



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

% **Date of order: 20th September, 2022**

+ **W.P.(C) 8712/2021**

MAHENDRI DEVI Petitioner

Through: **Mr. Narender Singh Sharma,**
Advocate

versus

UNION OF INDIA & ANR Respondent

Through: **Ms. Jyoti Tyagi,** Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner has filed the present Petition under Article 226 of the Constitution of India seeking *inter alia* the following reliefs, for issuance of:

“A. A writ of Mandamus and/or any other appropriate writ thereby quashing/setting aside the letter No.F.33(82)/226/2005/L&B/AIt./450, dated 25.08.2020, sent by the Respondent No.2 to the petitioner.

B. A Writ of Mandamus and/or any other appropriate writ thereby directing the respondents to allot/provide alternative residential plot/land against the agricultural land of the petitioner, acquired by the respondents.



C. Pass any other relief or remedy which this Hon'ble Court may deem fit and proper in favour of the petitioner, in the interest of justice."

2. It is submitted by learned counsel for the petitioner that 1 bigha 5 Biswa of agricultural land belonging to the petitioner, situated at Village Rajapur Kalan, Delhi, was acquired by the Government vide award No.20/2003-2004.

3. Learned counsel for the petitioner submitted that the petitioner is a poor lady and senior citizen whose agricultural land has been acquired. Since the petitioner has a large family, the petitioner does not have sufficient place for residential accommodation of her entire family, therefore, allotment of alternative plot is very necessary for her.

4. Learned counsel for the petitioner submitted that a letter No.F.33(82)/226/2005/L&B/Alt./450, dated 25.08.2020, sent by the Respondent No.2, was received by the petitioner wherein it was mentioned that letters were repeatedly sent from the Respondent No.2 but none has been replied to nor required documents were submitted by the petitioner and due to the said reason, the application of the petitioner for allotment of alternative plot has been rejected.

5. It has also been submitted that the rejection letter mentioned that the above fact were also published in some newspapers, but the petitioner is not much educated so the petitioner could not get to know about any such news published in any newspaper.



6. It is submitted that the petitioner made applications to the Respondent No. 2 on 09.11.2020 and subsequently, on 04.12.2020, for allotment of alternative plot against the land acquired, but the petitioner neither receive any reply to the same nor was any action taken by the Respondent No.2.

7. It is submitted that previously the petitioner had changed her house and due to the said reason, the letters sent by the Respondent No.2 were not served upon the petitioner because they must have been sent at the old address of the petitioner.

8. In view of the aforesaid, it is submitted that the action of the respondents depriving the petitioner of her source of livelihood is totally arbitrary, illegal and malafide. Thus, the action of the Respondents in acquiring land of the Petitioner and thereafter allotting the same for commercial purposes, without properly settling the petitioner, is totally in violation of all settled principles of law.

9. *Per contra*, learned counsel for the respondents submitted that the present writ petition is liable to be dismissed as the petitioner appears to be not interested in any allotment of alternative plot because having applied for alternative plot on 26.04.2005, there was no follow up by the petitioner nor any application was furnished showing her bona fide and seeking to update her changed address in the official records.

10. It is submitted that no right of the petitioner was infringed or determined adversely as the petitioner himself failed to submit the required documents and merely by payment of some cost, the petitioner



should not be permitted to enter the queue with same seniority number while again choking the way for other genuine applicants and by placing the entire government machinery under burden for the alleged claim which petitioner himself has abandoned long ago by its act, attitude and conduct.

11. It is submitted that the concerned authority issued a notice dated 15.12.2017 to the petitioner asking him to submit the deficient documents in a time bound manner but the petitioner never turned up for the obvious reason that the petitioner was not interested and not in genuine need of allotment of alternative plot.

12. It is submitted that in the absence of complete documents, the seniority list could not move properly, leading to pendency in adjudication of the applications for allotment of alternate land. The competent authority i.e the Principal Secretary of the Land & Building Department, thus, took a conscious decision that one final opportunity may be given to all the applicants whose applications are pending for want of deficient documents and if the applicants were found to be serious enough in pursuing their respective claims, they would submit the deficient documents in pursuance of the last opportunity.

13. It is stated that the said proposal was placed before the competent authority i.e the Hon'ble Lieutenant Governor who accorded his approval and accordingly a Public Notice was duly published in Hindustan Times (English) and Navbharat Times (Hindi), vide which a last and final opportunity was granted to all the applicants to submit the deficient



documents, the details of which were duly uploaded on the official website of the respondent, failing which the applications would be considered on basis of existing and available documents in the official files.

14. It is submitted that even thereafter, the respondent with the intent and purpose that no applicant should be left unheard, again issued a letter dated 19.09.2018 to the petitioner and offered him a personal hearing on 03.10.2018, however, the petitioner preferred not to opt for the personal hearing and remained absent.

15. It is submitted that after the last date of submission of documents, the case of the petitioner was placed before the Recommendation Committee whereupon the application was duly considered by the Recommendation Committee and the case of the petitioner was rejected for non-submission of required documents.

16. It is, therefore, submitted that there has to be some finality in the administrative decision taken by the concerned authority having given sufficient opportunities to such people to come forward with complete documents. It is submitted that the respondent has passed the rejection order with good conscience and there is no legal impropriety/ infirmity in the rejection order which requires judicial examination in the writ petition. Hence, it is submitted that the instant petition be dismissed.

17. Heard learned counsels for the parties and perused the record.



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) reappraise 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. 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. 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.

