions of the Land Acquisition Act, 1894, as well as DDA Act, are clear that if land of a person is required for the purpose of development of Delhi, then such person has the entitlement to an accommodation suitable to their reasonable requirements. The learned counsel for the petitioners relied especially on Section 21 of the DDA Act which stipulates that persons who may be living or carrying out business etc. on the land acquired by the DDA, will be eligible to obtain accommodation, on the land belonging to the DDA or other local Authority, suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them. It is submitted that Hon'ble Supreme Court in ***State of UP vs. Smt. Pista Devi AIR 1986 SC 2025***, held that Section 21 of the DDA Act contains a wholesome principle which should be followed by all development authorities throughout the country while acquiring large tracks of land for purposes of development in urban areas. It is submitted that despite such observations, the respondents did not abide by the terms and conditions laid down under the Act.

12. It is submitted that although the petitioners have a right of allotment of land out of the land acquired by the respondents under Section 21 of the DDA Act, however, without prejudice to the said



contention it is submitted that even otherwise in view of the Rule 6, Rule 12 and Rule 17 of Nazul Land Rules, 1981 (hereinafter “Nazul Rules”), it is also made obligatory on the DDA to allot plot out of Nazul Lands to the persons whose land has been acquired at pre-determined rate. It is submitted that in order of priority, the individuals whose land has been acquired for Planned Development of Delhi after 1st January, 1961 rank highest and it is immaterial whether such persons are owning land and their entire land has not been acquired or they own land inside *abadi*/Lal Dora.

13. Learned counsel for the petitioner submitted that it is no more *res integra* that a Section will prevail on a Rule and Rule will prevail on a Policy. Hence, Section 21 of the DDA Act would prevail while deciding the case of the petitioners over the Scheme of 1961 pertaining to control on land value in urban areas of Delhi acquisition, development and disposal of land.

14. It is submitted that villagers and plot owners in the same Village, and being similarly placed as the petitioners herein, have been allotted alternative plots in lieu of their land being acquired. The respondents have been picking and choosing to give benefits to the owners of the property whose lands have been acquired, including those who own land inside Village *abadi* and whose entire lands were not acquired. Such actions of the respondents are not only discriminatory but also illegal and arbitrary.

15. It is submitted that in light of the position of law as well as the contentions raised above, the impugned letters dated 6th May 2019 and 4th



November 2019 are liable to be quashed for being passed arbitrarily without application of mind and in contradiction to the provisions of law.

16. After being given several opportunities to the respondents, they opted not to file a counter affidavit in response to the petition. However, the respondent no. 3 has placed on record its written synopsis in W.P. (C) 2791/2020 which has been perused and the objections raised therein are considered for all the connected matters.

17. Learned counsel appearing on behalf of the respondents vehemently opposed the contentions raised and arguments made on behalf of the petitioners and submitted that the orders rejecting the applications of the petitioners have been passed in accordance with law and in consonance with the Scheme of 1961.

18. It is submitted that orders dated 6th May 2019 and 4th November 2019 are detailed and reasoned orders and the competent authority after duly scrutinizing all the documents and the entire record found the petitioners ineligible as per the Scheme of 1961. It is submitted that at the time of filing applications for allotment of alternative plots, the respective wives of the petitioners already had a plot in their name and hence, the petitioners were not entitled to any allotment in lieu of the land acquired, in light of the condition (a) of paragraph 10 of the Scheme of 1961. It is submitted that as per the provision of the Scheme of 1961, no plot is to be allotted to any person who himself or whose spouse or any of his dependent relations owns a house or residential plot of land in Delhi, New Delhi or Cantonment. It is submitted that the only exception to this condition is for those who are living in a congested locality or whose



family has outgrown. However, the case of the petitioners did not lie in any such exception and is barred by the condition (a) of paragraph 10.

19. Further, it is submitted that the report from Halqa Patwari was placed before the competent authority and as per the report, the entire land of the petitioners was not acquired. Part of the land of the petitioners remains in Lal Dora and hence, they were also not entitled for the alternate plot in light of this information. It is submitted that as per the principles outlined in the judgment of **Jai Singh Kanwar (Supra)** and **Surinder Singh Mann (Supra)**, the objective of the Scheme of 1961 suggests that a plot should be allotted to a person whose land has been taken away entirely and who is left without any plot or residential accommodation. It is a rehabilitative measure to provide for those who become landless or homeless when their land is acquired. Therefore, the Scheme does not apply to the petitioners.

