

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order :11th November 2022**

+ **W.P.(C) 15541/2022**

SURAT SINGH Petitioner

Through: Counsel for the Petitioner
(Appearance not given)

versus

DISTRICT MAGISTRATE (NORTH) Respondent

Through: Ms. Jyoti Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant 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 for calling the record of me No. F.33(90)/l05/2006/L&B/Alt./Seniority No.5423 relating to application for allotment of alternative plot in lieu of acquired land of the petitioner: AND

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction for the respondent to quash the order/letter no. F.33(90)/l05/2006/ L&B/ Alt./3260 dated 30.12.2021, by which application of the petitioner for allotment of alternative plot was illegally rejected;

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OR

To issue direction for respondent to issue recommendation letter in favour of petitioner for allotment of alternative plot to DDA at the earliest.”

2. The facts of the present case are that the father of the Petitioner along with his brothers were shown as bhumidars of the land comprising in Khasra No. 13//19(4- 16), 20(4-16), 17// 14(4-16), 21/ / 18 (4-16), 23(4-16), 24/1(1-10), 25//7(4-04), 8(4-12), 9(4-16), 12(4-16), 26(0-04), 27/4(4-16), 62//23/1(4-03), 63//3 (4-16), 4(4-16), 64//6(4-16), 14/2(1-16), 15(4-16), 16(4-16), 24(4-16), 25(4-16), 65/ /11(4-16) , 19/2(1-16), 20(4-16), 21(4-16) and 22(4-16) total measuring 108 bigha 18 biswas, situated in the revenue estate of village Barwala, Delhi, wherein the share of Petitioner was shown as 1/9th, since 1954-55. In another Khatoni of Khata No. 473/241, for the year 2003-04 of Village Barwala, Delhi, the Petitioner is shown as a bhumidar of the land comprising in khasra No.No.21/ /24/2 (3-06),69/ /3(4-08), 4Jl(I-18), 7(4-13), 8(4-16) and 9(4-16) total measuring 23 bigha 17 biswas, situated in the revenue estate of villageBarwala, Delhi.

3. In the year 2003, the appropriate Government issued a notification under Section 4 of the Land Acquisition Act, 1894 vide notification no. F.11(19) / 2001/L&B/ LA/20 112 dated 21st March 2003, to compulsory acquire the land measuring 6129 bigha 10 biswas 10 biswansi, situated in revenue estate of Village Barwala, Delhi, and declaration under Section 6 of Land Acquisition Act, 1894 was published vide notification no.

F.11(19)/2001/L&B/LA/28281 dated 19th March 2004 for aforesaid land including the land of the Petitioner.

4. The possession of the acquired land was taken on 6th October 2005 by the appropriate Government and the compensation of the acquired land under this award to the tune of Rs. 47,44,220/- was disbursed to the Petitioner on 21st October 2005 by the Land Acquisition Collector in respect of the land of Khata Khatoni No. 37//23 min and Rs. 12,45,945/- was disbursed on 28th October 2005, in respect of land of Khata Khatoni No.473/241.

5. Under "Large Scale Acquisition Development & Disposal of Land in Delhi Scheme, 1961" the Petitioner on 13th July 2006 applied for allotment of alternative plot in his favour, in the office of Land & Building Department, Govt. of NCT of Delhi. The file for making recommendation, created by the office of Land & Building Department, was dealt in file No. F.33(90)/105/2006/L&B/Alt. The office of Respondent sent a letter dated 13th April 2018 to the Petitioner to furnish the required documents. On 8th October 2018, the Petitioner furnished a reply to the said letter alongwith certain documents in the office of the Respondent.

6. After considering the seniority list prepared by the Land & Building Department, the office of District Magistrate called the Petitioner for personal hearing in view of the general direction issued by the Delhi High Court and a letter for personal hearing was issued for 27th September 2019. The Recommendation Committee in its meeting held on

5th December 2019 rejected the application of Petitioner and the decision was communicated to the Petitioner on 30th December 2021.

7. Aggrieved by the rejection of his application, the Petitioner has approached this Court by way of the instant writ petition.

8. Learned counsel appearing on behalf of the Petitioner has submitted that the concerned authority has erred in holding that the land of the Petitioner has not been acquired in its entirety and the case of the Petitioner is squarely within the letter and spirit of the 1961 Scheme as modified from time to time.

9. It is also submitted that all the documents have been submitted to the Respondent on various occasions and all of their letters calling upon the Petitioner to submit the documents have been duly complied with. Further, the learned counsel has relied on a landmark judgment passed by the Hon'ble Supreme Court in ***Delhi Development Authority vs. Jai Singh Kanwar, Civil Appeal No. 8289 of 2010*** decided on 14th September 2011, to substantiate his claims.

