

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

% **Date of order : 15th November 2022**

+ **W.P.(C) 8908/2019**

BALJEET SINGH

..... Petitioner

Through: Mr. N.S. Dalal, Mr. Devesh Pratap
Singh, Mr. Alok Kumar and Ms.
Rachana Dalal, Advocates

versus

LAND & BUILDING DEPARTMENT

..... Respondent

Through: Ms. Jyoti Tyagi and Ms. Manisha,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking *inter alia* the following reliefs:

“(i) Issue an appropriate writ, order or direction thereby quashing the order dated 06.02.2013 passed by the respondent, vide which the application of the father of the Petitioner was ordered to be rejected;

(ii) Issue an appropriate writ, order or direction thereby directing the Respondent to decide the representation sent by the Petitioner to the Respondent for seeking decision on merits in the light of documents submitted with the representation;

(iii) award costs of the present writ petition in favour of the Petitioner and against the Respondent.”

2. The land of the father of the petitioner (hereinafter “predecessor-in-interest/applicant”) in revenue estate of Village Kakrola was notified under Section 4 of the Land Acquisition Act, 1894, and was acquired vide Award No. 1/1993-94 dated 2nd April 1993. Compensation in lieu of acquisition was also paid to the predecessor-in-interest on 14th May 1993.

3. The predecessor-in-interest, thereafter, applied for allotment of alternative plot in lieu of acquisition of his land under the Scheme dated 2nd May 1961 of Large Scale Acquisition, Development and Disposal of Land in Delhi (hereinafter “Scheme of 1961”) vide application dated 31st January 1994. The said application of the petitioner’s predecessor-in-interest came to be rejected vide order dated 6th February 2013 on the ground that his entire land was not acquired.

4. Aggrieved by the rejection order, the petitioner has approached this Court seeking the aforesaid prayers.

5. Learned counsel on behalf of the petitioner submitted that the finding of the respondent that the land of the applicant was not entirely acquired is wrong, unfounded, unsubstantiated and therefore, erroneous. There is not even a single inch of agricultural land was left after acquisition of the applicant’s land.

6. It is submitted that the application under the Scheme of 1961 for allotment of alternative plot was filed by the applicant well within time. Thereafter, subsequent to his death, and relinquishment of interest in favour

of the petitioner by the other legal heirs, the petitioner got the file No. F.31(50)/129/94/L&B/Alt transferred in his name and pursued the application for allotment of alternative plot.

7. It is further submitted that after the rejection letter was received, since the petitioner was not keeping well and was admitted in the hospital, it was only in February 2016 that he was able to obtain the status of the land in question from the Revenue Department of Village Kakrola. As per a status report dated 10th March 2016, remaining land, i.e., Khasra no. 195/56 was in the village *abadi* and the entire agricultural land was acquired. It is submitted that as per the policy, the applicant seeking allotment of alternative plot should not be the owner of land outside village *abadi* and in the case of the applicant, the land in Khasra no. 195/56 was a part of the extended Lal Dora and hence, the part of *abadi*. Therefore, it is submitted that the petitioner is entitled for allotment of alternative plot.

8. A representation alongwith the status report dated 10th March 2016 was submitted by the brother of the petitioner on 27th April 2016 for reconsideration of the case of allotment of alternative plot but no action was taken by the concerned authorities on the said representation. The petitioner again made representations and approached the concerned authorities on 1st September 2018 and 12th February 2019 alongwith documents to show that the entire land of the applicant had been acquired and therefore, the rejected case for allotment of alternative plot should be reopened. However, no action was taken on the said representations as well.

9. It is submitted on behalf of the petitioner that if the stand of the Respondent is to be adopted then the policy of allotment becomes meaningless and it renders the policy otiose for allotment of alternative plot.

10. Therefore, it is submitted that the impugned order rejecting the application of the father of the petitioner is liable to be set aside, since the petitioner is entitled for allotment of alternative plot.

11. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the instant petition has been filed after six years of passing of the rejection order, therefore, is liable to be dismissed on the ground of delay itself.

12. It is submitted that the application for allotment of alternative plot was rightly rejected upon finding that the entire land of the petitioner's predecessor-in-interest had not been acquired. It is submitted that the Scheme of 1961 is meant for those whose entire land stand acquired and they are rendered roofless and are left with no shelter or residence, however, the petitioner does not fall under this category of persons.

13. It is submitted that therefore, the instant petition is liable to be dismissed for being devoid of merit.

14. Heard learned counsel for the parties and perused the record. This Court has perused the rejection order dated 6th February 2013.

15. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to

entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record. The law, as has been interpreted by the Hon'ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law and the contents of impugned order dated 6th February 2013.

16. This Court has perused the impugned order bearing No. F.31(50)/129/94/L&B/ALT/16890 dated 6th February 2013 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:-

“With reference to the above-mentioned subject, it is to inform you that your case for alternative plot in lieu of acquired land has been placed before the Recommendation Committee held on 19/12/2012, the Committee observed that the entire land of the applicant has not been acquired and is therefore in view of the decision in the case titled “Jai Singh Kanwar V/s. Delhi Administration in Civil Appeal. No.8290 of 2010 by the Hon'ble Supreme Court of India. Hence, the Committee rejected the case.”

17. A bare perusal of the impugned order reveals that the only ground taken by the respondents while rejecting the application of the petitioner's predecessor-in-interest is that his entire land was not acquired and therefore, he, or even the petitioner herein, were not rendered landless subsequent the acquisition of land in question.

