

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

% **Date of Order: 18th November 2022**

+ **W.P.(C) 15821/2022**

SHIV BHAGWAN Petitioner

Through: Mr. Sanjay Rathi, Advocate

versus

GOVT. OF NCT OF DELHI & ANR Respondents

Through: Ms. Jyoti Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 49237/2022

Exemption allowed subject to just exceptions.

The application stands disposed of.

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

“(a) Issue a writ of certiorari or any other appropriate writ or direction thereby quashing the order dated 15.10.2020 in file No. F.33(77)/192 /2003/L&B/ALT/760 SNTY. No. 1380 issued by the respondent no. I (vide which the application of the petitioner for allotment of an alternative plot has been ordered to be rejected on the ground that the land of the petitioner has not been acquired in entirety and he has some un-acquired land in Kh.No.86/74 of the revenue estate of village Pehlادpur Bangar (extended abadi area), Delhi).

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(b) further issue a writ of mandamus or any other appropriate writ or direction thereby directing the respondents to make recommendation for allotment of alternative plot as the petitioner fulfills all requisite conditions for allotment of alternative plot.”

2. The facts of the present case are that the Petitioner had inherited the estate of Sh . Badlu Ram S/o late Sh. Hira Lal to the extent of one-half share in the land measuring 4 bighas 19 biswas out of Khasra No.6//21/2(O-3),7//24(4-16), & share in land measuring 17 bighas 4 biswas & 5 biswansi out of Khasra no. 7//25/2(0-10), 12//3(4-16),4/1(2-08), 4/2(1-18), 5/1 (2-08), 62//16(0-12), 17min(2-07-15), 18/2min (0-19.1/2), 23min (0-16), 24min (0-09) situated in the revenue of Village Pehladpur Bangar, Delhi-110042.

3. The abovesaid land which in the name of the Petitioner was acquired by the Land Acquisition Collector vide Award No. 14/2002-2003 dated 8th July 2002 of which the Petitioner was the exclusive bhumidhar thereof and the compensation of the was paid to the Petitioner as depicted in the payment certificate dated 23rd July 2003.

4. Under the Large Scale Acquisition, Development and Disposal of Land in Delhi Scheme, 1961, the Petitioner applied for allotment of alternative land vide application form on 28th July 2003 having diary no. 5032 and seniority no.1380.

5. Vide order dated 15th October 2020, the Recommendation Committee decided not to recommend the case of the Petitioner for allotment of alternative land on the ground that the land of the Petitioner has not been acquired in entirety and he has some remaining un-acquired

land in Khasra No. 87/74 in the revenue estate of Village Pehladpur Bangar, Delhi.

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

7. Learned Counsel appearing on behalf of the Petitioner has made the following arguments in support of his prayers:

a. The impugned order dated 15.10.2020 as passed by the Respondent No.1 with the consent of the Respondent No.2 is a unreasoned order being passed improperly thereby acting inadequately on the facts, and law and have also failed to consider the own scheme, policy, ratio of law as is prevailing in context to the allotment of the alternative plot by completely ignoring the factual aspect of the subject in issue and had traveled illegally in applying the ratio of law as laid down in **Civil Appeal No. 8289 of 2010 and 8290 of 2010 of Delhi Development Authority vs. Jai Singh Kanwar** decided on 14th September 2011.

b. The Respondents have fallen in grave error in not adhering to the ratio of law as laid down by the Hon'ble Supreme Court and factual evaluation of the case of the Petitioner as the land bearing Khasra No. 86/74 as said to have been remaining as un-acquired falls in the extended abadi area of Village Pehladpur Bangar, Delhi. It is submitted that the report of the Patwari dated 23rd September 2014 clearly depicts that the land bearing Khasra No. 86/74 (0-14) is situated in "*androoni Phirni extended abadi-cheter main padti hai*".

