



2024:DHC:8343



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

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Date of Decision: 23rd September, 2024

+ W.P.(C) 13311/2024

SHRI RANBIR SINGH TOMAR

.....Petitioner

Through: Mr. N.S. Dalal, Mr. Alok Kumar, Ms. Nidhi Dalal, Ms. Rachana Dalal and Mr. Kunal Narwal, Advocates

versus

LAND AND BUILDING DEPARTMENT, THROUGH ITS SECRETARY LAND AND BUILDING & ANR.Respondents

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mrs. K.K. Kiran Pathak, Mr. Sunil Kumar Jha, Mr. M.S. Akhtar and Mr. Sami S. Siddiqui, Advocates for R-1 and 2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to order dated 28.08.2024 passed by Deputy Commissioner, North-West, Kanjhawala/ Respondent No.2, whereby application of the Petitioner for allotment of alternative plot has been rejected.

2. Facts to the extent necessary are that Petitioner purchased land ad-measuring 200 Sq. Yds. by way of registered Sale Deed on 22.10.1971. The land was acquired vide Award No. 215/1979-80 and admittedly Petitioner received compensation on 09.07.1993. After receiving the compensation and



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in terms of the policy of the Respondents, Petitioner made an application in 1993 for allotment of alternative plot and furnished all requisite documents. By letter dated 27.01.2014, Respondent No.1 rejected the application on the ground that Petitioner did not submit requisite documents and in the absence thereof, his eligibility could not be ascertained. This order was challenged by the Petitioner in W.P.(C) 9920/2017 before this Court, which was dismissed on 25.08.2022 on the ground that Petitioner had not produced proof of mutation carried out in the name of the purchaser in the revenue records.

3. Petitioner filed an Appeal before the Division Bench being LPA No. 628/2022 and by order dated 13.04.2023, the Division Bench set aside the order dated 25.08.2022. It was observed by the Court that land in question was acquired by DDA in 1976 and the fact that compensation had been paid to the Petitioner was proved that he was the owner of the land in question and therefore, it was not open to the Respondent to seek mutation documents as a pre-condition for getting benefit under the rehabilitation policy. The Court also observed that Respondent never disputed the ownership of the Petitioner to the acquired land. The object of the rehabilitation policy is to ensure that persons who have been deprived of shelter over their head due to acquisition proceedings are given an alternative accommodation. The Division Bench directed the Respondents to consider the claim of the Petitioner *de hors* the mutation documents and pass appropriate orders granting the plot, if he was found eligible as per the rehabilitation policy. Respondent No.2 considered the case of the Petitioner and vide the impugned order dated 28.08.2024 rejected the application on the ground that the Petitioner is residing in House no. 166, Sector-40, Gurgaon, Haryana,



which was earlier in the name of his wife and was subsequently transferred in the name of their son which clearly indicates that Petitioner has residential property to live in. For rejecting the claim of the Petitioner, the Respondents relied on the judgement of the Supreme Court in the case of **Delhi Development Authority v. Jai Singh Kanwar** in **Civil Appeal No. 8289/2010** and of this Court in **Shri Krishan Kumar v. Land and Building Department and Anr.** in **W.P.(C) 13301/2022**, decided on 18.11.2022.

4. At the outset, Mr. N. S. Dalal, learned counsel for the Petitioner submits that the sole reason for rejecting the case of the Petitioner for alternative plot is that Petitioner resides in a house in Gurgaon, which was earlier in the name of Petitioner's wife and was subsequently transferred in the name of his son, which is wholly erroneous and contrary to the rehabilitation policy. It is also submitted that the case of the Petitioner is squarely covered by a judgment of a Coordinate Bench of this Court in **Ajay Bajpai v. Union of India & Ors.**, in W.P.(C) 7142/2023 decided on 20.02.2024.