20. It is submitted that the same issue of rejection of applications for alternate plots in Village Dhool Siras has been challenged in various petitions earlier, which were dismissed and against which LPA was also filed by the petitioners therein, which also stood dismissed. It is submitted that all the contentions raised in the instant petition have already been addressed in the said judgment titled **Ranjeet Singh vs. Government of NCT of Delhi LPA 173/2017** decided on 27th September 2017.

21. It is submitted that the judgment of **Ranjeet Singh (Supra)** clarified that the Scheme of 1961 is not in violation of either Section 21



of the DDA Act or the Nazul Rules. The following observations were made by the Division Bench of this Court:-

“5. The scheme of allotment of alternative plots acquired a statutory character under the provisions of the Delhi Development Act, 1957 (hereafter “DD Act”) read with the Delhi Development Authority (Disposal of Nazul Land) Rules, 1981 (hereafter “Nazul Rules”). The lands acquired by the Central Government and placed at the disposal of the Delhi Development Authority (DDA), for development fell under the category of Nazul lands within the meaning of Section 21 of the Delhi Development Act, 1957. The Nazul Rules generally incorporated the conditions outlined in the 1961 Scheme. The categories mentioned in Clause 8 of the 1961 Scheme were expanded under Rule 4 of the Nazul Rules.”

It is submitted that the Court observed that the Scheme of 1961 is not in violation of but incorporated in the Nazul Rules and is also in consonance with the provisions of the DDA Act.

22. Learned counsel appearing on behalf of the respondents further submitted that the argument advanced on behalf of the petitioner vis-à-vis the terminology used in the Scheme as against the ground mentioned in the rejection letter dated 4th November 2019 with respect to “out of village abadi” or “in village abadi” is immaterial and irrelevant, in light of the observations reproduced hereunder, that reiterate the objective of the Scheme of 1961:-

“24. As far as the first contention is concerned, that the executive’s interpretation that the landowner should not be left with any lands at all is contrary to the letter of the scheme, this Court is unpersuaded by



the argument. The object of the scheme clearly stipulates that it is to provide alternative plots to “farmers whose lands are acquired”. To take the logic of the appellants, conceivably, one individual may own land in four different parts of Delhi, in three different villages. To say that if portions of land in two villages, affecting two pieces of such landholding are acquired, he would still answer the description of a farmer whose lands are acquired would be stretching the meaning and intent of the scheme. The broad understanding of the authorities and officials of the Govt. of NCT of Delhi, who considered Jai Singh Kanwar (supra) and granted or allowed applications only where no lands were left at all, with the land owners, is, from this perspective, wholly reasonable. The object, as we understand, of the scheme is not to provide all landowners whose lands are acquired but only to extend benefit to those who lost all their landholdings due to acquisition.”

23. Learned counsel for the respondents further submitted that the Scheme of 1961 does not vest an absolute right in anyone to be allotted an alternate land, especially those who are barred by the conditions laid therein. The right and entitlement with the petitioners were limited to being considered for allotment of alternate land. Reliance has been placed upon ***Ramanand vs. Union of India 1993 SCC OnLine Del 397.***

24. It is submitted that there is no illegality or error in the orders dated 6th May 2019 and 4th November 2019 and the instant petitions are liable to be dismissed in light of the arguments advanced on behalf of the respondents, since, neither did the petitioners have an absolute right for allotment of alternate plot nor were they found eligible when they applied for allotment of alternate plot.



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

ANALYSIS AND FINDINGS

26. This Court has perused the rejection orders/letters dated 6th May 2019 and 4th November 2019 as well as the Scheme of 1961, which became the primary ground for rejecting the applications of the petitioners for allotment of alternate plot in lieu of acquisition of their land.

27. 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.

Scope of Writ Jurisdiction

28. 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.

29. In *Nagendra Nath Bora vs. Commr. of Hills Division and Appeals* AIR 1958 SC 398, the Hon'ble Supreme Court made the



following observations while examining the scope of interference by High Courts in an order impugned and what would constitute an error apparent on record:-

“37. But the question still remains as to what is the legal import of the expression ‘error of law apparent on the face of the record’. Is it every error of law that can attract the supervisory jurisdiction of the High Court, to quash the order impugned? This court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the face of the record. In this respect, the law in India and the law in England, are, therefore, the same. It is also clear, on an examination of all the authorities of this Court and of those in England, referred to above, as also those considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction.

