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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 06th December, 2024*+ **W.P.(C) 17449/2022****OM PRAKASH CHAUHAN (THR. LRS)Petitioners**

Through: Mr. Kirti Uppal, Senior Advocate with Mr. Mohd Amanullah, Mr. Misbah Bin Tariq, Ms. Shahin Alvi, Ms. Vidhi Uppal, Ms. Riya Gulati and Mr. Shekhar Kumar, Advocates.

versus

UNION OF INDIA AND OTHERSRespondents

Through: Ms. Anju Bhushan Gupta, SPC with Mr. Aditya Goel, Mr. Sanyam Gupta and Ms. Soniksha, GP, for Respondent No.1/UOI. Mr. Biraja Mahapatra and Mr. Nalin Hingorani, Advocates for Respondents No.2 and 3/GNCTD. Ms. Meghna and Ms. Garima Jain, Advocates for Respondent No.4/DDA.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking a direction to Respondents No.2 and 3 to allot an alternative plot to the Petitioners in a time bound manner as also to set aside order dated 23.03.2021 passed by Respondent No. 3 whereby claim of the Petitioners was rejected.
2. Facts to the extent necessary are that Sh. Harchand was the owner of 25 bighas and 8 biswas land falling in revenue estate of Village Jasola,



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Delhi. Notification dated 06.04.1964 was issued under Section 4 of the Land Acquisition Act, 1894 ('1894 Act') by Government of Delhi for acquisition of certain agricultural lands followed by Notification dated 07.12.1966 under Section 6 of the 1894 Act and an award of compensation was announced being Award No.6-D/Supplementary/86-87.

3. It is averred that Sh. Harchand expired on 25.06.1986 leaving behind Shri Om Prakash Chauhan and his five sisters as the legal heirs. Shri Om Prakash Chauhan received compensation in lieu of acquisition of his land on 29.01.1987 and became entitled to alternative plot measuring 400 sq. yards in Dwarka as per the Scheme, which was introduced as a rehabilitation measure. Shri Om Prakash Chauhan filed an application on 28.09.1987 seeking allotment of an alternate plot and in January, 1997 he was called upon to submit certain documents such as death certificate, relinquishment deed, indemnity bond etc. which he did on 31.01.1997. Later, in 2003-04 as required, he also submitted the legal heir certificate but no plot was allotted.

4. On 27.01.2004 and 18.03.2004, Shri Om Prakash Chauhan wrote to Respondent No.2 intimating that all requisite documents had been furnished by him and requested the officer to reopen his file. Legal notice was also sent in this regard, however, there was no response from the office of Respondent No. 2 and Shri Om Prakash Chauhan filed a writ petition being W.P.(C.) No.10802/2005 in this Court which was dismissed by the learned Single Judge on 29.10.2013. This order was challenged in LPA No.97/2014 in which the Court summoned the records from the Land & Building Department pertaining to File No. 329(29)/14/07/Land B. The appeal was disposed of on 06.02.2014 giving liberty to Petitioners to challenge the decision of Respondent No.2.



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5. Subsequently, Shri Om Prakash Chauhan filed another writ petition being W.P.(C.) No.2052/2015 aggrieved by letter dated 11.10.1998 and subsequent communication dated 22.04.2004 by which his application for allotment of plot was rejected. This writ petition was dismissed by the learned Single Judge on 21.10.2016 as barred by delay and laches. Aggrieved with the dismissal of the writ petition, Petitioner filed LPA No.219/2017. This intra-Court appeal was disposed of on 25.02.2019 setting aside the order of the learned Single Judge observing that the writ petition could not have been dismissed only on the ground that Shri Om Prakash Chauhan had not submitted the documents and remained silent. Matter was remanded back for a decision on merits with regard to the claim of the Petitioners therein.