10. *Per Contra*, learned counsel for the Respondent vehemently submitted that the application for the alternative plot of the petitioner has been rejected by the competent authority on two aspects: - *first*, Petitioner has failed to supply the copy of the requisite documents as required, despite giving ample opportunity for supplying the same and giving notice by publication in the daily newspaper and *secondly*, Petitioner's land has not been acquired in its entirety.

11. Learned counsel further submitted that if the scheme has been introduced by the Government to enable the citizens having roof over head does not mean that the scheme is meant for enrichment of the people. 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.

12. In the rejoinder, learned counsel for the Petitioner submitted that the Petitioner was never given any notice requiring documents to be supplied.

13. Heard learned counsel for the parties and perused the record. 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?

Issue 2- Whether the Petitioner has supplied the requisite document despite sufficient notice being given?

14. 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:-

“Whereas, an application was received from Sh. Surat Singh S/o Chataru, R/o 169, Village BARWALA, Delhi-110039 on 13.07.2006 for allotment of alternative plot as per Government policy in lieu of acquisition of land of village Barwala vide Award No. 12/2005-06.

Whereas, in the meeting held on 05.12.2019, the Recommendation Committee observed that notice dated

31.04.2018 was issued to the applicant to submit the requisite documents & also two Public Notices dated 13.05.2018 and 23.08.2018 were also published in two dailies i.e. Hindi and English to submit the requisite documents within the period of one month. Further, an opportunity of personal hearing was also provided to the applicant on 27.09.2019.

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

Whereas, the Hon'ble Supreme Court in the judgment 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." Committee is of the view that the applicant is not entitled for alternative plot. Hence, the Committee recommends the application of the applicant for REJECTION.

In view of the position mentioned above, the District Level Recommendation Committee has decided not to recommend the case of Sh. Surat Singh S/o Chataru, R/o 169, Village BARWALA, Delhi-110039, due to noncompliance of above mentioned notices, public notice and non-submission of requisite documents and land of the applicant has not been acquired in entirety."

Answer to Issue 1-

15. 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 and that despite notices

being published, he did not provide the requisite documents for consideration of his application.

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 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.

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. 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.”

19. A 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.

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.

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 certain conditions which need to be fulfilled, 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 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.....”

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. The Division Bench of this Court in ***Government of NCT of Delhi vs. Veerwati, 2012 SCC OnLine Del 1444***, and its connected LPAs, held

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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. 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.....”

27. 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.

28. 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.

29. 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.

30. In the instant matter, the perusal of the contents of the impugned Order reveals that as per the report of the Tehsildar 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.

Answer to Issue 2:

31. Further, the Petitioner also failed to supply certain documents, as were required by the Committee to consider his application despite there being publication of notices regarding the same, which would have helped his case to show any facts contrary to what was observed by the concerned Authority.

32. The Petitioner has not been able to prove his case for being considered for the allotment of alternate land because of the inaction on his part. The petitioner was granted opportunity at several occasions for submissions of requisite documents and personal hearing for his case being considered under the Scheme through personal notices as well as through public notice. However, the petitioner failed in appearing before the authorities and submitting the requisite documents.

33. Public Notice is one important means of notification to the citizens at large or to a section of stakeholders regarding a proceeding ongoing before an authority. The ordinary business practice is to publish the public notice in two different languages in widely-circulated newspapers, and containing all necessary information. The said notice must be achievable, accessible and verifiable. In the case of ***Sridhar M. A. Vs. Metalloy N. Steel Corporation (2000) 1 SCC 397***, the Hon'ble Supreme Court held that in appropriate cases, deemed service of notice may be accepted by the Court and this will depend on the facts of each case. Accordingly, in the instant case, the public notice made shall be considered to be deemed notice to the petitioner.

34. Therefore, even if, for the sake of argument, the earlier notices are deemed not to be served, the public notice issued by the Respondent in newspapers in two languages – i.e. English and Hindi, shall be deemed to be a valid service, and accordingly the Petitioner cannot claim the benefit of being unserved.

35. Keeping in view the observations and discussions in the foregoing paragraphs and the facts and circumstances, it is found that the concerned authority/respondent appreciated the facts and record before it in light of the established principles of law and in accordance of the scheme of provisions and conditions under the Scheme of 1961 and then passed the impugned order.

36. This Court does not find any illegality, impropriety or error apparent on the face of record in the impugned Order dated 30th December 2021 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.

38. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 11, 2022

Aj/Mg

