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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 13th November, 2024*+ **W.P.(C) 15740/2024****SHRI JAI BHAGWAN & ANR.**

.....Petitioners

Through: Mr. N.S. Dalal, Mr. Alok Kumar,
Ms.Nidhi Dalal, Ms. Rachana Dalal, Mr. Karan
Mann 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 Mr. Sunil Kumar Jha and Mr. Sami
Sameer Siddiqi, Advocates for Respondent No.1.
Ms. Avni Singh, Panel Counsel with Ms. Prapti
Singh, Advocate for Respondent No.2.

**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 laying a challenge to the impugned order dated 23.03.2021 passed by Respondent No.2/District Magistrate, South-East, Lajpat Nagar, New Delhi, whereby claim of the Petitioners for allotment of alternate plot has been rejected.
2. Facts to the extent necessary and as averred in the writ petition are that vide Award No.6B/SUPPL./1981-82, land of the predecessor-in-interest



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of the Petitioners, i.e., Late Sh. Murari, situated in the Revenue Estate of village Jasola, P.O. Jamia, New Delhi was acquired and possession was taken over on 07.09.2000 and compensation was paid on 30.08.2004. Sh. Murari applied for allotment of alternate plot in lieu of his acquired land under the policy of the Government for allotment of alternate plots to those persons whose lands had been acquired and compensation had been received, as a rehabilitation measure.

3. It is averred that on 21.02.2011, Shri Murari expired but prior thereto he had fulfilled the required formalities and Petitioners continued to prosecute the matter after his death. Petitioners received an order dated 29.09.2017 by which the application filed by Sh. Murari was rejected on the ground of non-submission of requisite documents. Petitioners filed a writ petition being W.P.(C) No.6225/2018 before this Court seeking quashing of the said order and the writ petition was allowed vide order dated 29.08.2018, setting aside the order of rejection and directing that the application would be considered afresh within 16 weeks and the fate of the decision will be made known to the Petitioners within two weeks thereafter.

4. It is stated that pursuant to the direction of the Court, Petitioners received a notice from Respondent No.2 in March 2021, and thereafter appeared for a personal hearing on 08.03.2021. The outcome of the hearing was not made known to the Petitioners and it is only through an application under the Right to Information Act, 2005 ('RTI Act') that they received the impugned order, rejecting the application for allotment of alternate plot.

5. It is the categorical case of the Petitioners in the writ petition that Respondent No.2 has erroneously rejected their claim for allotment of alternate plot basing his decision on the report of Tehsildar (Sarita Vihar)



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wherein it is brought out that on local enquiry conducted by Revenue officials it has come to light that Sh. Murari has residential property measuring about 300 Square Yards as also an agricultural land in village Jasola, which is factually incorrect. It is urged that the report of the Tehsildar was not even supplied to the Petitioners before the decision was taken, based on the incorrect findings therein.

6. Learned counsel submits that neither Sh. Murari nor the Petitioners own a residential land outside the village *abadi* area and therefore, there is no embargo under the policy dated 03.04.1986 for allotting the alternate plot to them. The decision dated 14.09.2011, relied upon by Respondent No.2 in the case of *Delhi Development Authority vs. Jai Singh Kanwar, Civil Appeal No.8289/2010* will be inapplicable to the present case as in the said case the entire land of the Respondent was not acquired while in the present case, the entire land of Sh. Murari was acquired vide Award No.6B/SUPPL./1981-82 announced on 31.10.1998. The judgment in *Surinder Singh Maan v. Government of NCT of Delhi & Anr., 2017 SCC OnLine Del 10194*, relied upon by Respondent No.2 does not help the Respondents as in the said case the property was purchased by the wife of the Petitioner, which is not the case here. Right to alternate plot is a statutory right in view of DDA (Disposal of Developed Nazul Land) Rules, 1981, Rule 6 whereof provides for allotment of alternate plot to persons whose land has been acquired. Had Respondent No.2 supplied the report of the Tehsildar before passing the order, Petitioners would have clarified the factual position and the impugned order may not have been passed.

7. Issue notice.

8. Learned counsels, as aforesaid, accept notice on behalf of their



respective Respondents.

9. At the outset, learned counsel for Respondent No.1 takes an objection to the maintainability of the writ petition on ground of delay and laches and submits that this writ petition has been preferred challenging an order dated 23.03.2021 after nearly three years, with no explanation for approaching the Court belatedly. On merits, it is submitted that there is no infirmity in the impugned order as the same has been passed after looking into the report of the Tehsildar, which in turn is based on a local enquiry conducted by concerned Revenue officials, which revealed that Late Sh. Murari owned residential property around 300 Square Yards and also agricultural land in Village Jasola at the time of verification. The Supreme Court in **Jai Singh Kanwar (supra)** has held that object of the scheme is to rehabilitate those whose lands have been taken away in entirety provided that they do not own a house/residential plot/flat.