6. After the matter was remanded back, the writ petition was taken up for consideration by the learned Single Judge and the Court examined the impugned orders dated 11.10.1998 and 22.04.2004 passed by Respondent No.2, rejecting the case of the Petitioners for allotment of alternate plot. Court took note of the observations of the Division Bench that documents sought by the Respondents vide letter dated 10.02.1997 had been submitted by Shri Om Prakash Chauhan and there was no reason for the Respondents to sit over the matter and not decide the application filed by him. As the impugned orders were primarily based on non-furnishing of documents by the Petitioner, which was an incorrect fact, the learned Single Judge set aside both the orders and directed Respondent No.2 to treat the writ petition as a representation and pass a reasoned order. By impugned order dated 23.03.2021, Respondent No.3 again rejected the application but this time on a new and fresh ground that as per the report of Tehsildar (Sarita Vihar)



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based on a local inquiry conducted by revenue officials, Shri Om Prakash Chauhan was having a residential property around 400 sq. yards and his family was residing in the same at the time of physical verification and therefore, in view of the judgment of the Supreme Court in ***Delhi Development Authority v. Jai Singh Kanwar, Civil Appeal No.8289/2010*** as well as of this Court in ***Surinder Singh Maan v. Government of NCT of Delhi & Anr., 2017 SCC OnLine Del 10194***, he was not entitled to an alternate plot. Aggrieved by this order, Petitioners who are legal heirs of Shri Om Prakash Chauhan have filed this petition.

7. Mr. Kirti Uppal, learned Senior Counsel appearing for the Petitioners submits that Petitioners' grandfather late Sh. Harchand was the owner of 25 bighas and 8 biswas of land in revenue estate of Village Jasola, which was acquired way back in 1964 and compensation was awarded under Award No.6-D/Supplementary/86-87. Sh. Harchand expired on 25.06.1986 and after his son Shri Om Prakash Chauhan received the compensation on 29.01.1987, he applied for alternate plot on 28.09.1987. As there was complete inaction, Shri Om Prakash Chauhan filed a writ petition seeking a direction for allotment of plot measuring 400 sq. yards in Dwarka. Initially, the case of the Petitioners was rejected on two-fold grounds i.e. delay in making a claim and non-submission of requisite documents. The Division Bench in LPA No. 219/2017 rejected both the contentions of the Respondents and held that the documents as sought for by the Respondents vide letter dated 10.02.1997 had been submitted by Shri Om Prakash Chauhan immediately thereafter and there was no reason for the Respondents to sit over the matter and not decide the application. The Division Bench also held that the learned Single Judge could not have



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dismissed the writ petition only on the ground of non-submission of documents and delay and by order dated 25.02.2019 set aside the order of learned Single Judge and remanded the matter back for a decision on merit. However, by the impugned order dated 23.03.2021, Respondents have now taken an altogether new stand that Shri Om Prakash Chauhan owns a residential property around 400 sq. yards in Village Jasola, New Delhi. This stand was never taken over the years in two rounds of litigation prior to this writ petition and it is obvious that Respondents are seeking some reason or the other to non-suit the Petitioners and deprive them of their legitimate right.

8. It is further submitted that as per the policy of allotment of alternate plots, the *sine quo non* is that the land of the landowner is acquired in entirety and the applicant does not own a 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. In the present case, land of Sh. Harchand was acquired in its entirety and this is the reason that objection on this aspect was not raised for nearly two decades by the Respondents. It is further contended that allotment of alternate plot was regulated by a welfare policy which came into force on 02.09.1961, hereinafter referred to as '1961 Policy' and was subsequently amended on 03.04.1986 ('1986 Policy'). As per 1986 Policy, any person who is the recorded owner prior to issue of notification under Section 4 of 1894 Act and whose land has been acquired and he has received compensation, is entitled to alternate plot provided he does not own a house/residential plot/flat out of village *abadi* in his/her dependant relation's name including unmarried children nor is a member of any co-operative housing society.



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Om Prakash did not own a house outside the village *abadi* or in the urban area when he made the application and therefore, the ground for rejection in the impugned order is completely flawed. In this context, learned Senior Counsel relies on the judgments of this Court in *Ajay Bajpai v. Union of India & Ors. W.P.(C.) No. 7142/2023* and *Shri Jai Bhagwan and Another v. Land and Building Department through its Secretary Land and Building and Another, 2024 SCC OnLine Del 8168*.

