

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

% **Date of order : 14th November 2022**

+ **W.P.(C) 15538/2022**

SHRI AZAD SINGH

..... Petitioner

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

versus

LAND AND BUILDING DEPARTMENT & ANR.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“(i) Issue a Writ of Certiorari or any other appropriate writ, order or direction thereby quashing the Order dated 09.03.2020 passed by the Respondent No.2, vide which the Application of the Petitioner for allotment of alternative plot was rejected by the Respondent No.2;

(ii) Issue a writ of Mandamus or any other appropriate writ, order or direction thereby directing the Respondents to make recommendation for allotment of alternative plot;

(iii) Award costs of the present writ petition in favour of the Petitioner and against the Respondents;”

2. The Petitioner was owner of the land situated in various Khasra Nos.6/13 (1-8), 18 (4-14), 23 (4-16), 8/4/1 (1-8), 7 (4-16), 8 (4-16) and 10/17/2 (3-4), total land measuring 25 bighas 2 biswas situated in the revenue estate of Village Mubarakpur Dabas, Delhi. The Petitioner was having 1/8th share in the aforesaid land. The notification under Section 4 of the Land Acquisition Act, 1894 was issued on 21st March 2003 for acquisition of the land and an Award bearing No.16 of 2005-06 was announced on 14th September 2005. Possession of the land was taken on 4th April 2006 and compensation was paid to the Petitioner of his share on 23rd June 2006.

3. The Petitioner moved an application for allotment of alternative land under the ‘Large Scale Acquisition Development & Disposal of Land in Delhi Scheme, 1961’ with the concerned authorities on 26th December 2006. The Application of the Petitioner was given the Number as F.33(87)/07/2006/L&B.

4. In pursuance of the aforesaid Application moved by the Petitioner, process for scrutiny of the same started. The Petitioner herein received a letter dated 29th September 2016 wherein it was mentioned that the application of the Petitioner suffers from certain deficiencies and hence there was a need to file certain documents.

5. The Petitioner by letter dated 2nd January 2017 filed certain documents which were demanded by the Respondent. The Petitioner received a letter vide which it was mentioned that a personal hearing will

be given by the Recommendation Committee for allotment of alternative plot and the Petitioner in pursuance of the said letter so received from the office of Respondent No.2 appeared for personal hearing.

6. The Petitioner received a letter dated 22nd January 2018 from the office of Superintendent, Land & Building Department, vide which the Petitioner was asked to furnish documents i.e. Affidavit in the prescribed form for not owning immovable property in urban area of Delhi including membership details of Cooperative Group Housing Society and the LAC Report.

7. The Petitioner received an order dated 9th March 2020, vide which the Petitioner was informed that the Application of the Petitioner was rejected as the Petitioner is having ancestral property in Village Mubarakpur Dabas and the Petitioner is not eligible/entitled for allotment of alternative plot.

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

9. Learned counsel appearing on behalf of the Petitioner has contended that as per the Policy of the Respondent, the person concerned should not own the house outside Village Abadi and hence, the house within Village Abadi is permissible and there is no prohibition and bar. It is submitted that the ancestral house of the Petitioner is within the village Abadi and therefore, the Petitioner is entitled to the benefit of the 1961 scheme.

10. It is further submitted that two things i.e. owning the house and carrying on agricultural operations cannot be bifurcated. They have to stand together meaning thereby, in the absence of the house, there cannot be any agricultural operations. Thus, for agricultural operation, house is must and prohibition as mentioned above is that of not owning the house outside abadi.

11. It is also submitted 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. It is also submitted that the case of the Petitioner is rejected on the basis of the decision of the Coordinate bench of this Court in **Krishan Kumar Aggarwal vs. Land & Building Department, W.P. (C) 758/2015** decided on 5th August 2016, which is not applicable in the facts and circumstances of the present case.

