



2024:DHC:1427



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

% Judgment delivered on: 20.02.2024

+ **W.P.(C) 7142/2023****MR. AJAY BAJPAI**

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ruchin Midha, Advocate

For the Respondent : Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Adarsh Pandey, Advocate for
UOI.
Ms. Kritika Gupta and Mr. Nihal
Singh, Advocates for DDA.
Mr. Sunil Kumar Jha, SPC with Mr.
M.S. Akhtar, Ms. Nidhi Thakur and
Mr. Mayank Arora, Advocates for R-3
and 4.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a civil writ petition under Article 226/227 of the Constitution of India *inter alia* seeking the following prayers:-

“A) A Writ in the nature of Mandamus *inter-alia* quashing



the order dated 28 March 2023 passed by the Respondent No. 4 whereby the Application for allotment of alternate plot has been rejected on frivolous, arbitrary and baseless grounds and without affording proper reasons;

B) An appropriate writ in the nature of Mandamus inter-alia directing the Respondents No.2 and 3 to allot a plot admeasuring minimum area of 40 sq. yards within an urban area in the Municipal limits of South Delhi, in terms of the Scheme of allotment of alternative plots in lieu of acquired land under large scale acquisition development & disposal of land in Delhi announced by Govt. of India, Ministry of Home Affairs vide their letter no.37/16/60-delhi (i) dated 02 may, 1961;...”

2. The case of the petitioner is that the petitioner had purchased the land admeasuring 1 Bigha (1000 sq. yds) bearing Khasra No. 18/17/1(0-8) and 18/16/2(0-12) situated at Village Pochan Pur, Delhi on 28.11.1986. On 13.12.2001, the notification under Section 4 of the Land Acquisition Act, 1894 was issued by the Land and Building Department, Delhi and followed by the notification under Section 6 of the Land Acquisition Act, 1894 on 07.12.2002.

3. In terms of the policy of the respondent, the petitioner had submitted an application to respondent no.3 on 12.06.2003 for allotment of an alternative plot in lieu of the acquisition of the said land. On the aforesaid application, after having scrutinized, respondent no.3 by its letter dated 19.12.2013 had sought certain documents for clarification of doubts within 15 days of the receipt of such letter. The response was sent by the petitioner belatedly to respondent no.3 on the account of the demise of father of the petitioner.

4. In the interregnum, on the refusal of respondent no.3 from



considering the application, the petitioner had approached this Court by way of a Writ Petition (Civil) No. 10579/2015 whereby this Court had allowed the aforesaid writ petition and directed the respondent no.3 to reconsider the petitioner's application on merits for allotment of the alternative plot. Consequent thereto at the meeting held on 14.06.2018, the Recommendation Committee of respondent no.3 recommended an allotment of alternative plot for a size of 40 Sq. Yds. to the petitioner and further placed the same for approval of the Competent Authority.

5. Since the matter was getting delayed and not being resolved by the respondent, the petitioner was constrained to file another writ petition bearing W.P.(C) 1879/2022 whereby this Court had directed the respondent no.4 i.e. the District Task Force, District South West, Delhi to consider the application of the petitioner and pass appropriate orders.

6. Subsequently by the impugned order dated 31.03.2023, the application seeking allotment of alternative plot was rejected by the respondent No.4.

7. The present writ petition is filed by the petitioner challenging the said impugned order.

8. Learned counsel appearing for the petitioner submits that admittedly the respondents had acquired his land covered by the aforesaid khasra numbers in lieu of which the petitioner was entitled to an alternative plot of land as per the policy letter, subject to fulfillment of certain criteria laid down by the Government.

9. By referring to the policy of the alternative plots carved out by the respondents, learned counsel invites attention to Clause 3 of the Eligibility Condition, according to which, such applicants should file an



affidavit with the respondents disclosing that they do not own a house/residential plot/flat out of village *abadi* in his/her dependant relation's name including unmarried children, nor should he be a member of any Co-operative Housing Society. Learned counsel submits that the petitioner being the purchaser of the said land, which was acquired, fell within the eligibility criteria as stipulated in the policy letter.

10. Learned counsel submits that even according to the letter of objection dated 19.12.2013, the petitioner was directed to file an affidavit which was duly furnished in the year 2014. Learned counsel submits that despite the petitioner being eligible and all criteria as required in the policy letter being fulfilled by the petitioner, no alternative plot of land to the extent of 40 Sq. Yds has ever been allotted to the petitioner. In fact in the impugned order, the rejection is on the ground that the wife of the petitioner, by virtue of a Conveyance Deed dated 15.02.2021, had become an owner of Flat No.402, Ouraniya, Sector 53, Gurugram in the State of Haryana. That apart, learned counsel submits that there is no other ground on the basis of which the petitioner's allotment was rejected.

