

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

% **Date of order: 17th October 2022**

+ **W.P.(C) 14631/2022**

DAYAWATI & ORS

..... Petitioners

Through: **Mr. Sandeep Thakur, Advocate**

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: **Ms. Jyoti Tyagi, Advocate**
Mr. Achal Gupta, Advocate for
GNCTD

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 & 227 of the Constitution of India has been filed on behalf of the petitioners seeking the following reliefs:-

“a) Issue a writ of mandamus or an order, direction in the nature of mandamus or any other writ provision for issuing a writ of mandamus or certiorari or any other appropriate writ against the respondent by set-aside the rejection order dated 28.01.2021 in respect of the alternative plot passed by the respondent and allow the recommendation of alternative plot to the petitioners in lieu of their acquired land.

b) Pass the direction for reconsider the matter of the petitioners' case/application for alternative plot by the competent officials of the respondent having vast legal knowledge of scheme laid down by Govt. of NCT of Delhi in respect of alternative plots by remanding the matter."

2. The father of the petitioners, Jagdish Yadav, was the owner of the land situated in the Village of Samaypur, Delhi which was acquired vide Award No. 42/84-85. Upon acquisition of his land, the predecessor-in-interest of the petitioners applied for allotment of alternative plot in lieu of acquisition of his land under the Scheme dated 2nd May 1961 for "Large Scale Acquisition Development & Disposal of Land in Delhi" (hereinafter "Scheme of 1961").

3. On the said application, the respondent passed the order bearing no. F.33(29)/59/69/2011/L&B/alt/533 dated 28th January 2021 rejecting the application of the petitioners' predecessor-in-interest on the ground of delay and part of his land remaining in Lal Dora.

4. The petitioners being aggrieved of the said rejection order have sought the aforementioned prayers by way of filing the instant petition.

5. Learned counsel appearing on behalf of the petitioners submitted that the grounds taken by the respondent while rejecting the application of the predecessor-in-interest are unfounded since the petitioners do not own any residential plot outside the village *abadi* area. It is submitted that the petitioners are residing in the village with a big family and they,

therefore, seek rehabilitation from the respondent, as has been granted to other villagers as well.

6. It is submitted that therefore, the impugned rejection order dated 28th January 2021 is liable to be set aside.

7. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that as per the Scheme of 1961 the claim of the applicant was rightly rejected since, first, their application was barred by limitation as per the Scheme and secondly, certain part of their land remained in Lal Dora.

8. It is submitted that the petitioners are not eligible for an alternative plot in light of the findings of the Recommendation Committee and hence, the instant petition too 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 also perused the impugned order dated 28th January 2021 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, an application was received on 28.12.2011 from Sh. Jagdish S/o Kishan Lal R/o H. No. 69, Gali No. 9, VPO Samaypur, Delhi-110042 for allotment of alternative plot in lieu of his/her acquired land of village Samaypur vide Award No. 42/84-85.

Whereas, in the meeting held on 28.01.2021, the Recommendation Committee observed that notice dated 13.07.2018 was issued to the applicant to submit the documentary evidence/payment certificate to verify the date of compensation and explain as to why his application should not be rejected as application is filed after the expiry of one year from the date of compensation and Public Notice dated 23.08.2018 was also published in two dailies i.e. Hindi and English to submit the requisite documents. Further, personal hearing notices dated 03.10.2019 and 23.12.2020 were issued to the applicant with the request to appear before the Recommendation Committee for personal hearing on 24.10.2019 at 12.30 PM and 28.01.2021 at 11.00 AM.

Whereas, concerned Tehsildar has also inquired into the matter and submitted his report stating therein that applicant is having remaining land and residential house in lal dora as per Tehsildar report.

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Whereas, as per legal opinion received from Land & Building Department, it is evident that “In view of the interpretation of scheme of 1961 by the various judgments of Delhi High Court on the basis of full bench judgment of Apex Court in the case of Delhi Development Authority Vs. Jai Singh Kanwar in Civil Appeal No. 8289 of 2010 dated 14.09.2011 it is clear that the person who owned any shelter over their head whether it is in the village abadi, Lal Dora, extended Lal Dora/urbanized village or urban area are not entitled for allotment of alternative plot.” Hence, the Committee recommends the application of the applicant for REJECTION.”

