

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

% **Date of order: 11th October 2022**

+ **W.P.(C) 3653/2018**

SHRI YASH PAL SINGH Petitioner

Through: **Mr. Dwarka Sawale, Advocate**

versus

THE SECRETARY (LAND & BUILDING DEPARTMENT)

..... Respondent

Through: **Mr. Siddharth Panda, Advocate**

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:

“(i) Issue a writ of mandamus or any other writ, order or direction to set aside or quashing of the impugned order dated 13.08.2012 issued by the Respondent and to consider the case of the petitioner on priority basis and allot him atleast 250 sq. yards alternative plot of land in Delhi as per his entitlement at the old circle rate of 1979-80;

ii) Award cost of the petition in favour of the petitioners and against the respondents;

iii) Grant any other relief to the petitioner which this Hon'ble Court may deem fit and proper in the interest of justice in the facts and circumstances of the case."

2. The background of the case reveals that the petitioner was the recorded owner of the agricultural land comprised in Khasra no. 1 Min, 2 min, 26, 27, 28, 29, 30, 31, 2/1 min, 2 min, 26-32/1/2 min, measuring 50 Bighas 4 Biswas, to the extent of 1/6th share therein, situated in the revenue estate of village Sanjar Pur, Delhi. The said land of the petitioner was acquired by respondent vide Award No. 43/79-80 and 211/86-87.

3. Upon acquisition of his land, the petitioner and his brothers 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") seeking allotment of 250 sq. yds of land for each of them, which applications were clubbed.

4. It is submitted on behalf of the petitioner that the Assistant Housing Commissioner (Alt.) had recommended the case of the petitioner opining that he was eligible for plots of 250 sq. yds and for making an exception for the disability of having a share in residential property No. 2982-83, Jiwan Niwas, Arya Pura, Subzi Mandi, Delhi.

5. On the said application, the respondent passed the order rejecting the application for allotment of alternative plot which was communicated to the petitioner on his application under the Right to Information Act, 2005 (hereinafter "RTI") dated 13th August 2012. The petitioner's case

was rejected on the ground that he was having a residential house out of village abadi area.

6. The petitioner is before this Court challenging the said communication and rejection of his application and is also praying for allotment of an alternative plot measuring atleast 250 sq. yds.

7. Learned counsel appearing on behalf of the petitioner submitted that the petitioner does not possess a plot larger than his entitlement in lieu of acquisition of his plot, i.e., 250 sq. yds. It is submitted that the petitioner is sharing the property at 2982-83, Jiwan Niwas, Arya Pura, Subzi Mandi, Delhi admeasuring 212 sq. yds. with him having 1/6th share and hence, the residential accommodation with him and his brother comes down to 35 sq. yds. yards each and that too, is not fully covered as only 20 sq. yds. is built up area and the rest 15 sq. yds. is open, which falls to the shares of the petitioner and his two brothers each. It is submitted that the said property is insufficient for the family of the petitioner.

8. It is further submitted that one of the applicants, i.e., Chaman Singh, brother of the petitioner had obtained directions from this Court for allotment of an alternative plot of 250 sq. yds. in lieu of acquisition of his 1/6th share in agricultural land vide Award No. 43/79 and 211/86-87, hence, the petitioner seeks the same relief being identically placed.

9. It is submitted that the petitioner and co-owners of the acquired land were not paid adequate compensation and thus, they require the

allotment of an adequate plot. Therefore, it is submitted that the instant petition be allowed and the impugned communication be set aside.

10. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that as per record available in the File No- F.33(42)/1/81-93/L85B/ALT, the case of allotment of alternative plot was rejected on account of the applicant having a residential house out of the village Abadi and conveyed to the applicant in reply to RTI vide Letter No- 8072-73 dated 13th August 2012. It is submitted that the said position is admitted by the petitioner in his writ petition that he and his brothers are co-owners of a residential house admeasuring 212 sq. yds. situated in Arya Pura, Subzi Mandi, Delhi and hence, the petitioner is not eligible for the allotment under the Scheme of 1961.

11. The rejoinder affidavit on behalf of the petitioner is also on record, wherein it is submitted that the Commissioner and Secretary (L&B) suggested that the size of the plot already possession by the petitioner should not be larger than the plot to be allotted and the petitioner being in possession of only 35 sq. yds., is entitled to 250 sq. yds. of property. It has been reiterated that the petitioner's case is fit for making an exception for disability of having share in the residential property as said.

12. It is submitted that the petitioner is entitled to the alternative plot in lieu of acquisition of his plot.

13. It is, therefore, submitted that the instant petition is devoid of merit

and is liable to be dismissed.

14. Heard the counsel appearing on behalf of the parties and have also perused the record.

15. Upon perusal of the record, it is found that the petitioner has not challenged the rejection order passed by the respondent upon his application seeking allotment of alternative plot. The petitioner is before this Court seeking setting aside of order on his RTI application wherein he was intimated about the rejection of his application for allotment of alternative plot under the Scheme of 1961.

16. The Scheme for Large Scale Acquisition Development & Disposal of Land in Delhi came into force on 2nd May 1961 and has been modified from time to time and 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. 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”

19. Further, in **Surender 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.”

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. 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 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.....”

24. 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.”

25. 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. 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.”

26. 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.

27. The order intimating the petitioner about the rejection of his application is reproduced hereunder:-

“With reference to your RTI application ID No. 6357/12, it is stated that the point wise reply as under:-

- 1. The question asked by the applicant is not specific hence it is not possible to provide the requisite information.*
- 2. It is stated that your name is not in the draft seniority list for the period 1979-2000. After going through the file the case has been rejected on account of that the applicant is having a residential house out of the village abadi.*
- 3. As in point no. 2.”*

28. Although the rejection order of the respondent has not been placed on record, a perusal of the impugned order reveals that the allotment of alternative plot was rejected on the ground of existence of an alternative plot. 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. 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.

29. 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 petitioner does not fulfil the eligibility criteria and hence, he was rightly found not entitled to the alternative accommodation under the Scheme.

30. Keeping in view the pleadings, submissions, impugned order and the observations and discussions in the foregoing paragraphs as well as present facts and circumstances, it is found that there is no error apparent on the face of record or any gross illegality in the impugned communication dated 13th August 2012. The existence of an alternative plot, however, large or small, will not invoke any entitlement in favour of the petitioner for allotment of an alternative plot. Moreover, the challenge

has been brought about against the order on the application of the petitioner under RTI Act and hence, this Court finds that there is no relief that may be granted to the petitioner in the present circumstances.

31. Accordingly, the instant petition is dismissed.

32. Pending applications, if any, also stand disposed of.

33. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 11, 2022

Aj/MS

