

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

% **Date of order : 15th November 2022**

+ **W.P.(C) 12539/2018**

NIMMI BAWEJA

..... Petitioner

Through: Ms. Jyoti Kataria, Mr. Aashu Tyagi and Mr. N. S. Vashisht, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for UOI
Ms. Aakanksh Kaul, Mr. Manek Singh, Mr. Aman Sahani and Ms. Simran Gill, Advocates for R-3/DDA Ms. Jyoti Tyagi, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

“a. set aside the order dated 1.11.2017.

b. issue writ, direction, orders to the Respondents to allot to the Petitioner, a plot of appropriate size and on the rate which were prevailing as on 19.5.2005 i.e date of

W.P.(C) 12539/2018

Page 1 of 15

application in the South Delhi and/or within the Territory of Delhi in lieu of the land of the Petitioner acquired by the Respondents for the planned development of Delhi; or

c. pass any other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice in favour of the Petitioner and against the Respondents;

d. cost of the proceedings be also awarded in favour of the Petitioner and against the Respondents. ”

2. The property bearing Khasra No. 1556 (modified to No. 1012) situated in Village Mehrauli, New Delhi, belonging to the husband of the petitioner, Kishan Chand Baweja, (hereinafter “the auction purchaser”), in which the petitioner was holding ½ share, was acquired in pursuance of the Notification No. F15(iii)/59-LSG dated 3rd November 1959 and Award No. 60/82-83 was also notified in lieu of the acquisition.

3. The petitioner moved an application seeking allotment of an alternative plot in lieu of acquisition of the property under the Scheme dated 2nd May 1961 of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961 (hereinafter “Scheme of 1961”) vide letter dated 19th May 2005, which ultimately came to be rejected vide order/communication dated 1st November 2017 on the ground that the petitioner/applicant was not the recorded owner of the land in question at the time of acquisition and that the property in question was never mutated in the name of the auction purchaser.

4. The petitioner has now approached this Court assailing the said order rejecting her application of allotment of alternative plot.

5. Learned counsel appearing on behalf of the petitioner submitted that the impugned order has been erroneously passed by the respondent no. 4. It is submitted that it was only after the death of the auction purchaser, that the information regarding acquisition of the land in question came in the knowledge of the present petitioner. She approached the concerned authorities by way of an application dated 19th May 2005 for allotment of alternative plot in lieu of acquisition of the accommodation in question, however, the same was rejected by the respondents vide order dated 16th October 2006 on the ground that the compensation in lieu of the acquisition was not received by the applicant. It is submitted that the majority share of compensation was paid to the original owner and only a 35% of the compensation was paid to the custodian, which was thereafter, increased by the order of the Additional District Judge.

6. It is submitted that pursuant to the order directing payment of compensation, the petitioner again made an application in the prescribed form for allotment of alternative plot which also came to be rejected vide order dated 1st November 2017 on the ground that the applicant was not the recorded owner at the time of acquisition of the land in question. Against the finding of the respondent no. 4, the petitioner approached the Public Grievances Commission which upheld the order of rejection while passing the order dated 23rd May 2018.

7. Learned counsel for the petitioner submitted that the respondents failed to appreciate that after rejection of the application of the petitioner on the ground of non-receipt of compensation awarded by the Land

Acquisition Collector vide Award No. 60/82-83 under the Scheme of 1961, the petitioner was awarded enhanced compensation by the Additional District Judge. Therefore, the applicant was eligible for allotment of alternative plot thereafter.

8. It is further submitted that the respondents while rejecting the request of the petitioner for allotment of alternative plot in lieu of acquired land, have failed to appreciate that the original purchaser of the land and his mother, Ruki Bai, were lawful owners of the said land, having purchased the same in a public auction held by Ministry of Rehabilitation and having received the compensation awarded in respect thereof. The purchasers fulfilled the preliminary condition for allotment of alternative plots as stipulated in the Scheme of 1961.

9. The learned counsel appearing on behalf of the petitioner relied upon the judgements of *Swami vs. Inder Kaur*, AIR 1996 SC 2823, *H. Lakshmiah Reddy and Others vs. L. Venkatesh Reddy*, AIR 2015 SC 2499, *General Government Servants Co-operative Housing Society Ltd, Agra vs. Wahab Uddin and others*, AIR 1981 SC 866, amongst others, to give force to her arguments. It is submitted that, therefore, while allowing the instant petition, the impugned order may be quashed and set aside.

10. *Per Contra*, the learned counsels for the respondents vehemently opposed the instant petition as well as the contentions raised on behalf of the petitioner and submitted that there is no illegality or error in the impugned order.

11. It is submitted that the orders dated 1st November 2017 as well as 23rd May 2018 have been passed on merits after considering all material facts and circumstances as well as the eligibility criteria and conditions laid under the Scheme of 1961. It is also submitted that ample opportunities were given to the petitioner to present her case before the concerned authorities, including the respondent no. 5.

12. It is submitted that receipt of compensation is a preliminary condition for consideration of the claim for allotment of alternative plot and admittedly, the 65% of the compensation was paid to the occupant and remaining 35% was deposited in the Court, therefore, the petitioner did not receive any compensation.

13. Heard learned counsel for all the parties and the record has also been perused.

14. This Court has perused the impugned order bearing No. F.3/SDM (HQ)/2017/244 dated 1st November 2017 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 Recommendation Committee after examining the record available on file, legal opinion obtained from Land & Building Department of GNCT of Delhi, the policy of GNCT of Delhi for allotment of alternative plot and the judgement of Hon’ble Delhi High Court in LPA No. 870/2003 titled GNCT of Delhi Vs Chaman Lal & Ors. Dated 12/12/2005 has observed that you are not eligible for allotment of alternative plot in lieu of the agricultural land as you were not the recorded owner of the agricultural land at the time of notification issued under section(4) of the Land Acquisition

Act on dated 13/11/1959 and no mutation application was ever filed by the original purchaser of the land Sh. Krishan Chand Baweja S/o Sh. Ram Chand and Smt. Ruki Bai W/o Sh. Ram Chand to get the said land mutated in their names in the revenue records.