11. In the instant matter, the relevant conditions, which became the ground for rejection of application of the petitioners’ predecessor-in-interest, were that he already held land in Lal Dora and was not landless,

he failed to apply for the alternative plot within the prescribed period and that despite notices being published, he did not provide the requisite documents for consideration of his application and also did not appear for personal hearings.

12. The Scheme of 1961 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.

13. 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”

14. 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”

15. 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.”

16. Hence, it is evident that the Scheme of 1961 was introduced 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.

17. 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 therein 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.

18. 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 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.....”

19. 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.”

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 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. yard 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.”

22. The abovementioned conditions, read with the directions regarding the said conditions laid by the Division Benches of this Court, indicate that there is a prescribed period for filing an application for allotment of alternative plot which operates from the date of the Award made in lieu of acquisition till the expiry of one year thereafter. In the instant matter, the petitioners’ predecessor-in-interest failed to comply with the condition of applying for the allotment of alternative plot within one year

from the date of the Award, which barred him from having his application accepted and processed and hence, there is no error in the finding of the respondent in the impugned order to this effect.

23. Further, the condition of holding a plot/residential accommodation or having certain land left even after acquisition being a bar for consideration of application of allotment of alternative plot is a 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.

24. 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.

25. Upon receiving and considering the application of the petitioner, the concerned department carried out the necessary inquiry to adjudicate upon the application of the applicant and upon such enquiry, by the report of Tehsildar, it was found that the entire land of the petitioners was not acquired and they had certain portion of land left with them in Lal Dora which made them ineligible for consideration for allotment of alternative plot. The petitioners were 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 matter, it is found that as long as an applicant is left with a part of his land or owns an alternative accommodation, the fact whether the same is inside or outside village *abadi* area would be irrelevant.

26. 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.

27. 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 petitioners does not fulfil the eligibility criteria and hence, the applicant and the petitioners were rightly found not entitled to the alternative accommodation under the Scheme.

28. The application of the petitioners' predecessor-in-interest was also rejected on the grounds of non-submission of requisite documents and non-appearance for personal hearings. It is evident from the impugned order that the concerned authority had issued a notice to the applicant to provide an opportunity of personal hearing in the matter on 24th October 2019 and 28th January 2021.

29. It is also evident that Notice dated 13th July 2018 was issued to the applicant to submit the requisite documents within the stipulated time. Public Notice dated 3rd October 2019 as well as 23rd December 2020 were also published in two dailies in Hindi and English to submit the requisite documents. However, as per the record, the documents were not submitted by the petitioner. The petitioners have not been able to prove their case for being considered for the allotment of alternate land because of the deficiencies and inaction on their part. The petitioners were granted opportunity on several occasions for submissions of requisite documents and personal hearing for their case being considered under the Scheme

through personal notices as well as through public notice. However, the petitioners and even the applicant failed to appear before the authorities and submitting the requisite documents. Therefore, their application was rejected.

30. Keeping in view the entirety of the matter, the Scheme of 1961 and the conditions laid therein, the observations of the Hon'ble Supreme Court as well as the Division benches of this Court, and the contents of the impugned order and the observations as aforementioned, it is found that the communication no. F.33(29)/59/69/2011/L&B/alt/533 dated 28th January 2021 rejecting the application of the petitioners' predecessor-in-interest does not suffer from any illegality, impropriety or error apparent on the face of record.

31. The petitioners and their predecessor-in-interest failed to approach the concerned authority within the stipulated time prescribed for applying for allotment of alternative plot, they were not rendered landless after acquisition and had land remaining in Lal Dora, and further, they failed to submit the requisite documents, in absence of which their rights and entitlement could not have been determined.

32. Therefore, in these circumstances, this Court does not find any cogent reason to exercise its writ jurisdiction and allow the prayers as made on behalf of the petitioners.

33. Accordingly, the instant petition is dismissed for being devoid of merit and pending applications, if any, also stand disposed of.

34. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 17, 2022

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