9. It is further argued that the decision of the Supreme Court in *Jai Singh Kanwar (supra)* will not come in the way of the Petitioners since the entire land of Shri Om Prakash Chauhan was acquired at the time of acquisition unlike in the case before the Supreme Court. Moreover, the judgment does not deal with the policy dated 03.04.1986, whereby owning a house/plot/flat within the village *abadi* is not an embargo for allotment of the alternate plot. Mr. Uppal submits that the residential plot referred to in the impugned order was acquired years later as Petitioners cannot be expected to live on streets for years, when their case is under consideration.

10. Mr. Mahapatra, learned counsel appearing on behalf of Respondents No.2 and 3 strenuously opposes the writ petition and defends the impugned order on the ground that the case of the answering Respondents is squarely covered by the judgment of the Supreme Court in *Jai Singh Kanwar (supra)* and highlights paragraphs 5 and 6 thereof, wherein the Supreme Court has observed that the High Court did not address the crucial and fundamental issue relating to eligibility. Under the scheme, only a land user who did not own a house/residential plot/flat in his own name or in the name of spouse or dependents and who is not a member of the cooperative society was entitled for allotment of plot and the relevant date for this purpose will



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the date of Award. It is argued that applicant Shri Om Prakash Chauhan owns a house in village Jasola admeasuring about 400 sq. yards as per the report of Tehsildar, Sarita Vihar based on a local inquiry and therefore, the Petitioners, who are his legal heirs, are disentitled to an alternate plot.

11. Mr. Mahapatra also relies on the judgment of the Division Bench of this Court in ***Ranjeet Singh v. Govt. of NCT of Delhi & Anr., 2017 SCC OnLine Del 10794***, wherein after going through the 1961 and 1986 Policies, the Division Bench observed that the object of these policies is to provide alternate land to farmers whose lands are acquired and not to allot land to those whose lands have not been acquired in entirety. It is also urged that village Jasola was urbanised vide notification dated 28.05.1966 and therefore, the 1986 Policy will cease to apply and benefit of the same cannot enure to the Petitioners.

12. Ms. Meghna, learned counsel appearing on behalf of Respondent No.4/DDA submits that as far as DDA is concerned, it only acts on the directions of the Revenue Authorities and if a direction is issued to allot the land, the same shall be implemented. There is no contest on the merits of the case.

13. Heard learned Senior Counsel for the Petitioner and learned counsel for Respondents No.2 and 3 as well as the DDA.

14. There is no dispute between the parties to the *lis* that land of Late Sh. Harchand, who was owner of 25 bigha and 8 biswa of land falling in village Jasola was acquired under the 1894 Act and after his death on 25.06.1986, his son Late Shri Om Prakash Chauhan had received compensation on 29.01.1987. Shri Om Prakash Chauhan made an application on 28.09.1987 for allotment of alternate plot. Initially, the application was rejected on the



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ground of non-furnishing of requisite documents followed by rejection on the ground that the claim was beyond the permitted time period. In the earlier round of litigations in this Court, the Division Bench negated both the pleas of the revenue officials and rendered a finding that Shri Om Prakash Chauhan had submitted requisite documents on time and there was no reason for the Respondents to sit over the application. The judgment of the learned Single Judge holding that the claim of the Petitioners was barred by delay and laches was also set aside with a direction to decide the case on merits.

15. Strangely having failed to succeed on both these counts, Respondents No.2 and 3 rejected the claim on the ground that Shri Om Prakash Chauhan is the owner of a residential property measuring 400 sq. yards in village Jasola. This reasoning is reflective in the impugned order dated 23.03.2021 and basis this reasoning, Respondent No.3, relying on the judgment of the Supreme Court in *Jai Singh Kanwar (supra)* and of this Court in *Surinder Singh Maan (supra)* rejected the claim for alternate plot.