38. The principle underlying the jurisdiction to issue a writ or order of certiorari, is no more in doubt, but the real difficulty arises, as it often does, in applying the principle to the particular facts of a given case. In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said



to be errors of law apparent on the face of the record. If at all they are errors, they are errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected. As already indicated, the Appellate Authority had unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction. Section 9(3) of the Act, gives it the power to pass such orders as it thought fit. These are words of very great amplitude. The jurisdiction of the Appellate Authority, to entertain the appeals, has never been in doubt or dispute. Only the manner of the exercise of its appellate jurisdiction was in controversy. It has not been shown that in exercising its powers, the Appellate Authority disregarded any mandatory provisions of the law. The utmost that has been suggested, is that it has not carried out certain Executive Instructions. For example, it has been said that the Appellate Authority did not observe the instructions that tribal people have to be given certain preferences, or, that persons on the debarred list, like smugglers, should be kept out (see p. 175 of the Manual). But all these are only Executive Instructions which have no statutory force. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the power of the Appellate Authority to make its own selection, or affect the validity or the order passed by it.

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41. A Constitution Bench of this Court examined the scope of Article 227 of the Constitution in the case of Waryam Singh v. Amarnath [(1954) SCR 565] . This Court, in the course of its judgment, made the following observations at p. 571:



“This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR (1951) Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Art 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art, 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Hence, interference by the High Court, in these cases, either under Article 226 or 227 of the Constitution, was not justified.”

30. 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:....”

31. 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.”



32. 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....”

33. 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.

34. Now it is deemed significant to examine the background, intent as well as the objective of introduction of the Scheme of 1961 and the provisions for alternate plot in lieu of acquisition.

Delhi Development Authority Act and Masterplan for Delhi

35. The DDA Act came into force in 1957 with the objective of providing for development of Delhi according to plan. By virtue of the Act, the DDA is vested with the power to acquire, hold and dispose of property, while fulfilling the objects of promoting and securing



development of Delhi according to plan. The Act also provides for compulsory acquisition of land where the Central Government is of the opinion that land is required to be acquired for the purposes of development. The Government then acquires land as per the provisions under the Land Acquisition Act, 1894. Initially, the provisions of the DDA Act also provided for compensation for compulsory acquisition and its payment thereof, however, such provisions were subsequently omitted and certain other provisions came into being for compensation in lieu of acquisition.

36. As an extension of application of the DDA Act and the development of the NCT of Delhi, at various phases of development, the Master Plan for Delhi came into being. Master Plan guides the development of the State of NCT in phased and planned manner. The first of these plans was the Master Plan for 1962 which was based on the provisions of the DDA Act. The Master Plan for 1962 set out a developmental vision of large-scale acquisition and development of land. The aim was to ensure that the envisaged spatial pattern of development and use of land would conform to the development plan and, thereby, infrastructure services would be laid out to match the same.

37. It was natural that for planned development of the National Capital Territory, land was needed to be acquired, urbanized and developed as per the requirements deemed fit by the Government, however, the same could not have been done at the cost of those already in possession of the land which was found in the areas required for the planned development. Accordingly, to facilitate development in harmony with those who



already possessed the land, the Government came up with schemes and provisions for providing the land owners with alternative rehabilitation and compensation in return for acquisition of their land. One such provision was the Scheme of 1961.

Scheme of 1961

38. 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 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.

39. 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”

40. 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”

41. Further, in **Surinder Singh Mann (Supra)**, 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.”

42. A coordinate bench of this Court in **Amrit Kumari vs. Asst. Housing Commissioner & Ors, 2016 SCC OnLine Del 1624**, also held that a scheme for allotment of alternative plots is purely a welfare scheme formulated to rehabilitate the farmers whose land had been acquired.



43. 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”.

44. 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.

45. However, 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.

46. These conditions which stood under paragraph 10 of the first 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.....”



47. 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.”

48. In the instant matter, the relevant condition, which became the ground for rejection of petitioners' applications, was that the respective wives of the petitioners already had a plot in their name at the time of the application for alternate plot. This condition finds mention in the first as well as the subsequently modified version of the Scheme of 1961. The availability of an existing plot in the name of the owner or any of his dependent, including his/her spouse or even unmarried children, creates a bar on the eligibility of the person to have an alternative plot allotted in his/her favour.



Rejection/Impugned Letter

49. In the case at hand, in the rejection orders/letters dated 4th November 2019, which is impugned before this Court, the respondent no. 3 took the existence of a plot/flat in the name of the petitioners' wives as a primary ground for rejection of the applications and relied upon the judgments of this Court and the Hon'ble Supreme Court to support its decision. The relevant part of the similar impugned orders dated 4th November 2019 is reproduced hereunder:-

“Whereas, the Government Policy and the Guidelines are as below:

“The applicants should not own a house/residential plot/flat out of village abadi in his /her own name or in the name of his wife/husband or any of his/her dependent relations including unmarried children, nor he should be a member of any Co-operative Housing Society”.

