



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

% **Date of order : 6<sup>th</sup> September 2022**

+ **W.P.(C) 12815/2021**

**SH DEEPAK SHARMA** ..... Petitioner

Through: Mr. Indradutt Vyas,  
Advocate

versus

**DISTRICT LEVEL RECOMMENDATION**

**COMMITTEE THROUGH CHAIRMAN & ORS. .... Respondents**

Through: Ms. Jyoti Tyagi, Advocate  
(Through VC)

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The instant civil writ petition has been filed on behalf of the petitioner seeking issuance of appropriate writ, order, direction for setting aside or quash the order dated 13<sup>th</sup> March 2020 whereby the Recommendation Committee decided not to recommend the case of the petitioner for allotment of alternative plot in lieu of his land being acquired and for directing the respondents to allot alternative plot to the petitioner in accordance with the Scheme dated 2<sup>nd</sup> May 1961 for "Large Scale Acquisition Development & Disposal of Land in Delhi" (hereinafter "Scheme of 1961").



## **FACTUAL MATRIX**

2. The respective share of agricultural land belonging to predecessor-in-interest of the petitioner, Sh. Makkhan Lal, bearing Khasra No. 444 (03-03), 445 (02-12), 447 (02-12), 450 (03-12), 451 (09-11) & 453 (02-19) situated in revenue estate of Village Jasola, New Delhi, was acquired by the Government of NCT of Delhi for the purposes of channelisation of river Yamuna. A notification under Section 4 of the Land Acquisition Act, 1894 bearing No. F.9(1)/89/L&B(I) dated 23<sup>rd</sup> June 1989 was issued and Award No. 21/1992-93 was made in lieu of acquisition.

3. The said part of the land was acquired by the Government on 19<sup>th</sup> January 2006 and the compensation amount of Rs. 1,30,799.73/- was received by the petitioner on 27<sup>th</sup> August 2012. Thereafter, the predecessor-in-interest of the petitioner/applicant applied for allotment of alternative plot under the Scheme of 1961 vide application dated 26<sup>th</sup> August 2013. The petitioner, upon his application being considered by the concerned authority, received the communication/order bearing No. F.33(02)/ 10188/2013/L&B/ALT/444 dated 13<sup>th</sup> March 2020, whereby the application of the alternative plot was rejected on the ground that the petitioner was found to be already having an alternative plot where the family of the petitioner was residing at the time of physical verification.

4. The petitioner is aggrieved by the communication/order dated 13<sup>th</sup> March 2020.

## **SUBMISSIONS ON BEHALF OF THE PARTIES**

5. Learned counsel appearing on behalf of the petitioner submitted



that the impugned order has been passed despite the fact the petitioner was eligible for allotment of alternative plot. It is submitted that the District Level recommendation committee, in its meeting, observed that family of the petitioner was found residing in his own house i.e. House No. 167, Bhangar Mohalla, Madanpur Khadar, New Delhi-110076. The Scheme of 1961 provided that only a person who does not own a house/residential plot/flat will be entitled to apply. It is submitted that aforesaid house of the petitioner falls within Lal Dora/ *abadi* area and as per the Scheme of the Government, petitioner is the eligible person for allotment of alternative plot, the terms and condition for allotment of alternative plot which reads as under:-

*“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 Cooperative Housing Society.”*

It is submitted that in view of the Scheme and the condition laid therein, the observation of the recommendation committee was factually incorrect, illegal and unlawful since the petitioner or his family members did not own a plot/land except the aforesaid property, which falls in Lal Dora/ *abadi* area.

6. It is submitted that the petitioner complied with all terms and conditions mentioned in the Scheme of 1961 and submitted the application within stipulated time and therefore, the observations of the



recommendation committee while rejecting the application of the petitioner were illegal, unlawful, arbitrary and unsustainable in the eyes of law and hence, the impugned order dated 13<sup>th</sup> March 2020 is liable to be quashed.

7. *Per Contra*, learned counsel appearing on behalf of the respondents opposed the instant petition and submitted that there is no illegality or error in the rejection order passed by the concerned authority.

8. It is submitted that the petitioner and his family was found to be living at a residence in Delhi, which was an alternative accommodation that barred him to be entitled for an alternative plot under the Scheme of 1961. Therefore, the impugned order was passed rejecting the application of the predecessor-in-interest of the petitioner. It is thereby submitted that there is no valid ground to challenge the impugned order and hence, the instant petition is liable to be dismissed.

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

10. This Court has perused the rejection order dated 13<sup>th</sup> March 2020 as well as the Scheme of 1961, which became the primary ground for rejecting the application of the petitioner for allotment of alternate plot in lieu of acquisition of their land.

### **FINDINGS AND ANALYSIS**

11. 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**

12. 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.

13. 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:....”*

14. 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.”*

15. 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.

**Objective of Scheme of 1961**

16. 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 2<sup>nd</sup> May 1961 and has been modified from time to time. The Scheme for Large Scale Acquisition, Development & Disposal of Land in Delhi 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.

