

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

% **Date of order: 22nd November 2022**

+ **W.P.(C) 9506/2019**

RAJ KUMAR

..... Petitioner

Through: **Mr. Manoj K Srivastava, Advocate**

versus

**GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI (GNCT) AND ORS**

..... Respondent

Through: **Mr. Biraja Mahapatara and Mr.
Rajat Sharma, Advocates for R-1
Mr. Shashi Pratap Singh and Ms.
Garima Chauhan, Advocates for
R-2/DDA.
Mr. Mukul Singh, CGSC with Ms.
Ira Singh, Advocate for R-3/UOI.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of Mandamus thereby directing the respondents to allot alternative plot to the petitioner near village Samaspur Jagir, Delhi-110092 from where the land of the petitioner was acquired or at any other reasonable places in Delhi as stipulated In Para A(1 to 4) of the Schemes of allotment of alternative

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plots issued vide Letter no. 37/16/60-Delhi dated 2nd May, 1961" read with all subsequent notification/Orders of the Respondent no.1 and the General Notification No. F.15(III)/59/LSG dated 13.11.1959 under Section 4 of the Land Acquisition Act, 1894 & in terms of Award No. 79-A/1/72-73 dated 30.04.1983 and 79-B/72-73 dated 30.06.1983 at predetermined rates.

b) Issue a writ of certiorari to quash the Order of the Respondent no.1 passed vide its Minutes dated 17.04.2013."

2. The facts for the disposal of the instant writ petition are that on 13th November 1959, the Respondent No.1 issued a General Notification No. F.15(111)/59/LSG under Section 4 of the Land Acquisition Act, 1894 to acquire 34070 acres of land in Delhi *inter alia* Khata Khewat no. 6 Khata Khatauni No.6, Khasra no.6/2,11/2,13/2,60,61,62/2,68,69/2(Total 8 pieces) measuring 26 Bighas & 8 Biswas situated at 25, Samaspur Jagir, Delhi-110092, which was ancestral land in the hands of the grandfather of the petitioner late Sri Hari Kishan for Planned Development of Delhi.

3. On 12th February 1973, the Land Acquisition Collector of the Respondent No.1 passed an Award no. 79-A/72-73 & 79-B/72-73 under the said Land Acquisition Act, 1894 and on 28th February 1973, the possession of the said land of the grandfather of the petitioner was taken over by the Respondent No.1. On 9th March 1973, Rs. 20,960.56 was paid to the grandfather of the petitioner as compensation for the land acquisition in terms of the said Awards as per Report of the Acquisition Collector.

4. On 12th April 1979, the grandfather of the petitioner Sri Hari Kishan expired intestate and the petitioner along with his uncle became owner of the said property as per the Hindu Succession Act, 1956. In the year 1983, two supplementary Awards No. 78-B/72-73(Suppl) dated 30th June 1983 were passed by the Land Acquisition Collector of the Respondent no.1 directly in favor of the Petitioner and the supplementary compensation of Rs. 6779.26 towards Award No.79-A/1/72-73(Suppl) & Rs. 5,963 towards Award 79-B/72-73(Suppl) was awarded to the Petitioner. The 'Land Acquisition and Payment Certificate' was issued on 26th August 1986 vide Letter no. LAC(DS)/86/NT/104.

5. On 19th September 1986, the Petitioner filed an application for allotment of alternative plot in terms of the Schemes of allotment. On 18th June 2012, the Petitioner received a letter dated 18th June 2012 from the Respondent no.1 which informed the petitioner that his application for allotment of alternative plot was scrutinized but found with lack of some supporting documents. On 4th July 2012, the Petitioner informed Respondent No.1 that the requisite documents sought by the letter dated 18th June 2012 were already on record as they were filed by the Petitioner vide his letter dated 26th April 2010.

6. Vide minutes of meeting dated 17th April 2013, the application of the Petitioner for allotment of alternative plot was rejected.

7. Aggrieved with the rejection of his application for allotment of alternative plot, the Petitioner has approached this Court by way of the instant writ petition.

8. Learned counsel appearing on behalf of the Petitioner has taken the following grounds in support of his writ petition:

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- a. The application of Petitioner was not barred by limitation as the Petitioner filed his application for allotment of alternative land on 19th September 1986, i.e., within 24 days when the cause of action arose when the payment of certificate was issued to the Petitioner. Even otherwise, the Respondent no.1 had extended the period of limitation up to 30th April 1989 for consideration of application for the allotment of alternative plot by virtue of its latest notification dated 30th April 1989, whereby the Delhi Administration had to consider all applicants whose lands were acquired in a 25-year period between 1963 and 1988.
- b. Reliance has also been placed on ***Simla Devi vs. Secretary & Ors., W.P.(C) 16425/2004*** decided on 28th March 2007 wherein the Delhi High Court held as follows:

"18. In the light of the legal position noticed above, we are of the view that the time limit set in the public notice cannot be held to be final and conclusive as to preclude the persons whose lands are acquired from being considered for allotment of alternative land under the scheme. The long delay in making an application under the scheme, no doubt, is a factor to draw an inference that there is no actual need of the alternative plot, however, it cannot be held that all the applications which are made beyond the period prescribed in the public notice shall be rejected as barred by limitation.