16. The short issue that arises for consideration before this Court is whether the Petitioners, who are legal heirs of late Shri Om Prakash Chauhan, are entitled to alternate plot. As per 1986 Policy, a person who is a recorded owner of a land prior to issue of notification under Section 4 of 1894 Act and whose land is acquired and he has received compensation is entitled to allotment of alternate land provided the applicant does not own a house/residential plot/flat out of village *abadi* in his/her dependant relation's name including unmarried children nor is a member of any co-operative housing society.



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17. Petitioners have taken a categorical position before this Court that Shri Om Prakash Chauhan did not own a house/residential plot/flat out of village *abadi* at the time when the application was made. This position is reiterated by Mr. Kirti Uppal, learned Senior Counsel during the course of hearing on a pointed query put to him. It is urged that the accommodation referred to in the impugned order is a residential property in village Jasola and was acquired recently after waiting for over 34 years for allotment as no person can be expected to be homeless and without a shelter only because he is pursuing his case for alternate land and is litigating in Court. I agree with the submission of Mr. Uppal that since Shri Om Prakash Chauhan did not own a house/residential plot/flat out of village *abadi* at the time when the application was made, Petitioners cannot be denied the alternate plot for the circumstance that exists today. This Court also agrees with the Petitioners that in the earlier rounds of litigation Respondent No.3 had never taken up the issue that Shri Om Prakash Chauhan owned a residential property in village Jasola. For nearly two decades Shri Om Prakash Chauhan was made to run from pillar to post and litigate on the ground that he had not furnished requisite documents and/or his claim was time barred and now a third and a new ground has been introduced in the impugned order, which too has no basis. No doubt the Petitioners have a residential property in village Jasola at present but as rightly argued on their behalf, they are not expected to be without a shelter from 1987, when Shri Om Prakash Chauhan had made an application for an alternate plot and this is exactly what was held by the Court in *Ajay Bajpai (supra)* and I quote:

“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."

18. Argument of Mr. Mahapatra that Petitioners are not entitled to the alternate land in light of the decision of the Supreme Court in **Jai Singh Kanwar (supra)** or of the Division Bench of Court in **Ranjeet Singh (supra)** is wholly misconceived. Both these decisions proceed on the facts of those cases where the lands of the applicants were not acquired in entirety, which is not the case here. The entire land of Shri Om Prakash Chauhan was acquired and he received compensation, only after which he had applied for alternate land. As noted above, the *sine qua non* of the allotment policy is: (a) applicant should be recorded owner of the subject land; (b) the land should be acquired in entirety for which compensation is paid under an award; and (c) applicant does not own house/residential plot/flat out of village *abadi* and to my mind, Petitioners fulfil all the parameters under the said policy on the date of the application and their case is squarely covered by the decision of this Court in **Ajay Bajpai (supra)**. As per the argument of



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Mr. Mahapatra that village Jasola stands urbanised, the same has no merit. The urbanisation dates back to 28.05.1966 and till today when the writ petition is being argued, Respondent No.3 has not taken this objection. Even in the impugned order, this is not a ground for rejection of the application of Shri Om Prakash Chauhan and therefore, it is evident that even the understanding of Respondent No.3 has been that this urbanisation cannot come in the way of an applicant seeking allotment of an alternate plot under a policy which is meant to give a succour to a land owner whose land has been acquired.

19. Accordingly, this writ petition is allowed setting aside the impugned order dated 23.03.2021 with a direction to Respondent No.2 to process the application of the Petitioners for grant of alternative land. After the recommendation is given by the Committee constituted for the purpose, the recommendation will be forwarded to the DDA for further action for allotment. The entire exercise will be completed within 04 months from today including allotment of land. The timelines fixed by the Court will be strictly adhered to, taking into consideration that the application of Shri Om Prakash Chauhan was filed on 28.09.1987 and this is the third round of litigation.

20. Writ Petition is allowed in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 6, 2024

B.S. Rohella