17. 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”*

18. 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”*

19. Further, in ***Surender Singh Mann vs. Government of NCT of Delhi, W.P.(C) 12306/2015***, decided on 25<sup>th</sup> 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.*”

20. 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”.*

21. 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**

22. The relevant portion of the impugned order dated 13<sup>th</sup> March 2020 is reproduced hereunder:-

*“Whereas, the Scrutiny Committee had issued and served notices to provide requisite documents and the applicant appeared on 02.12.2019 and submitted the relevant documents in support of his claim. Tehsildar (Sarita Vihar) has also inquired with the matter and submitted his report stating therein as per local inquiry conducted by the concerned Revenue Officials, the applicant Sh. Deepak Sharma S/o Lt. Makkhan Lal Sharma is found residing in his own house i.e. H No. 167, Bhangar Mohalla, Madanpur Khadar, New Delhi-110076, at the time of physical verification. Further, the applicant had not applied within the stipulated time period i.e. within one year from the date of compensation.*

*Whereas, the 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. 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 had been acquired; yet before his allotment could be processed, the wife of the petitioner had 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 legal position mentioned above, documents/record placed in the file, the District Level Recommendation Committee based upon the findings of the Scrutiny Committee has decided not to recommend the case of Sh. Deepak Sharma S/o Lt. Makkhan Lal Sharma, r/o H No. 167, Bhangar Mohalla, Madanpur Khadar, New Delhi-110076.”*

23. In the instant matter, the relevant condition, which became the ground for rejection of petitioner's application, was that his family was found to be residing at House No. 167, Bhangar Mohalla, Madanpur Khadar, New Delhi-110076, i.e. an alternate residence. Relying upon the



judgments of *Delhi Development Authority vs. Jai Singh Kanwar C.A. No. 8289/2010* decided on 14<sup>th</sup> September 2011, and *Surender Singh Mann (Supra)*, the respondents rejected the claim of the petitioner for alternative plot observing that the Scheme for acquisition and disposal of land is meant for those rendered landless upon acquisition of their land by the Government for the purposes of development. 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.

24. 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.....”*

25. 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.”*

26. The same have also been reiterated by a Division Bench of this Court in ***Ranjeet Singh vs. Govt. (NCT of Delhi)***, 2017 SCC OnLine Del 10794, wherein it was observed as under:-

*“3. Clause 10 stipulated further conditions for allotment of alternative plots to individuals. These were:*

*(i) that the person being allotted the alternative plot should not own any other residential plot in Delhi,*

*(ii) that a building should be constructed thereon within two years of the allotment and thirdly that the plot cannot be transferred for a period of ten years from the date of allotment except with the permission of the Chief Commissioner.*

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*10. DDA issued a printed version of the alternative plot allotment scheme outlining eligibility criteria and the norms for the sizes of plots, the procedure to be*



*followed etc. Significantly, a reference was made to the Scheme contained in the letter of the Government of India dated 02.05.1961. It also stated that the plots are allotted by the DDA on the recommendation of the Govt. of NCT in terms of policy prescribed by the latter. There was a stipulation that those eligible, in the case of acquisition of ancestral land had to be recorded owners before the issue of the Notification under Section 4 of the Act. There was a condition that such individuals should have received compensation as rightful owners and possession of such land should have been taken by the Govt. of NCT of Delhi. The disqualifying condition stipulated was that applicants should not own a house or residential plot in their own name or name of the near and dependent relations. For awards announced prior to 03.04.1986, the land acquired was to be not less than 150 sq. yards and for post 03.04.1986 awards, it was to be not less than 1 bigha. Under the sub-heading procedure followed by the Department, there were two columns for documents to be submitted. The first was in case of applicant being recorded owner at the time of Notification under Section 4 of the Act. The other column was if the applicant was not recorded owner, i.e. is one of the legal heirs of the deceased recorded owner. In the latter case, in addition to the documents required to be submitted by the applicants belonging to the first category, certain other documents like death certificate, heirship certificate, relinquishment deed of other legal heirs and indemnity bond have to be submitted.”*

27. 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.

28. Upon receiving and considering the application of the predecessor-in-interest of petitioner, the concerned department carried out the necessary inquiry to adjudicate upon the application of the applicant and upon such enquiry, the Tehsildar concerned found out that at the time of physical verification, the petitioner was already having an alternative accommodation which was being used by him and his family as a residential accommodation. The petitioner was clearly not rendered landless after the land in question was acquired. As per the Scheme, and as per the interpretations of the Division Bench of this Court in the aforementioned matters, it is found that as long as an applicant owns an alternative accommodation, the fact whether the same is inside or outside village *abadi* area would be irrelevant. The only relevant fact which remains is that the person seeking allotment of alternative plot has a residential plot available with him which can be used for sustaining a life by him and his family.

29. 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.

### **CONCLUSION**

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

31. 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 13<sup>th</sup> March 2020 passed by the concerned authority while deciding the application for allotment of alternative plot.

32. 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.

33. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**SEPTEMBER 6, 2022**  
**gs/ms**

