



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

% **Date of order : 2nd September, 2022**

+ **W.P.(C) 12673/2022**

SAHAB SINGH KHATRI Petitioner

Through: Appearance not given

versus

DISTRICT MAGISTRATE NORTH Respondent

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 38495/2022

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 12673/2022

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

“i) Issue a writ of certiorari or any other appropriate writ, order or direction for calling the record of file No. F.33(73)/01/2004/L&B/Alt./Seniority No.2537 relating to application for allotment of alternative plot in lieu of acquired land of the petitioner: AND

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction for the respondent to quash



the order/letter no. F.33(73)/02/2004/L&B/Alt./2855 dated 23.11.2021, by which application of the petitioner for allotment of alternative plot was illegally rejected;

To issue direction for respondent to issue recommendation letter in favour of petitioner for allotment of alternative plot to DDA at the earliest.

(iii) Award costs of the present petition in favour of the petitioner and against the respondent; and

(iv) Issue any other or further appropriate writ, order or direction as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, in favour of the petitioner and against the respondent”

2. Learned counsel appearing on behalf submitted that the petitioner is the 5/18 owner of the land in question comprised in Khasra No. 17//22/1(0-16), 22/2(4-00), 19//5(3-14), 20//1(4-12), 2(14-13), 3/1(3-04), 9/1(2-05) and 27(0-05) admeasuring 23 bigha 9 biswas, situated in the revenue estate of Village Shahpur Garhi, Delhi, since 1954-55. Vide notification issued by the government bearing no. F.10(32)/96/L&B/LA/2736 dated 16th May 2002 land admeasuring 250 bighas 8 biswas situated in revenue estate of Village Shahpur Garhi, Delhi was acquired under Section 4 of the Land Acquisition Act, 1894 (hereinafter “LA Act”). Under Section 6 of the LA Act another notification dated 20th April 2003 was published bearing No. F.10(32)/96/L&B/LA/1299 declaring the land, including the land of the petitioner, to be acquired for development of Fright Complex (Narela). Award No. 29 of 2003-04 for the said acquisition was also drawn on 15th



March 2004. It is submitted that the land in question was acquired on 14th July 2004 and the Land Acquisition Collector paid a compensation under the Award to the tune of Rs. 32,40,541/- to the petitioner on 30th July 2004.

3. It is submitted that the petitioner, thereafter, applied for allotment of an alternative plot under the Scheme dated 2nd May 1961 for 'Large Scale Acquisition Development & Disposal of Land in Delhi' (hereinafter "Scheme of 1961") vide application dated 23rd December 2004. It is submitted that the file for making recommendation, created by the office of Land & Building Department, was dealt in file No. F.33(73)/01/2004/L&B/Alt.

4. It is submitted that in accordance with the order of a Coordinate Bench of this Court, a seniority list was prepared, whereby, the petitioner was given seniority at no. 2537. The office of the D.M. (North) called the petitioner for a personal hearing as per the direction of the Coordinate Bench of this Court. It is submitted that subsequently, the application of the petitioner for allotment of alternative plot was cancelled vide rejection letter dated 26th November 2019, however, the same was communicated to the petitioner only in year end of 2021.

5. Learned counsel for the petitioner submitted that a letter/order dated 23rd November 2021 (hereinafter "impugned Order") was received from the office of the District Magistrate (North)/respondent, to the petitioner, wherein it was stated that the District Level Recommendation Committee had decided not to recommend the case of predecessor-in-interest of petitioner, due to non-compliance of notices, public notice and



non-submission of requisite documents. It is submitted that the said order dated 23rd November 2021 is assailed before this Court since the same has been passed in contravention to the principles laid down and interpretation given by the Hon'ble Supreme Court in ***Delhi Development Authority vs. Jai Singh Kanwar, Civil Appeal 8289/2014***, decided in 14th September 2011. As per the modifications in the Scheme of 1961 in 1993, there are specific directions that if an applicant owns a land in village *abadi* or Lal Dora, it will not create a bar for recommending him for allotment of alternative plot and hence, the impugned Order is not sustainable in the eyes of law and is liable to be quashed.

6. *Per Contra*, learned Standing Counsel appearing on behalf of the respondent vehemently opposed the submissions made on behalf of the petitioner and submitted that there is no error or illegality in the impugned Order.

7. It is submitted that the petitioner failed to provide the requisite documents for the consideration of his application for allotment of alternative plot despite several notices being published. Further, as the report of the Tehsildar, the petitioner is residing in Lal Dora and therefore, he is not eligible for the allotment of alternative plot, since he was not rendered landless after his land was acquired in accordance with the LA Act.

8. Learned counsel for the respondent submitted that the impugned Order was passed after taking into the consideration the report of the Tehsildar, the fact that the petitioner failed to submit the requisite document and that he was not landless after acquisition and hence, there



is no illegality in the impugned Order and the instant petition is liable to be dismissed for being devoid of merit.

