

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

% **Date of order: 16th November 2022**

+ **W.P.(C) 11712/2022 & CM APPL. 34828/2022**

RAKESH RANA & ORS Petitioner

Through: **Mr. Ram Kumar, Advocate**

versus

GOVT OF NCT OF DELHI Respondent

Through: **Mr. Biraja Mahapatra and Mr. Rajat Sharma, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioners seeking the following reliefs:

“a) Issue a writ of mandamus or any other suitable writ, order or direction in like nature thereby issuing the direction to the Pr. Secretary, (Land & Bldg. Deptt), to issue the recommendation letter for allotment of alternative plot in lieu of acquisition of petitioners land from village Bijwasan and Respondent be directed to consider his case for allotment as per seniority

b) And set aside and declare impugned letter dated 31.03.2022 null and void”

2. The brief facts of the present case are that the father of the Petitioners, late Shri Ram Kishan applied for alternative allotment of plot vide registered letter No.331 dated 17th April 2003. He expired on 7th April 2008 leaving behind Sh Rakesh Rana, Azad and Hari Om as legal heirs, but no allotment was given by the Land & Building Department during his life time. The Respondent issued the rejection letter dated 7th July 2015. The relevant portion of the rejection letter is reproduced below:

"That your case for allotment of alternative plot in lieu of acquired land has been placed before the meeting of recommendation committee held on 17-04-2015 and it was observed that as per available record, the applicant received the compensation of the acquired land on 25-11-2002, whereas the application for allotment of alternative plot in lieu of acquired land was submitted on 19-05-2004 which is beyond the prescribed time of one year. Hence the case being time barred is rejected."

3. In furtherance of the above-mentioned rejection letter, the Petitioners made multiple representations to the Respondent to reconsider their case on the ground that compensation was paid on 1st May 2014, and the application of the Petitioners was within the period of limitation, therefore the rejection letter dated 7th July 2015 is void.

4. The Respondent vide order dated 20th July 2017 again rejected the case of the Petitioners. The relevant portion of the above-mentioned order is reproduced below:

"That I am directed to inform the case of the applicant was placed before the recommendation committee on 17.04.2015 as per available record in the file , it was observed that the applicant received the compensation of the acquired land on 25.11.02 whereas application for allotment of alternative plot was submitted on 19.05.2004 which is beyond the prescribed

time limit of one year, hence case Rejected being time barred. Further it is informed that there is no provision under the scheme to suo motto re open the case after rejection unless there is an order of the competent court of law."

5. Thereafter, aggrieved by the rejection of their application, the Petitioners preferred W.P.(C) No. .8901/2017. The said writ petition was decided by the Coordinate bench of this Court on 18th September 2017 by quashing the rejection orders and condoning the delay. The relevant portion of the above-mentioned order is reproduced below:

"9. For the reasons stated above, in my opinion, a reasonable explanation has been given for the delay in filing the application by the petitioners. The petitioners cannot be denied their rights for small infractions. The impugned letters dated 07.07.2015 and 20.07.2017 are quashed. The respondent shall consider the application of the petitioners for allotment alternative plot ignoring the alleged delay in filing the said application expeditiously as per seniority"

6. Being dissatisfied with the compliance of order dated 18th September 2017 passed by the Coordinate bench of this Court, the Petitioners preferred a Contempt Petition No. 980/2021. The Coordinate bench of this Court vide order dated 18th September 2019 disposed of the contempt petition with the following observations:

"3. It is stated by the learned counsel for the Petitioners that the order dated 31.03.2021 is not in proper compliance of the order inasmuch 18.09.2019 passed by this Court in W.P.(C) 8901/2017 as it has not considered any of the points raised by this Court in the said order. He further states that the Sub-Divisional Magistrate also had no jurisdiction to consider the application of the Petitioners."

4. Be that as it may, the order stands complied with. The contempt notices are discharged. It is always open to the Petitioners to take appropriate steps in accordance with law.

5. The contempt petition is disposed of with the above observations. Pending application(s), if any, stand disposed of."

7. Aggrieved by the rejection of his application for allotment of alternative plot, the Petitioners have preferred the instant writ petition.

8. Learned counsel appearing on behalf of the Petitioners has submitted that the Respondent has failed to comply with the letter and spirit of the 'Large Scale Acquisition Development & Disposal of Land in Delhi Scheme, 1961' (hereinafter referred to as the 'Scheme'), as amended from time to time, and for this he has relied on Para 3 of the Scheme. Para 3 is reproduced below:

"WHERE THE LAND IS ANCSTRAL:

3: THE APPLICANTS SHOULD NOT OWN A HOUSE /RESIDENTIAL PLOTS/FLATS OUT OF THE VILLAGE ABBDDI IN HIS /HER DEPNDENTS RELATIONS NAME INCLUDING UNMARRIED CHILDREN NOR HE SHOULD BE A MEMBER OF ANY COOPERATIVE HOUSING SOCIETY."

9. It is submitted by the learned counsel for the Petitioners that as the house owned by the Petitioners falls in lal dora but is not a recorded property and the other property also falls in the abadi area, therefore the Petitioners are eligible for allotment of alternative plot.

10. Learned counsel has also laid stress on the argument that, the judgment of the Hon'ble Supreme Court in ***Delhi Development Authority***

vs. Jai Singh Kanwar bearing **Civil Appeal No. 8289/2010** decided on 14th September 2011 is not applicable to the facts and circumstances of the present case.

11. It is accordingly submitted that the Respondent has committed a serious error in rejecting the application of the Petitioners and hence, the impugned rejection letter is liable to be set aside.