18. The instant petition stems from the Scheme of 1961. The Scheme for 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, 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. The Scheme provides for eligibility criteria as well as conditions and procedures one needs to follow while applying for allotment of alternative plot. The Scheme provides for such conditions under paragraph 10, which were updated and modified with time and as per requirements. These conditions act 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.

19. These conditions which stood under paragraph 10 of the Scheme are reproduced hereunder:-

“10. The following conditions shall govern the allotment of land whether by auction or otherwise to individuals (including those whose land has been acquired):

a) No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot of land in Delhi, New Delhi or Cantonment. The question of making an

exception in the case of persons living in a congested locality or whose family has out-grown should be considered after some experience has been gained of the working of the scheme.

b) The allottee of a plot should be required to construct the house in accordance with the sanctioned plans within two years of the date of allotment, failing which the land would be liable to be resumed.

c) The allottee of a plot shall not sell or transfer his rights in the plot or part thereof for a period of 10 years from the date of allotment except with the previous approval of the Chief Commissioner which will be given only in exceptional circumstances. Thereafter the permission to sell will be given to the Chief Commissioner. In both the cases, 50% of the unearned increase in the value of the plot will be paid to the Government before the transfer is permitted.....”

20. 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.”

21. The conditions stipulated in this matter have stemmed from the Scheme of 1961 and its subsequent amendments and hence, have to be given foremost importance while making an application for allotment of alternative plot and while its consideration by the concerned authority.

22. Admittedly, 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 versions of the Scheme of 1961. This bar is also applicable in cases where the entire land of the applicant has not been acquired or where certain portion of the applicant's land remains in Lal Dora.

23. It is also pertinent to see that the aim and intention of the Scheme of 1961 also highlights the said bar since the ultimate aim of the Scheme is to accommodate those who are rendered roofless. 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. 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.”

25. 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”.

26. 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.

27. In the instant case, the case of the petitioner and his predecessor-in-interest was considered by the concerned authority, i.e., the Recommendation Committee, and to evaluate the eligibility of the petitioner for allotment of an alternative plot the necessary actions were carried out. It was found that the entire land of the applicant had not been acquired. Therefore, evidently, the petitioner was not landless after the land of his predecessor-in-interest was acquired.

28. 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 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. 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.

29. Moreover, the Division Bench of this Court in ***Ranjeet Singh vs. Govt. (NCT of Delhi)***, 2017 SCC OnLine Del 10794, observed as under:-

“25. 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.

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56. It is clear from the above facts that in each appeal, the committee applied the same criteria consistently, i.e. whether any applicant was entirely displaced by acquisition proceeding. The adoption of this interpretation is, in our opinion, a fair one, given the limitations that executive agencies would undoubtedly face in dealing with a vast multitude of claims. Even the appeals before this Court have shown that several claimants, mostly co-sharers or joint owners invariably make separate claims. These naturally need to be analyzed. If in fact the respondents were to accede to each request (including the demands of each co-sharer) it is doubtful whether all developed lands would be sufficient to meet the demands. Here again, the Court notices that the scheme contains guidance (“Where, as a result of clubbing of the shares of nearest blood relations, the area of the acquired land comes to 150 sq. yds. or more, allotment of one plot can be made in their joint names”). Yet, in most cases, clubbing does not appear to be resorted to by co-owners who seem to approach through different applications.

57. 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. The aforesaid observations by the Division Bench also clarify the position that dispossession itself does not entitle an applicant for allotment of alternative plot. The important condition which has to be considered is

whether the applicant is left without any land/residence whatsoever after acquisition.

31. Since, the very purpose of the scheme for allotment of alternative plot is to provide for those who do not have any land left, residential or agricultural, subsequent to their land being acquired, and even the conditions laid under the Scheme provide for the ineligibility on account of ownership of a land, it is found that the case of the petitioner does not fulfil the eligibility criteria and hence, he was rightly found not entitled to the alternative accommodation under the Scheme.

32. Furthermore, in the instant case, as is evident from the record that the petitioner after passing of the rejection order on 6th February 2013, went into deep slumber for years and only got agitated after a considerable passage of time of more than six years and as per the petitioner's version. 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.

33. Keeping in view the observations and discussions in the foregoing paragraphs and the facts and circumstances, it is found that there is no error apparent on the face of record or any gross illegality in the impugned order dated 6th February 2013 bearing No. F.31(50)/129/94/L&B/ALT/16890 passed by the concerned authority while deciding the application for

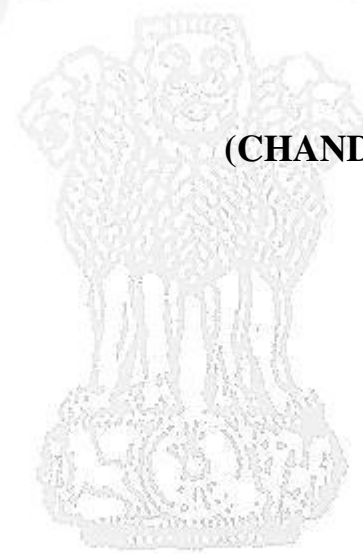
allotment of alternative plot. The petitioner was not rendered landless after the land of the father of the petitioner was acquired.

34. Therefore, this Court does not find any merit in the instant petition since the petitioner cannot claim a benefit that does not accrue to him. Accordingly, the instant petition is dismissed. Pending applications, if any, also stand dismissed.

35. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 15, 2022
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