Therefore, the Recommendation Committee has rejected your request of allotment of alternative plot.”

15. The original application of the petitioner came to be rejected on 16th October 2006 on the ground that the applicant was unable to produce the receipt of the compensation in lieu of the acquisition which is a primary condition and requirement for consideration of an applicant's case for allotment of alternative plot. However, pursuant to the order of the Additional District Judge, the compensation in lieu of acquisition of land was paid to the petitioner. The petitioner, after becoming eligible for consideration of her case for allotment of alternative plot upon the ground of rejection ceasing to operate, filed a fresh representation seeking the allotment of alternative plot. The aforesaid order was passed on the novel grounds that, *firstly*, the applicant/petitioner was not the recorded owner of the property in question at the time of acquisition and *secondly*, no application for mutation has ever been filed on behalf of the auction purchasers to have the land mutated in their names.

16. To examine the validity of the ground taken by the respondent no. 3 while rejecting the application of the petitioners' predecessor-in-interest, the objectives and the background of the Scheme of 1961 may be analysed.

17. The Scheme for 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, 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.

18. 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 ***Surender Singh Mann vs. Government of NCT of Delhi, W.P.(C) 12306/2015***, decided on 25th August 2017, 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.”

20. 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. However, this is not an absolute right which the person handing over possession upon acquisition may have. 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.

21. These conditions which stood under paragraph 10 of the 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 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 his 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 to the 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.....”

22. 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.”

23. Further, a 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.”

24. 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:-

“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. yards 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.

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23. The scope of the scheme and its raison d’etre is explained in its object clause which inter alia says that it is to benefit “farmers whose lands are acquired for planned development of Delhi is a rehabilitation measure”. The eligibility conditions no doubt stipulated that for ancestral lands, the concerned landowner should have been a recorded owner and

in the case of transferred lands, the owner should have acquired them five years before the notification for acquisition, through a regular deed and should have mutated the property in his or her favour. There are also provisions that clearly state that if lands or houses are in the name, unacquired, in favour of the land owner, that would not be a bar for application for alternative plots.”

25. The conditions as stipulated above 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. Evidently, the condition of the applicant being a recorded owner of the plot in question prior to the issuance of notification under Section 4 of the Land Acquisition Act, 1894 is a condition which finds mention in the first notified Scheme as well as its modified versions and has also been reiterated by the Division Benches. Therefore, there is no doubt that it is one of the crucial and indispensable conditions which needs to be fulfilled while making/considering an application for allotment of alternative plot.

26. In the instant matter, when the application of the petitioner was considered by the concerned authority to ascertain her eligibility, it was found that neither was the applicant/petitioner the recorded owner of the plot at the time of acquisition of property vide Notification dated 3rd November 1959 bearing no. F15(iii)/59-LSG nor was the property found to be mutated in the name of the petitioner or her husband, i.e, the auction purchaser. This eligibility criterion for allotment of alternative plot has

been clarified by the Division Bench of this Court in ***Ranjeet Singh (Supra)***.

27. As per the Scheme, for cases where the ancestral lands are acquired for the purposes of development, the applicant whose land is so acquired should be a recorded owner of the same. In the case at hand, admittedly, the land in question was not the ancestral property of applicant/ predecessor-in-interest of the petitioner. Therefore, to this extent the Scheme of 1961 was not applicable to the applicant.

28. The second situation which remains after ineligibility of the applicant for the reason of the land in question not being her ancestral property, is ascertaining her right, entitlement and eligibility keeping in view the rights of the individuals in cases for transferred properties. To this aspect, the Division Bench in ***Ranjeet Singh (Supra)*** noted that where the land acquired is not an ancestral land and the landowner is not the recorded owner of such property but has had the same transferred in his name, such transfer by way of regular deed, should be executed five years prior to the notification for acquisition of land and be mutated in his favour, for him to be eligible for allotment of alternative plot.

29. The petitioner herein claims that the auction purchaser had purchased the land in question prior to the acquisition, however, it is also admitted that the property remained in the name of the original owner and was not mutated by the auction purchaser, i.e., the husband of the petitioner, is his name. Therefore, in this expansive interpretation and

applicability of conditions, it is found that the case of the petitioner did not fall under the Scheme of 1961 and the conditions laid therein.

30. Hence, in light of the conditions laid down under the Scheme of 1961, the eligibility criteria interpreted by the larger benches of this Court and after examining the case of the petitioner, without conducting a roving inquiry into the facts and evidence of the case, it is found that the claim of the petitioner for allotment of alternative plot was rightly rejected by the respondents. There is no error apparent on the face of record or any gross illegality in the order passed by the concerned authority after scrutiny of the petitioner's case on merits.

31. Keeping in view the facts and circumstances, the submissions on behalf of the parties, contentions made in the pleadings, as well as observations and discussions in the foregoing paragraphs, this Court finds that the impugned rejection order dated 1st November 2017 bearing no. F./SDM(HQ)/2017/244 does not warrant any interference from this Court since there is no cogent reason to set aside the same. There is no illegality, perversity or error apparent on record in the impugned order and the application for allotment of alternative plot has been rejected considering the Scheme as well as its interpretation and the conditions laid therein.

32. Accordingly, the instant petition is dismissed for being devoid of merits.

33. Pending application, if any, also stand disposed of.

34. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 15, 2022
gs/ms