5. Issue notice.

6. Learned counsels as above accept notice for the Respondents.

7. Mr. Sanjay Pathak, learned Standing Counsel for the Respondents does not dispute that in **Ajay Bajpai (supra)**, the Court was dealing with the issue of alternative plot sought by the Petitioner on acquisition of his land vide Notification dated 13.12.2001 issued under Section 4 of Land Acquisition Act, 1894 followed by receipt of compensation pursuant to Notification under Section 6 of the said Act. Rejection of the Petitioner's claim therein was on the ground that his wife owned a flat in Gurugram by virtue of Conveyance Deed dated 15.02.2021. Relying on the policy of



allotment of alternative plots, Court concluded that Petitioner was entitled to the alternative plot being eligible under Clause 3 of the policy, wherein the only impediment in allotment is that the applicant should not own a house/residential plot/flat out of Village Abadi in his/her dependant relation's name including unmarried children. Writ petition was allowed noting that the Petitioner did not own property in urban area in Delhi and had so stated in the affidavit filed in the prescribed format. Mr. Pathak, however, contends that House no. 166, Sector-40, Gurgaon, Haryana was earlier in the name of the wife of the Petitioner and was deliberately transferred in the name of their son, i.e. within blood relation and the Petitioner continues to reside in the said house and therefore, his application was rightly rejected as the purpose of the rehabilitation policy is to allot alternative plot to those persons who have been deprived of a shelter over their head due to acquisition of their land for public purpose and not to those who have a house to live in.

8. Heard learned counsels for the parties and examined their submissions.

9. This is a second round of litigation by the Petitioner. Facts to the extent that Petitioner was the owner of land measuring 200 Sq. Yds., which was acquired by Award No. 215/1979-80 and for which compensation was received by the Petitioner, are not in dispute. In the first round of litigation, the Division Bench of this Court in LPA No. 628/2022 had rejected the stand of the Respondents that Petitioner was not entitled for alternative plot in the absence of furnishing mutation documents. Respondents were directed to re-consider the case of the Petitioner *de hors* the mutation documents and in terms of the rehabilitation policy. As noted above, the sole ground for



rejection of the Petitioner vide impugned order dated 28.08.2024 is that he is currently residing in House no. 166, Sector-40, Gurgaon, Haryana, which was earlier owned by his wife and was subsequently transferred in the name of his son, i.e. within blood relationship.

10. There is no dispute that allotment of alternative plot to persons whose land has been acquired for public purpose is governed by a policy, relevant part of which is as follows:

“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”

11. It is not in dispute that Petitioner's land was acquired vide Award No. 215 of 1979-80 and he has received compensation on 09.07.1993. The sole reason for rejection of Petitioner's claim for alternative plot is that his son owns a house in Gurugram which was earlier in the name of Petitioner's wife and was subsequently transferred to the son's name and in which the Petitioner resides. In my view, this ground is wholly erroneous and as rightly contended by Mr. Dalal, Petitioner's case is covered by the judgment of this Court in *Ajay Bajpai (supra)*, wherein a similar issue arose for consideration before the Court where the application of the Petitioner was rejected on the ground that his wife was a owner of a flat in Gurugram.



Examining the same policy in question, Court concluded that there is no provision in the policy which debars an applicant from allotment of an alternative plot if his/her dependant relation including unmarried children own a house outside the urban area in Delhi. In fact, in the said case, the Court has also held that the judgment of the Supreme Court in **Jai Singh Kanwar (supra)** was in favour of the Petitioner. Relevant paragraphs from the judgment in **Ajay Bajpai (supra)** are as follows:

“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.

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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.

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



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12. A Full Bench of this Court in *Smt. Shiv Devi Virley v. Lt. Governor of Delhi and Others, 1986 SCC OnLine Del 254*, held that a plot can only be allotted to a person whose wife/husband or any of his/her dependant relations, including unmarried children do not own a house or plot in Delhi. It is pertinent to note that in *Ajay Bajpai (supra)* also dealt with the contention of the Respondents therein that the Petitioner was residing in the property in Gurugram and observed that land of the Petitioner having been acquired in the year 2000, it cannot be expected that Petitioner would live as vagabond on the streets and it was obvious he will have to find some shelter.
13. In view of the aforesaid decisions of this Court and the undisputed facts that Petitioner was the owner of the land which was acquired and for which compensation was paid to him and his asseveration in the writ petition on an affidavit that he does not own a house/plot in the urban area of Delhi, he cannot be denied his entitlement for allotment of the alternative plot.
14. Accordingly, this writ petition is allowed, directing the Respondents to consider the application of the Petitioner for allotment of alternative plot in light of the judgments referred above and the observations of this Court within a period of three months from the date of receipt of this order. The recommendation of the Recommendation Committee will be forwarded to land owning agency for allotment of alternative plot and the exercise shall be completed within three months thereafter. Impugned order dated 28.08.2024 is hereby quashed and set aside.

JYOTI SINGH, J**SEPTEMBER 23, 2024/kks/jg**