11. According to learned counsel, the condition stipulated in the policy letter is of not having a plot in his/her dependant relation's name or in a village *abadi* etc, within the territory of Delhi and there is no such disqualification if the dependants own any plot of land outside the territory of Delhi. On that basis, learned counsel submits that there is no reason or any legal impediment as to why the petitioner is not entitled to an alternate plot of land.



12. *Per Contra*, Mr. Sunil Kumar Jha, learned panel counsel for respondent nos. 3 and 4 draws attention of this Court to the counter affidavit filed on behalf of the respondent, particularly to para 8 and 10 to submit that though the Recommendation Committee of the Land and Building Department had recommended the case of the petitioner on 14.06.2018, however the Competent Authority, i.e. the Principal Secretary, Land and Building Department had specifically rejected the said recommendation.

13. It was further submitted that under the orders of this Court, as mentioned above, the application of the petitioner was reconsidered and also again rejected on the basis that the petitioner had filed an application on 25.01.2017 wherein in para 8, the petitioner had affirmed that neither he nor his family members or dependant relations, unmarried children have any plot/flat or house in the territory of Delhi except in village *abadi* Pochan Pur.

14. He submits that the said affidavit was acted upon and that read with the ratio laid down by the Supreme Court in Civil Appeal Nos. 8289/2010 and 8291/2010 titled ***Delhi Development Authority vs. Jai Singh Kanwar*** wherein it was held that the object of the scheme was that when the land owned by a person is taken away in its entirety and he is left without any house or plot of land, such person may be entitled to an alternative plot. The said scheme being a rehabilitation scheme, a person who has plot of land in Delhi would not be entitled to alternative plot.

15. He also submits that infact the impugned order also took into consideration the judgment of this Court in ***Surinder Singh Maan vs.***



Govt. of NCT of Delhi reported as **2017 SCC OnLine Del 10194** whereby the same point was reiterated. In that view of the matter, Mr. Jha submits that the petitioner is clearly not entitled by virtue of his own statement in the affidavit filed with the respondents.

16. Mr. Jha, learned counsel for the respondent also submits that the petitioner has also admitted that the wife of the petitioner also owns a property in Gurugram and as such would disentitle him from the allotment of an alternative plot of land.

17. This Court has heard the arguments of learned counsel for the petitioner as also Mr. Jha, learned counsel appearing for respondent nos. 3 and 4, perused the documents and considered the judgments.

18. At the outset it is observed that the policy is the substratum of the entire case of the petitioner. It is apposite to extract the relevant portion of the policy hereunder:-

“WHO IS ELIGIBLE?

WHERE THE ACQUIRED LAND IS ANCESTRAL

1. The persons who are RECORDED OWNER prior to issue of notification u/s 4 of 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 sq.yds. and for awards announced post 3.4.86, the land must not be less than one bigha”

19. A perusal of the aforesaid policy indicates that two types of persons would be eligible for the alternate plot of land i.e. first, who are recorded owner prior to issue of notification under Section 4 of Land Acquisition Act and second would be the category of persons whose lands have been acquired and have received the compensation as rightful owners from the LAC/Courts and the Government has taken possession of the acquired land.

20. In the present case, it is not disputed by the respondent nos. 3 and 4 that 1 Bigha of land covered by the aforesaid khasra numbers was infact acquired by the Government in the year 2000 and subsequently taken possession of. There is no dispute that the petitioner was the rightful owner of the said property and as such as entitled to that extent for an alternate plot of land.

21. The main issue which is the dispute in the present petition is as to whether the petitioner or any of his dependants or unmarried children has any house/plot of land in Delhi.

22. The petitioner is stated to have furnished an affidavit in the year 2014 deposing that the neither the petitioner nor the dependant's relations or any unmarried children were having any house or plot of land in Delhi nor were any of them a member of Co-operative Housing Society. However, the said affidavit is not on record.

23. The impugned order refers to the rejection on two grounds namely: that the Conveyance Deed dated 15.02.2021 in favour of the



wife of the petitioner is undisputed and being the owner of Flat No.402, Ouraniya, Sector 53, Gurugram in the State of Haryana; and that apart, the judgment of the Supreme Court in *Jai Singh Kanwar* (supra) and judgment passed by this Court in *Surinder Singh Mann* (supra) disentitle the petitioner from claiming an alternate plot of land in lieu of the compulsory acquisition of land.

24. The main say of counsel for the respondent is on the basis that the petitioner in his affidavit admitted that he has a house in the *abadi* area of village Pochan Pur and as such would disentitle him claiming the alternate plot of land apart from the fact that wife of the petitioner also owns a house in Gurugram.

25. The petitioner has drawn attention of this Court to the Recommendation Committee's recommendation dated 14.06.2018 to submit that it was only after all the documents, including the affidavit furnished by the petitioner at the first instance, that the Recommendation Committee had given its recommendation that the petitioner was entitled to an alternate plot of land to the extent of 40 sq. yds keeping in view the 1 Bigha of land of the petitioner which was acquired.

