



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

% **Judgment reserved on : 23 July 2024**
Judgment pronounced on: 05 September 2024

+ **W.P.(C) 10989/2017 & CM APPL. 24658/2018**

SHRI RASHTER KUMAR Petitioner

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachna Dalal, Ms. Sweta Kadyan and Mr. Karan Mann, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

.....Respondents

Through: Ms. Manika Tripathy, Standing Counsel with Mr. Ashutosh Kaushik, Mr. Naveen K. Saraswat and Mr. Rony John, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The Petitioner invokes the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, by seeking the following relief:

“Issue an appropriate writ, order or direction thereby directing the Respondent to allot to the Petitioner an alternative plot of the size of 400 sq. yds., as recommended by the Land and Building Department vide Recommendation Letter dated 03.10.2017”

BRIEF FACTS:

2. The brief facts leading to the filing of the present petition are that the land belonging to the predecessor-in-interest of the petitioner,



namely Shri Fakira, situated in Village Nangli Jalib, New Delhi, was acquired *vide* Award No. 1614 dated 30.03.1965 upon which acquisition, the predecessor-in-interest of the Petitioner became entitled to an alternative plot measuring 400 square yards, as alleged by the petitioner herein.

3. Accordingly, the predecessor-in-interest applied for allotment of the alternative plot, however he passed away while the said application was still pending disposal. It is the case of the petitioner that after a long and unexplained delay, the said application finally came to be decided *vide* a recommendation letter 03.10.2017 issued by the Land & Building Department to the Commissioner (Land) of the Respondent/DDA for the allotment of a plot to the petitioner herein in lieu of his acquired land situated in Village Nangli Jalib.

4. The substance of the said recommendation letter upon which much mileage has been sought by the petitioner herein is reproduced hereinbelow:

“Sir,

I am directed to request you to allot a plot measuring 400 sq. yds. (Four Hundred Sq. Yds.) to Sh. Rashtra Kumar S/o Shri Goverdhan Dass, of Village Nangli Jalib, Delhi in lieu of his/her/their acquired land bearing Kh. Nos. 1etc./75 (7-17), 1etc./83 (2-12), 1etc. (3-17), 1etc/87 (5-01), 1etc./143 (4-09), total (23-09), 1etc./110 (0-08), total (0-08), total measuring (23-09) & (0-08) Bighas in which applicant's share is full & 1/16th which is acquired vide Award No. 1614 dated 30.03.1963 of Village Nangli Jalib, Delhi, in South West, as he/she/they has/have been found entitled for the same.

Date of possession: 17.06.65

Locking period for transfer of
Title shall be seven years from
Date of allotment.

...Further correspondence in the matter may please be made with the above mentioned office. The allotment of alternative plot is



subject to the availability of plot with D.D.A. However, it may clearly be noted that this letter does not carry with the legal commitment for the allotment of alternative plot.

In case, by virtue of allotment of this plot, the allottee come, to hold land in excess of the ceiling limit laid down under the provision of Urban Land Ceiling & Regulation) Act, 1976 the allottee will apply to the Competent Authority u/s. 15 of the Act.”

5. It is claimed by the petitioner herein that the respondent/DDA has carved out Pockets 4 and 6 in Sector 26, Dwarka allegedly earmarked for the purpose of alternative allotments to the persons whose lands have been acquired, including the petitioner herein. However, the grievance of the petitioner is that there is no plot of the size 400 square yards in the abovesaid area, as evidenced by the site plan of Sector 26, Dwarka placed on record by the petitioner herein. It is urged by the petitioner that the respondent/DDA is legally bound to provide an alternative allotment of the requisite size i.e. 400 square yards, to the petitioner herein. Hence, the present petition.

6. Upon the notice of the present writ proceeding, the Respondent/DDA filed a status report pursuant to the directions of this Court, stating that as per the office records, the recommendation with regard to the petitioner herein is for a plot admeasuring 400 square yards located in Rohini Residential Scheme, however the petitioner is making a demand for an allotment in Sector 26, Dwarka. Further, it has been brought on record that consequent to the issuance of Circular No.F.2(39)95/AO(O)/Pt./141 dated 24.11.2005 by the Director(LC), DDA, besides the meeting of the Screening Committee of the Respondent/DDA held on 04.11.2015, as well as the Note issued by Commissioner (Planning), DDA dated 15.01.2018, it is not possible to



allot alternative plots in Dwarka since the Dwarka project is now fully developed and the land value is very high due to other proposed projects sought to be developed in the surrounding area. Accordingly, it has become a matter of policy for the respondent/DDA to allot the alternative plots in upcoming pockets other than Dwarka. Furthermore, it is stated that the petitioner cannot assert a right for allotment of a particular plot as an alternative plot for the reason that an alternative plot is a purely administrative measure of rehabilitation as per the prevailing policy on the subject at pre-determined rates which are less than the market prices; and that in view of the fact that the petitioner has already received the statutory compensation equal to the market value of the acquired land under the Land Acquisition Act, 1894, it is not possible for the respondent/DDA to accommodate the demands of the petitioner herein.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

7. The learned Counsel appearing for the petitioner has strongly relied upon Rule 6 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 which provides as under:

6. Allotment of Nazul land at pre determined rates- Subject to the other provisions of these rules, the Authority shall allot Nazul land at the pre-determined rates in the following cases, namely:-

(i) to individuals whose land has been acquired for planned development of Delhi after the 1st day of January, 1961, and which forms part of Nazul land:

Provided that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted;

(ii) to individuals in the low income group or the middle income group other than specified in clause (i)-



- (a) who are tenants in a building in any area in respect of which a slum clearance order is made under the Slum Areas Act;
- (b) who, in any slum area or other congested area, own any plot of land measuring less than 67 square metres or own any building in any slum area or other congested area;
- (iii) to individuals, other than those specified in clause (i) and (ii), who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee;
- (iv) to individuals belonging to Scheduled Castes and Scheduled Tribes or who are widows of defence personnel killed in action, or ex-servicemen, physically handicapped individuals subject to the provisions of rule 13;
- (v) to industrialists or owners and occupiers of warehouses who are required to shift their industries and warehouses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act.