10. Heard learned counsels for the parties.

11. Insofar as the preliminary objection of delay and laches is concerned, the same deserves to be rejected as the Petitioner has clearly pleaded in the writ petition that after this Court had directed Respondent No.1 to reconsider the application of the Petitioners vide order dated 29.08.2018, Petitioners had appeared before Respondent No. 2 on 08.03.2021, but thereafter the outcome of the hearing was never made known to them and even the impugned order dated 23.03.2021 was not communicated. It was only through an application filed under RTI Act that Petitioners came to know of the rejection order on 23.09.2024, whereafter they filed this writ petition. There is thus no delay in approaching this Court.



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12. Reading of the impugned order dated 23.03.2021 shows that the rejection of the application filed by Sh. Murari, predecessor-in-interest of the Petitioners, was rejected solely on the basis of the report of Tehsildar (Sarita Vihar), wherein a finding was rendered that Sh. Murari owns 300 Square Yards of residential property as well as an agricultural land in Village Jasola. Admittedly, this report was never furnished to the Petitioners and thus, they were unable to point out the alleged factual inaccuracies in the report. This itself was an illegal exercise by Respondent No.2 as before passing any adverse order against the Petitioners, the report should have been furnished to the Petitioners calling upon them to respond to the alleged ownership of the properties under reference. Strangely, the impugned order does not even mention the description, address and/or any other detail of the properties allegedly owned by Sh. Murari and this illegality becomes important in view of the clear position adopted by the Petitioners that their predecessor-in-interest did not own any property outside the *abadi* area.

13. Petitioners have taken a categorical position in the writ petition that even the Petitioners do not own any residential property/agricultural land, save and except, a family house within the *abadi* area and therefore they cannot be denied the allotment as the only embargo in the policy dated 03.04.1986 for allotment of alternate plot is where the applicant owns a property outside the *abadi* area. I agree with the Petitioners to the extent that owning a property inside the *abadi* area cannot be an impediment or an embargo in allotment of alternate plot as per the policy and this position of law is no longer *res integra*. This Court in **Ajay Bajpai v. Union of India & Ors.**, decided on 20.02.2024 in **W.P.(C) 7142/2023**, has held that perusal of the policy indicates that two types of persons are eligible for allotment of



alternate plot, i.e., first, who are recorded owners prior to issue of notification under Section 4 of Land Acquisition Act, 1894 and second would be the category whose lands have been acquired and have received compensation after possession has been taken over. It was also held that requirement of the policy is that applicant should not be having any house/residential plot/flat out of Village *abadi* in his/her dependant relations' name nor he should be a member of any Co-operative Housing Society. Owning a house/residential plot/flat inside the village *abadi* is not an embargo under the policy. A Full Bench of this Court in ***Smt. Shiv Devi Viriley 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.

14. Looked at holistically, in my view the case of the Petitioners requires re-consideration in light of the fact that the report of the Tehsildar, on which the impugned order is predicated, was never supplied to them, depriving them of their right to contest the same. It is also evident that while taking the impugned decision, the concerned authority has not taken into account the provisions of policy dated 03.04.1986 and the position of law on the subject with regard to ownership of house/residential plot/flat by the applicants inside the *abadi* area.

15. Accordingly, this writ petition is disposed of at this stage with a direction to Respondent No.2 to call the Petitioners for a personal hearing, after furnishing the report of the Tehsildar, Sarita Vihar and/or any other document(s) which may be relevant for taking a decision in the matter and then take a considered decision with respect to allotment of the alternate



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plot. The date, time and venue of the personal hearing shall be intimated to the Petitioners by Respondent No.2 in writing, two weeks before the date of hearing. The decision shall be taken within six weeks from the date of hearing and while taking the decision, Respondent No.2 shall take into account the policy dated 03.04.1986 as well as the judgments aforementioned as also the stand taken by the Petitioners in the personal hearing with respect to alleged ownership in the properties by them, after providing the details of the properties, which form a part of the Tehsildar's report.

16. Needless to state, in case the decision is in favour of the Petitioners, the matter will be processed for allotment of the alternate plot and in case the decision is otherwise, a reasoned and speaking order shall be passed which will be communicated to the Petitioners within a week thereafter. Petitioners will be at liberty to take recourse to legal remedies in case of any surviving grievance.

17. It is made clear that this Court has not expressed any opinion on the merits of the case and it will be open Respondent No.2 to take a decision in accordance with law.

JYOTI SINGH, J

NOVEMBER 13, 2024

B.S. Rohella