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

10. 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 is reproduced hereunder:-

“Whereas, in the meeting held on 26.11.2019, the Committee observed that notice dated 25.10.2017 was issued to the applicant to submit the requisite documents & also, two Public Notices dated 13.05.2018 and 23.08.2018 were also published in two dailies i.e. Hindi and English to submit the requisite documents within the period of one month. Further, an opportunity of personal hearing was also provided to the applicant on 27.06.2018.

Whereas, concerned Tehsildar has also inquired into the matter and submitted his report stating therein that applicant is residing at village lal dora as per Tehsildar report.

Whereas, Hon'ble Supreme Court in the judgement in Civil Appeal No. 8289/2010, 8290/2010 of Delhi Development Authority V/s Jai Singh Kanwar has held that “the object of the scheme is that when the land owned by a person is taken away in entirety and he is left without any house or plot, he should be allotted a plot, 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 WPC no. 12306/15 titled as Surinder Singh Mann Vs. Govt. of NCT of Delhi decided on 25.08.2017 that “The



Policy of the Government as is evident from the scheme was to provide residential plots to farmers whose land has been acquired: it was a rehabilitative measure: meaning thereby that it was to rehabilitate those farmers whose land has been acquired as they has become homeless or landless. In the instant case, the 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 thereby 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 alternate plot. It is also not the case of the petitioner that his wife was not dependent on him”.

In view of the position mentioned above, the District Level Recommendation Committee has decided not to recommend the case of Sh. Sahab Singh S/O Deep Chand, R/o H.No. 26, Village Sahapur Garhi, P.O. Narela, Delhi-110040 due to non-compliance of above mentioned notices, public notice and non-submission of requisite documents and residing at village Lal Dora.”

11. In the instant matter, the relevant conditions, which became the ground for rejection of petitioner’s application, were that he already held land in Lal Dora and was not landless and that despite notices being published, he did not provide the requisite documents for consideration of his application.

12. 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.

13. 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.

14. 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”

15. 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”

16. Further, 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.

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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.”

17. 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.



18. 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”.

19. 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.

20. 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.

21. 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 returned 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 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.....”

22. 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.”

23. 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.

24. In the instant matter, the perusal of the contents of the impugned Order reveals that as per the report of the Tehsildar the petitioner is residing in Lal Dora. Even if he argues that he does not live in village *abadi* or Lal Dora, it is an admitted fact that he is the owner of a house in Delhi. 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 fulfil the necessary conditions of the Scheme of 1961, in consonance with the objective the Scheme seeks to achieve. The petitioner has relied upon the modified Scheme of 1961, however, has failed to appreciate that the relevant point of the said modified Scheme reads as under:-



“8. If a landholder himself or his spouse or any other dependent relation, including unmarried children-

(a) Is in possession of a residence or residential plot, a part thereof, either on leasehold or free-hold, in the National Capital territory of Delhi except in Village abadi, and/or

(b) Has already been allotted/recommended an alternative plot, and/or

(c) Is a member of any cooperative House Building Society/Group Housing Society in Delhi, then such a person is not eligible for an alternative plot under this Scheme.”

25. Hence, in light of this revelation, the petitioner was already ineligible at the first instance as per the mandate of the Scheme of 1961. The only exception to the bar of possession of a plot/residential flat on the allotment of alternative land is of the village *abadi*, however, as per the report of the Tehsildar, the petitioner held land in Lal Dora. Therefore, this Court does not find force in the argument of the petitioner that as per the modification in the year 1993 in Scheme of 1961, if an applicant owns a land in village *abadi* or Lal Dora, it will not create a bar for recommending him for allotment of alternative plot.

26. Further, the petitioner also failed to supply any documents, as were required by the Committee to consider his application despite there being publication of notices regarding the same, which would have helped his case to show any facts contrary to what was observed by the concerned Authority.

27. This Court does not find any illegality, impropriety or error



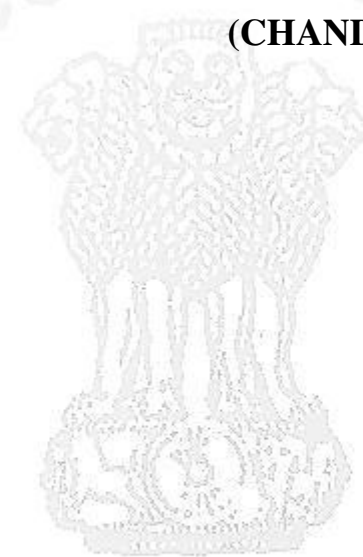
apparent on the face of record in the impugned Order dated 23rd November 2021 passed by the concerned Authority. There is no reason to interfere with the said impugned Order passed on the application of the petitioner.

28. Accordingly, the instant petition is dismissed.

29. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 2, 2022
gs/ms



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