12. *Per Contra*, learned counsel appearing on behalf of the Respondent has submitted that if the scheme has been introduced by the Government to enable the citizens to have a roof over their head does not mean that the scheme is meant for the enrichment of people. It is also submitted that in view of the law settled by Hon'ble Supreme Court and this Court, it is now settled that if a person is having any plot against acquisition made, he is not entitled for alternative plot. Therefore, there is no illegality in the impugned order passed by the competent authority and the writ petition is liable to be dismissed being devoid of any merit.

13. Heard learned counsel for the parties and perused the record. The issues to be adjudicated by this Court are:

Issue 1- If the person is having a plot/constructed house in the area of Abadi and Lal Dora, would he be entitled for alternative plot under scheme of 1961?

14. This Court has perused the impugned order and finds it apposite to look at the contents of the same for proper adjudication of the matter. The relevant portion of the impugned order dated 31st March 2022 is reproduced hereunder: -

"Whereas in response to Notice dated 17.02.2022, Sh. Rakesh Rana S/o Late Sh. Ram Kishan R/o House Number 922,

Bijwasan, Delhi-110061 had attended the meeting of the Scrutiny Committee fixed for 21.02.2022, at 03:00P.M.

Whereas High Court of Delhi had disposed off WP. (C) 8901/2017 titled as RAKESH RANA & ANR versus GOVT. OF N.C.T. OF DELHI and ORS and CM APPL. No. 36410/2017 on September 18 2019 with the direction to consider the application of the petitioner for allotment of an alternative plot. Whereas as per A.E.R.O, AC-36 (Bijwasan)'s report dated 25.02.2022, he (the A.E.R.O) found "that there are three residences/property, one on the outside of village Bijwasan" and "another two is in the village single story".

Whereas as per the concerned Patwari's report dated 04.03.2022, Sh. Rakesh Rana S/o Late Sh. Ram Kishan is the recorded owner of ½ part of total acreage of 1 bigha of Khasra Number 489 in extended abadi of village Bijwasan.

Whereas Hon'ble Supreme Court in its Judgement dated 14.09.2011 in Civil Appeal No. 8289/2010 and 8290/2010 titled Delhi Development Authority Vs Jai Singh Kanwar, had 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 owns a house /residential plot /flat will be entitled to apply.

Whereas since in the instant case, Sh. Rakesh Rana S/o Late Sh. Ram Kishan R/o House Number 922, Bijwasan, Delhi-110061 is the recorded owner of property in extended abadi of village Bijwasan, as per the Supreme Court's Judgement mentioned above, he is not entitled to apply for an alternate plot.

In view of the Hon'ble Supreme Court's Judgement mentioned above and on the basis of the documents/records placed in the file, the Scrutiny Committee has decided to reject the case for allotment of an alternative plot to Sh. Rakesh Rana S/o Late Sh.

Ram Kishan R/o House Number 922, Bijwasan, Delhi-110061.”

Answer to Issue 1-

15. In the instant matter, the relevant conditions, which became the ground for rejection of Petitioners application, were that they held house/land in the extended abadi of village Bijwasan and were not landless.

16. The condition of holding a plot/residential accommodation being a bar for consideration of application of allotment of alternative plot is bar which 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.

17. The subject matter of the Scheme of 1961 was Large Scale Acquisition Development & Disposal of Land in Delhi which came into force on 2nd May 1961 and has been modified from time to time. 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.

18. 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”

19. This objective has also been reiterated by this Court as well as the Hon’ble Supreme Court in various cases. In ***Surinder 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.

XXX

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.”

20. A Coordinate Bench of this Court **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.

21. 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
W.P.(C) 11712/2022

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.

22. 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 Delhi 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 with 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 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 Exception circumstances. Thereafter the permission to sell will be given by 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.....”

23. 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."

24. 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.

25. Those who lose their homes or their agricultural lands, which are the only source of their livelihood, are the beneficiaries 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.

26. 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.

27. In the instant matter, the perusal of the contents of the impugned order reveals that the Petitioners owns property in the extended village abadi and lal dora. As discussed above, the position is clear for those individuals whose land has been acquired and who seek alternative accommodation or plot; they are to fulfill the necessary conditions of the Scheme of 1961, in consonance with the objective the Scheme seeks to achieve.

28. 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.

29. Therefore, this Court does not find force in the argument of the Petitioners that as per the modification in the year 1993 in Scheme of 1961, if an applicant owns a land in village abadi, it will not create a bar for recommending him for allotment of alternative plot. It is pertinent to refer to ***Ranjeet Singh vs. Govt (NCT of Delhi), 2017 SCC OnLine Del 10794***, wherein it was observed as under: -

“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.

xxxxxxx

55. The Court notices that the appellants' argument that ownership of land or residential property in the village or extended abadi is not to be construed as a bar is, no doubt, justified. Yet, the fact that a dispossessed land owner has ownership or possession of a residence in the village, ipso facto, cannot entitle him or her to make an enforceable claim for allotment of alternative plot. Particularly when the left over lands with appellants are urbanized ones. ”

30. Therefore, Petitioners cannot claim that he has a right to allotment of alternative land merely because he owns a land in the extended village abadi.

31. In view of the foregoing discussion, this Court does not find any illegality, impropriety or error apparent on the face of record in the impugned order dated 31st March 2022 passed by the concerned Authority. There is no reason to interfere with the said impugned order passed on the application of the Petitioners.

32. Accordingly, the instant petition is dismissed. Pending applications, if any, also stands dismissed.

33. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 16, 2022
Aj/mg