c. The Respondents while passing the impugned order have fallen in grave error with not appreciating the real purpose of the policy of allotting the alternative plot and had overlooked the the mandate of the policy is to be rehabilitate a person and the petitioner who is legally entitled for rehabilitation was required to be considered but under tenuous application of mind, the Respondents have acted unsubstantially and inappropriately by rejecting the claim of the Petitioner and such untenable impugned orders are thus liable to be set-aside. Learned counsel has laid stress on the object clause of the 1961 scheme which *inter alia*, is to benefit ***“farmers whose land are acquired for plan development of Delhi is a rehabilitation measure clause”***

d. Learned counsel has relied on the following judicial pronouncements to substantiate his claim in the instant writ petition:-

Tukaram Kana Joshi vs. MIDC, (2013) 1 SCC 353.

Ranjit Singh vs. Govt. of NCT of Delhi. LPA No. 173/17 (Del HC) decided on 27th September 2017.

8. *Per Contra*, learned counsel appearing on behalf of the Respondents has prayed for dismissal of the instant writ petition and has relied on the following submissions:

- a. 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 against

acquisition made, 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.

- b. The Petitioner has himself admitted that his entire land has not been acquired by the Respondents and he has land remaining in the extended village abadi and hence, he is not eligible to be considered for allotment of alternative plot.

9. Heard learned counsel for the parties and perused the record. I gave given my thoughtful consideration to the submissions made by the parties.

10. This Court has perused the impugned order and finds it appropriate to reproduce the same for proper adjudication of the matter. The relevant portion of the impugned order dated 15th October 2020 is reproduced hereunder: -

“Whereas, an application has been received from Sh. SHIV BHAGWAN S/O Sh, Badlu, R/o VPO Pehladpur Bangar, Delhi-42 on 28.07.2003 for allotment of alternate plot as per Government policy in lieu of acquisition of land of village PEHLADPUR BANGAR vide Award No. 14/2002-03.

Whereas, SDM(HQ) as Chairman, Scrutiny Committee, District North had issued and served notice to provide an opportunity of personal hearing in the case on 03 .02.2018 and the applicant appeared and heard on the said date and time.

Whereas, Hon'ble Supreme Court in the judgement in Civil Appeal No.8289/2010,8290/2010 of Delhi Development Authority Vs 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, in the meeting held on 11.10.2018, it was observed that the land of applicant has not been acquired in entirety and the applicant has some remaining un-acquired land in kh. Nos.86/74 of revenue estate of village Pehladpur Bangar(Extended Abadi Area).

In view of the position mentioned above, the District Level Recommendation Committee has decided not to recommend the case of Sh. SHIV BHAGWAN S/O Sh. Badlu, R/o VPO Pehladpur Bangar, Delhi-42."

11. In the instant matter, the relevant conditions, which became the ground for rejection of Petitioners application, were that they held land in the extended abadi area of village Pehladpur Bangar and were not landless.

12. The condition of holding a plot being a bar for consideration of application of allotment of alternative plot is 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.

13. The subject matter of the Scheme of 1961 was 'Large Scale Acquisition Development & Disposal of Land' in Delhi 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. The objective of the above-mentioned scheme has been considered by the Hon'ble Supreme Court as well by the Delhi High 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.”

15. 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.

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 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 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.....”

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. 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.

20. Keeping in mind the objective of the Scheme, it can be said 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.

21. In the instant matter, the perusal of the contents of the impugned order reveals that the Petitioners owns property in the extended village abadi area. 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.

22. 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.

23. Therefore, this Court does not find force in the argument of the Petitioners that as per the modification in the year 1993 in Scheme of 1961, if an applicant owns a land in the extended 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.

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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."

24. Therefore, Petitioners cannot claim that he has a right to allotment of alternative land merely because he owns a land in the extended village abadi.

25. 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 order dated 15th October 2020 passed by the concerned Authority. There is no reason to interfere with the said impugned order passed on the application of the Petitioners.

26. Accordingly, the instant petition is dismissed. Pending applications, if any, also stands dismissed.

27. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 18, 2022

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