Whereas, Hon'ble Supreme Court in the judgment in Civil Appeal No. 8289/2010, 8290/2010 of Delhi Development Authority V/s Jaising Kanwar has held that “the object of the scheme is the 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 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, that land of the petitioner has been acquired; yet before his allotment could be processed, the wife of the petitioner has acquired a property in her own name meaning hereby that clause 3 (highlighted supra) created a hurdle in the case of the petitioner and since his wife already owned a plot in her name on the date when the allotment was to be issued, the petitioner was not entitled to an alternative plot. It is also not the case of petitioner that his wife was no dependent on him”.”

50. 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.

51. Upon perusal of the record before the concerned authority/respondent no.3-SDM, it was found by the concerned authority that the wife of the petitioner already had an alternative plot in her name at the time when the petitioner applied for allotment of alternative plot. Although the respondents have failed to bring out and establish the details of the alternative plot in the name of the spouse of the petitioner, however, to go into the material and records and conducting a roving inquiry would be beyond the scope of writ jurisdiction before this Court, as discussed in the foregoing paragraphs. The consideration before this Court is limited to the extent of evaluating whether there were any illegalities or error apparent in the observation of the respondent no. 3 while issuing the impugned letter dated 4th November 2019.

52. The impugned order dated 6th May 2019 made certain other observations while rejecting the application of the petitioner Sube Singh which are also reproduced below:-

“ With reference to your application for allotment of alternative plot in lieu of acquired land, in this connection it is to inform you that the Scrutiny Committee has examined your case on the basis of the



available record and the government guidelines. As per the report of Halka Patwari your entire land has not been acquired and the remaining land is under the Lal Dora now, which urbanized. You have not provided the required documents as per letters Nos. SDM(KH)/2016-17/2892-94 dated 22.9.2017 and Final Notice vide No. SDM(HQ)/2017/21137 dated 1.4.2019 sent to you.

Since, your case does not fall under the category of eligible applicant for allotment of alternate plot, the Scrutiny Committee has decided not to recommend your case for allotment of alternate plot.”

53. The said ground was also taken by the concerned authority in the orders dated 4th November 2019 and the following observations were made in this regard:-

“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 is placed before the committee. As per the report of Halka Patwari the entire land of applicant was not acquired; the land is remaining in the Lal Dora. Further, the Village has been declared urbanized U/s 507 of the DMC Act vide notification dated 24.10.1994 and U/s 22 of the DDA Act, 1957 vide notification dated 19.08.2002. As per available record on the file the applicant residing in the urbanized area and having his/her house/residential plot/flat in the urban area in the name of his/her own name or in the name of his/her wife/husband or any of his/her dependent.”

54. The respondent no. 3 while passing the impugned orders observed that the entire land of the petitioners was not acquired, as was reported by the Halqa Patwari. While the petitioners have challenged the ground



taken by the concerned authority while rejecting their applications, they have 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 no. 3 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 orders.

55. 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. Moreover, this Court as well as the Hon'ble Supreme Court has not held the Scheme to be contrary to any legislation or law in existence.

CONCLUSION

56. Keeping in view the observations and discussions in the foregoing paragraphs and the facts and circumstances, it is found that the orders/letters dated 6th May 2019 and 4th November 2019 have been passed after due and proper adjudication, appreciation of facts, listing out the reasons for rejection in detail, and in accordance with law. Although



this Court does not appreciate the inordinate delay of 16 years in passing the impugned orders/letters, however, apart from the delay, there is no illegality in the orders.

57. The petitioners had an alternative plot in the name of their respective spouses which they had the access to and could have taken possession of when the concerned plot was acquired by the concerned authority. As per the detailed reasons stated in the impugned orders the petitioners were not eligible for any alternate plot.

58. This Court does not find any illegality, impropriety or error apparent on the face of record in the orders/letters F.No.31(55)/199/2003/L&B/Alt/4064/79005 in W.P.(C) 2791/2020, F.No.31(55)/63/2003/L&B/Alt/SDMHQSW/1309 in W.P.(C) 2812/2020, F.No.31(55)/199/2003/L&B/Alt/4061/78989 in W.P.(C) 2816/2020 and F.No.31(55)/199/2003/L&B/Alt/4063/79000 in W.P.(C) 2817/2020.

59. This Court does not find any cogent reason to interfere in the impugned orders/letters dated 6th May 2019 and 4th November 2019 passed by respondent no. 3. Accordingly, the instant petitions are dismissed for being devoid of merit.

60. Pending applications, if any, also stand disposed of.

61. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 25, 2022/dy/ms