19. hence, in our considered opinion, it is essential for the recommendation committee to consider the applications for alternative land even if they are made beyond the period specified in the public notice and the applications can be rejected as time barred only where it is found that the delay is not satisfactorily explained."

- c. Reliance has also been placed upon ***Poonam Gupta vs. GNCT of Delhi, 2014(50) R.C.R. (Civil) 266*** to contend that the time limit of one year stipulated by the Respondent itself was not sacrosanct but relaxable in deserving cases where injustice was caused.
 - d. The rejection of the application of the Petitioner on the ground that the policy of Respondent no.1 requiring 80% of the acquired land to be taken possession of is untenable as the policy of the Respondent no.1 is prospective in nature and did not apply to the claim of the Petitioner.
9. *Per Contra*, learned counsel appearing on behalf of the Respondents have taken the following grounds to content that the instant petition is liable to be dismissed:
- a. The decision is **Poonam Gupta** (*Supra*) is not to be treated as a precedent as per the decision of the Hon'ble Supreme Court in SLP (Civil) No. 32313 of 2016.
 - b. The land of the Petitioner has not been acquired in its entirety and hence, he is disentitled to succeed in the allotment of alternative plot. Reliance has been placed on ***Delhi Development Authority vs. Jai Singh Kanwar, Civil Appeal 8289/2010***, decided on 14th September 2011 wherein it was held that:

"6. Neither the application nor the documents produced by the applicant Om Singh Kanwar averred or established that Chhaiju Singh did not own a plot or flat or residential house and that he was not a member of any Cooperative Housing Society. In the circumstances, the fundamental requirement for making an application was absent. 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."

- c. The Scheme of 1961 is not a statutory scheme but an administrative scheme launched by the Government of India to rehabilitate those agriculturists whose land has been acquired and those who require rehabilitation on account of such compulsory acquisition. Thus, being administrative in nature, the Respondent has all the rights to regulate the time limit for making an application for allotment of alternative plot.

10. Heard both the parties and perused the record. I have given my thoughtful consideration to the submission made by the parties. The issues to be adjudicated by this Court are:

Issue 1- Whether the Petitioner is entitled to allotment of alternative land even though the entire land of the Petitioner has not been acquired?

11. 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:-

"The case was considered by the Committee and observed that compensation was received by Shri Dalbir Singh on 15.02.84 and 09.01.84 whereas the application for allotment of alternative plot was filed by Shri Dalbir Singh on 19.09.86 Which is beyond the period of one year. Hence, the case is barred by time. Apart from the above, the land about 8 bigha has not been acquired in entirety.

Hence, the case was considered by the Committee and rejected”

12. In the instant matter, the relevant conditions, which became the ground for rejection of petitioner’s application, were that his entire land has not been acquired and he was not landless. The other factor which became the ground of rejection was that the application of the Petitioner was beyond the period of limitation. Even it is assumed that the rejection on the ground of delay was bad in law, the ground of rejection that his land has not been acquired in its entirety will come in the way of the Petitioner.

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. 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.”

15. 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”.

16. 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

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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.

17. 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.....”

18. 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.”

19. 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.”

20. In ***Delhi Development Authority vs. Jai Singh Kanwar, Civil Appeal No. 8289 of 2010*** decided on 14th September 2011, the Hon’ble Supreme Court made the following pertinent observations:

“6. Neither the application nor the documents produced by the applicant Om Singh Kanwar averred or established that Chhajju Singh did not own a plot or flat or residential house and that he was not a member of any Co-operative Housing Society. In the circumstances, the fundamental requirement for making an application was absent. 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.....”

21. 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.

22. 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.

23. In the instant matter, the perusal of the contents of the impugned Order reveals that the entire land of the Petitioner has not been acquired and the Petitioner is left with remaining land. The Petitioner was ineligible at the first instance and hence was not entitled to allotment of alternative plot. 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 remaining land is left with the Petitioner, then it will not create a bar for recommending him for allotment of alternative plot.

24. 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 minutes of meeting dated 17th April 2013 passed by the concerned Authority. There is no reason to interfere with the said impugned order passed on the application of the Petitioners.

25. Accordingly, the instant petition is dismissed. Pending applications, if any, also stand dismissed.

26. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 22, 2022

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