12. Learned counsel has relied on **Tukaram Kana Joshi vs. MIDC, (2013) 1 SCC 353**, wherein the Hon'ble Supreme Court held that:

“15. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.”

13. *Per Contra*, learned Standing Counsel appearing on behalf of the Respondents submitted that if the scheme has been introduced by the Government to enable the citizens to have a roof over their head does not mean that the scheme is meant for the enrichment of people. It is also submitted that in view of the law settled by Hon'ble Supreme Court and this Court, it is now settled that if a person is having any plot, he is not entitled for alternative plot. Therefore, there is no illegality in the impugned order passed by the competent authority and the writ petition is liable to be dismissed being devoid of any merit.

14. Heard learned counsel for the parties and perused the record. The issues to be adjudicated by this Court are:

Issue 1- If the person is having a plot/constructed house in the area of Abadi, would he be entitled for alternative plot under scheme of 1961?

Issue 2- Whether the present writ petition is liable to be dismissed on the grounds of delays and laches?

15. 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 Land & Building Department, GNCT Delhi forwarded the application of Sh. Azad Singh S/o Sh Bishan Dutt R/o 316, VPO Mubarakpur Dabas, Delhi-81, diarized at S.No. 2126 dated 26.12.2006 regarding allotment of alternative plot in lieu of his/her land situated at village Mubarakpur Dabas acquired by the Government for undertaking various development I infrastructural projects, to the District Task Force, District North-West, Kanjhawala, Delhi. File has been assigned Seniority No. 6049 by Land & Building

Department. As per record deficiency memo was issued to the applicant vide letters dated 29.9.2016 and the applicant was also given an opportunity of personal hearing on 21.6.2017 which was attended by himself.

The Notification U/s 4 of the land Acquisition Act was issued on 21.3.2003. The award was announced on 14.9.2005. The Possession of the acquired land has been taken by the Government on 4.4.2006. The payment released to applicant on 23.6.2006. As per record the total land in the name of applicant and others is 25 bigha 02 biswa. The land acquired by the government is 25 bigha 02 biswa.

The District Task Force Recommendation Committee of District North West, Kanjhawala, Delhi, in meeting held on 30.9.2019 has not recommended the allotment of alternative plot in your case. After careful examination of the documents placed on record the undersigned being the Competent Authority hereby rejects the application on following ground (s):-

1. Applicant/Legal heirs has ancestral property/Owns residential property in Village Mubarakpur Dabas and in view of the order dated 5.8.16 of Hon'ble High Court of Delhi in WP (C) 758/2015 titled Krishan Kr Aggarwal Vs land & Building Department in which it has been stated that the persons who were owning alternate accommodations or who had residential covers over their head were not entitled to alternate plots, the applicant is not eligible/entitled for allotment of alternate plot."

Answer to Issue 1-

16. In the instant matter, the relevant conditions, which became the ground for rejection of Petitioner's application, were that he held land in abadi area and was not landless.

17. The condition of holding a plot/residential accommodation 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.

18. 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.

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"

19. This objective has also been reiterated by this Court as well as the Hon'ble Supreme Court in various cases. In ***Surinder Singh Mann vs. Government of NCT of Delhi, W.P.(C) 12306/2015*** decided on 25th August 2017 the 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.*

XXX

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. The Coordinate Bench of this Court ***Amrit Kumari vs. Asst. Housing Commissioner & Ors***, 2016 SCC OnLine Del 1624, also held that a scheme for allotment of alternative plots is purely a welfare scheme formulated to rehabilitate the farmers whose land had been acquired.

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.

22. However, the Scheme for alternative plot does not confer a direct and absolute right to any person whose land is acquired. The Scheme provides for conditions under paragraph 10, which were updated and modified with time and as per requirements. These conditions acted as

eligibility criteria for the land owners whose lands were acquired and who became entitled to be considered for allotment of alternate plot, subject to the conditions laid.