26. Learned counsel has asserted that the affidavit dated 25.01.2017, which has been relied upon by the learned counsel for the respondents to disentitle the petitioner from any alternate plot of land would be untenable for the reasons that the petitioner did not own any plot of land within the *abadi* area of village Pochan Pur and he has asserted as such even in the present petition. He also submitted that the ownership of the Flat in Gurugram, referred to above, is also in the name of the wife of



the petitioner and there is no such bar even in the policy letter itself.

27. Learned counsel invites attention of this Court to all the documents that were required to be filed alongwith the original application at page 57 of the petition according to which the affidavit would have to only state that the applicant does not own property in urban area in Delhi, in the prescribed format. Learned counsel submits that it was only in accordance with that, the affidavit was filed by the petitioner.

28. This argument of the petitioner appeal to this Court mainly for the reason that the requirement, according to the policy letter, is that the applicant should not be having any house/residential plot/flat out of village *abadi* in his/her dependant relation's name including unmarried children, nor he should be a member of any Co-operative Housing Society. There is no doubt, in the facts of the case, that the petitioner fell squarely within four corners of Clause 3 of the said policy.

29. So far as the contention of learned counsel for the respondent nos.3 and 4 is concerned, based on the judgment of the Supreme Court in ***Jai Singh Kanwar*** (Surpa), this Court in fact reads the judgment in favour of the petitioner. The relevant portion of the judgment is extracted hereunder:-

"5....Under the Scheme, only a land loser who did not own a house/residential plot/flat in his own name or in the name of his spouse or dependent relation, and who was not a member of any Co-operative Housing Society was entitled for allotment of plot....

6....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."

In that, the petitioner has asserted in the present petition that he does not own any property or a plot of land in the entire Delhi, including the village Pochan Pur. Learned counsel had asserted that the plot of land in village Pochan Pur was the one which was actually acquired by the respondents and as such he has no land in Delhi and the same was acquired in its entirety.

30. In that view of the matter, this Court considered the ratio down by the Supreme Court in ***Jai Singh Kanwar*** (supra) read with the judgment of this Court in ***Surinder Singh Mann*** (supra) and find that the petitioner falls well within the ratio laid down therein and as such could not have been denied the alternate plot of land.

31. That apart, the other objection in respect of the petitioner's wife owning the property in Gurugram is concerned, this Court is of the considered opinion that the land of the petitioner having been acquired in the year 2000, it cannot be expected that the petitioner would live as a vagabond on the streets and it is obvious that subsequent thereto he will have to find some shelter.

32. The cause of action which gives right to the petitioner to apply for the plot of land is not the purchase of the land or alternate house having been purchased by his wife or dependant, but the fact as to whether the plot of land acquired. Therefore, it would be the date of acquisition which would be a material date on which his right according to the policy had crystallized. The subsequent event may or may not disentitle a party, but all that has to be observed on a case to case basis. It cannot be



laid down as a criteria nor can a straight jacket formula be placed to say that in every case where the persons like the petitioner, who have been waiting for decades for their rights are expected to live on the streets, etc. without having a shelter on their head. On facts it is not disputed that petitioner's land was acquired in the year 2000 and application was submitted on 12.06.2003 and after several rounds of litigation, the Committee had recommended 40 Sq.Yds of alternate plot to the petitioner after being satisfied that he fulfilled the criteria on 14.06.2018. Therefore, the rejection on the ground that wife of the petitioner had purchased a house in 2021 would be absolutely unfair and unjust.

33. The fact that the land of the petitioner has been acquired compulsorily is undisputed. The entitlement of the petitioner thereon, according to the policy, also cannot be disputed, of course subject to fulfilling of the conditions. In the present petition in para (v), the petitioner had by referring to the previous correspondences categorically asserted that on the date when the land of the petitioner was acquired and thereafter when the application was made by the petitioner for allotment of an alternate plot, neither he nor any of his dependants own any immovable property within the urban area of Delhi, New Delhi or Cantt area.

34. This, coupled with the assertion of learned counsel, that the petitioner does not own any land even in the *abadi* area of village Pochan Pur, has not been taken into consideration in the impugned order. In that view of the matter, this Court is of the considered opinion that the petitioner being entitled to an alternate plot of land by virtue of



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the policy of the Government itself, cannot be denied the alternate plot of land as per entitlement i.e. 40 sq. yds.

35. In view of the above, the writ petition is allowed.

36. Respondent nos.3 and 4 are directed to consider the application of the petitioner in view of the observations herein above and give their recommendation within two weeks from the date of service of this order. The recommendation be forwarded to DDA for the appropriate action. The DDA is directed to allot alternate plot of land. It is further directed that the process of allotment of plot of land shall be completed within next six weeks from the date of receipt of the recommendation.

37. The aforesaid timelines will have to be complied with by the respondents, particularly keeping in view that the land of the petitioner was acquired way back in the year 2000.

38. With the aforesaid, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 20, 2024

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