22. The Scheme for Large Scale Acquisition Development & Disposal of Land in Delhi 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.

23. 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”

24. 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”



25. 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.”

26. 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".

27. 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.

Rejection/ Impugned Order

28. The impugned letter of rejection dated 25.08.2020 is reproduced hereunder:

"Whereas, an application has been received from Smt. Mohinderi Devi W/o Satpal Singh, R/o 196, Kamruddin Nagar, P.O. Nangloi, Delhi-110041 on 26.04.2005 for allotment of alternate plot as per Government policy in lieu of acquisition of land of village Rajapur Kalan vide Award No.20/2003-04.

Whereas, SDM(HQ) as Chairman, Scrutiny Committee, District North had issued and served notice to provide an opportunity of personal hearing in the case on 03.10.18. The applicant did not appear on the said date and time.

Whereas, the two notices dated 15.12.2017 and 19.09.2018 was issued to the applicant to submit the requisite documents within the stipulated time period and subsequent Public Notice dated 13.05.2018 was also published in two dailies i.e. Hindi and English to submit the requisite documents within the period of one month. But the documents are not submitted by the applicant.



Whereas, Recommendation Committee was of the view that the applicant is not interested to pursue the matter and he has not submitted the requisite documents despite two notices and public notice.

In view of the position mentioned above, the District Level Recommendation Committee has decided not to recommend the case of Smt. Mohinderi Devi W/o Satpal Singh, R/o 196, Kamruddin Nagar, P.O, Nangloi, Delhi-110041 due to non-compliance of above mentioned notices, public notice and non-submission of requisite documents.”

29. It is evident from the aforesaid that the Chairman, Scrutiny Committee, District North had issued and served a notice to the petitioner to provide an opportunity of personal hearing in the matter on 03.10.2018. However, the applicant failed to appear on the said date and time. It is also evident that two notices dated 15.12.2017 and 19.09.2018 were issued to the applicant to submit the requisite documents within the stipulated time period. A Public Notice dated 13.05.2018 was also published in two dailies in Hindi and English to submit the requisite documents within the period of one month. However, as per the record, the documents were not submitted by the petitioner.

30. Accordingly, it was concluded by the Recommendation Committee that the applicant was not interested to pursue the matter since he did not submitted the requisite documents despite two notices and a public notice. The District Level Recommendation Committee accordingly decided not to recommend her case due to non-compliance of above mentioned notices, public notice and non-submission of requisite documents.



31. The petitioner has not been able to prove her case for being considered for the allotment of alternate land because of the deficiencies and inaction on her part. The petitioner was granted opportunity at several occasions for submissions of requisite documents and personal hearing for her case being considered under the Scheme through personal notices as well as through public notice. However, the petitioner failed in appearing before the authorities and submitting the requisite documents.

32. As per the mandate of the Scheme of 1961, the application for allotment of alternative plot has to be made in accordance with the conditions laid therein. These conditions not only specify the eligibility criteria but also provide for the limitations that need to be considered while adjudicating upon application for allotment of an alternative plot.

33. Despite several opportunities granted to the petitioner in the instant case, the petitioner did not approach the concerned authority with requisite documents nor responded to the notices served. 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 regarding adjudication of application for allotment of alternative plot and while its consideration by the concerned authority.

34. The petitioner was granted opportunity for submission of requisite documents for her case to be considered under the Scheme by means of a public notice as well. Public Notice is one important means of notification to the citizens at large or to a section of stakeholders regarding a proceeding ongoing before an authority. The ordinary



business practice is to publish the public notice in two different languages in widely-circulated newspapers, and containing all necessary information. The said notice must be archivable, accessible and verifiable. In the case of ***Sridhar M. A. Vs. Metalloy N. Steel Corporation (2000) 1 SCC 397***, the Hon'ble Supreme Court held that in appropriate cases, deemed service of notice may be accepted by the Court and this will depend on the facts of each case. Accordingly, in the instant case, the public notice made shall be considered to be deemed notice to the petitioner. Therefore, even if, for the sake of argument, the earlier notices are deemed not to be served, the public notice issued by the respondent no. 2 in newspapers in two languages – i.e. English and Hindi, shall be deemed to be a valid service, and accordingly the petitioner cannot claim the benefit of being unserved.

35. Furthermore, in the instant case, as is evident from the record that the petitioner after applying for allotment of alternate land on 26.04.2005, went into deep slumber for years and only got agitated after receiving the impugned letter dated 25.08.2020, and as per the petitioner's version, she sent applications to the Respondent No. 2 on 09.11.2020 and subsequently, on 04.12.2020, i.e. only after the rejection letter was received. 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. Unreasonable delay in bringing forth a claim or laches are a major hurdle in granting relief to the claimant, especially when the delay is substantial.



There is also no case made out for violation of the principles of natural justice.

36. Therefore, in light of the facts and circumstances, the contents of the impugned letter in the background of the Scheme of 1961, and the observations as aforementioned, it is found that the communication no. F.33(82)/226/2005/L&B/Alt/450 dated 25th August 2020 does not suffer from any illegality, impropriety or error apparent on the face of record. The petitioner failed to approach the concerned authority with requisite documents for allotment of alternative plot and neither brother to respond to the said notices issued by the concerned authority and hence, her application was rightly rejected after giving her an opportunity of hearing.

37. Accordingly, the instant writ petition is dismissed since this Court does not find any merit in the challenge to the impugned letter.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 20, 2022

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