23. 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 within two years of the date of allotment, failing which the land would be liable to be resumed.

c) The allottee of a plot shall not sell or transfer rights in the plot or part thereof for a period of 10 years from the date of allotment except with the previous approval of the Chief Commissioner which will be given only in Exceptional 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.....”

24. 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.”

25. An examination of the objective of the Scheme read with the observations made in the above-mentioned 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 fulfill the criteria provided for under the Scheme.

26. Those who lose their homes or their agricultural lands, which are

the only source of their livelihood, are the custodians of schemes like these and rightly so need to be facilitated as soon as possible. Such individuals, owners, villagers, farmers and their families cannot and should not be left remediless after their land is acquired. However, it should also be borne in mind that in garb of such welfare schemes, those who have alternative and effective means of sustaining a life do not take unfair advantage of the schemes and welfare provisions of the Government and its Authorities. Keeping in mind the objective of the Scheme, it is found that enforcing an eligibility criterion for consideration of application of allotment of alternate land is not unreasonable or unfair and is in fact required for ensuring that the active and effective measures reach those who are in need.

27. In the instant matter, the perusal of the contents of the impugned order reveals that the Petitioner owns an ancestral property in village Abadi. Even if he argues that he does not live in village *abadi*, it is an admitted fact that he is the owner of a house in Delhi. As discussed above, the position is clear for those individuals whose land has been acquired and who seek alternative accommodation or plot; they are to fulfill the necessary conditions of the Scheme of 1961, in consonance with the objective the Scheme seeks to achieve.

28. 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.”*

29. Therefore, this Court does not find force in the argument of the Petitioner that as per the modification in the year 1993 in Scheme of 1961, if an applicant owns a land in village *abadi*, it will not create a bar for recommending him for allotment of alternative plot. It is pertinent to refer to ***Ranjeet Singh vs. Govt (NCT of Delhi)*, 2017 SCC OnLine Del 10794**, wherein it was observed as under: -

“24. 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.

xxxxxxx

55. 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. Therefore, Petitioner cannot claim that he has a right to allotment of alternative land merely because he owns a land in abadi area.

Answer to Issue 2-

31. It is a well established rule of law that delay defeats equity and if the Petitioner has approached the Court of law after a long period of time after the cause of action has arisen, then the relief prayed by him/her may be denied on the ground of delay and laches.

32. The Hon'ble Supreme Court of India in ***State of Karnataka & Ors. vs. S.M. Kotrayya & Ors., (1996) 6 SCC 267***, has held as under :-

“9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in subsections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.”

33. In *Shiv Dass vs. Union of India & Ors.*, (2007) 9 SCC 274, the Hon’ble Supreme Court held as under:

“8....The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

34. Admittedly, the Petitioner was informed about the rejection of his application for allotment of alternative land on 9th March 2020, but the instant writ petition has been filed only on 10th November 2022. There

has been a delay of 2 years and 8 months but the Petitioner has failed to provide any explanation for the same. Merely citing that covid-19 outbreak led to the delay in the filing of the writ petition would not help the case of Petitioner as no justifiable cause has been assigned to explain the entire delay in the filing of the present petition.

35. Law favours only those who are alive as to their rights and not those who sleep over their rights. This is a fit case wherein the maxim *vigilantibus non dormientibus jura subveniunt* is fully attracted. The above maxim entails that law will come to the aid of only those who are vigilant about their rights and do not sleep over their rights. Therefore, the claim of the Petitioner is infected with delays and laches and is liable to be dismissed on this ground alone.

36. In view of the foregoing discussion on merits, this Court does not find any illegality, impropriety or error apparent on the face of record in the impugned order dated 9th March 2020 passed by the concerned Authority. There is no reason to interfere with the said impugned order passed on the application of the Petitioner.

37. Accordingly, the instant petition is dismissed on both the grounds i.e., on the basis of delays and laches as well as on merits.

38. Pending applications, if any, also stands dismissed.

39. The order be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 14, 2022

Ns/mg