Provided that the size of such industrial plot shall be determined with reference to the requirement of the industry or warehouses set up or to be set up in accordance with the plans and such industrialists and owners of warehouses have the capacity to establish and run such industries or warehouses and on the condition that the land allotted at pre-determined rates shall not, in any case, exceed the size of the land which has been, if any, acquired from such industrialist or owners and occupiers of warehouses and which form part of Nazul land:

Provided Further that in making such allotment, the Authority shall be advised by the Land Allotment Advisory Committee;

- (vi) to co-operative group housing societies, co-operative housing societies, consumer co-operative societies and co-operative societies of industrialists on "first come first served basis".

8. It is contended by the counsel for the petitioner that the respondent/DDA is statutorily bound to provide an alternative allotment to the petitioner, further it is urged that the respondent/DDA failed in performing the said duty in as much as it decided on the petitioner's application after a long and inordinate delay, secondly that the respondent/DDA did not carve out a plot of the requisite size for



the petitioner herein in Pockets 4 and 6 of Sector 26, Dwarka; and thirdly, believing it to be true that there is no availability in Dwarka, then respondent/DDA also failed to alternatively allot a plot to the petitioner anywhere else either.

9. *Per contra*, the learned standing counsel appearing for the respondent/DDA has contended that the petitioner herein cannot be allotted an alternative plot at Dwarka as it is now fully developed, and the plots situated therein command high premium. It is also urged that the “recommendation letter” produced by the petitioner herein is not a “Demand-cum-Allotment Letter” and thus, does not create any legal obligation upon the respondent/DDA to allot an alternative plot to the petitioner herein, as provided in the said recommendation letter itself. It is further reiterated that as per the recommendation letter, it has also been clearly communicated to the petitioner that the allotment of an alternative plot to the petitioner herein shall be subject to availability of plots with the respondent/DDA. Hence, the petition of the petitioner herein is without merits and is liable to be dismissed.

10. In rebuttal, the learned counsel appearing for the petitioner urged that the plea taken by the respondent/DDA that allotment cannot be made in developed sectors of Dwarka is not sustainable since every land put at the disposal of the respondent/DDA is *Nazul* land, including Sector 26 Dwarka, and thus, governed by the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 [“**Nazul Rules**”], which Rules override any policy formulated or minutes of meetings held by the Respondent/DDA. Learned counsel has also relied upon the decision of the Supreme Court in **Tukaram**



Kana Joshi v. Maharashtra Industrial Development Corporation¹
to support his submissions.

ANALYSIS AND DECISION:

11. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

12. First things first, it would be expedient to refer to order dated 18.11.2019 passed by the learned predecessor of this Court, which reads as under:

“1. The prayer made in the writ petition is that the respondent i.e. Delhi Development Authority (in short 'DDA') be directed to allot an alternate plot admeasuring 400 square yards, based on the recommendations made by the Land and Building Department, vide its letter dated 03.10.2017.

2. Mr.Dhanesh Relan, who appears for the DDA, has cited a judgment of the coordinate Bench dated 29.04.2019, rendered in W.P.(C) No.4902/2018, titled Ram Kumar Vs. Delhi Development Authority and Anr., which, according to him, qua the issue raised in the captioned matter, has ruled in favour of the DDA.

2.1 In this behalf, Mr. Dhanesh Relan refers to paragraph 93 of the said judgment. The said paragraph reads as under:-

"93. Thus viewed, it is clear that the petitioner cannot claim any enforceable right to be allotted an alternative plot at Dwarka, or that such allotment should be at a price which is "commensurate to the rate at which " his land was acquired in 1981."

3. I may indicate that the judgment in Ram Kumar's case, which has been rendered by a coordinate bench relies upon a full Bench judgment of this Court in Ramanand v. U.O.I., AIR 1994 Delhi 29. The learned Judge in Ram Kumar's case has summarized what he notes is the "upshot" of the full Bench in paragraph 64.

3.1 Besides this, the learned Judge has also relied upon the judgment of the Supreme Court in Amolak Raj v. Union of India, JT 2002 (10) SC 86.

4. Mr. Dalai says that he wants to address further arguments to persuade the court to the contrary.

¹ 2013 1 SCC 353



5. At request, renotify the matter on 03.12.2019.”

13. Thereafter, the matter lingered on for reasons attributable to none, and eventually final arguments have been advanced on 23.07.2024. At the outset, learned counsel for the petitioner has no answers to the ratio or proposition of law propounded in the case of **Ramanand v. Union of India & Ors.**². It was a case where a Full Bench of this Court dealt with the writ petitions concerning large scale acquisitions, development, and disposal of land for the purpose of planned development of Delhi and not only the provisions of Delhi Development Act, 1957 [“**the Act**”] but also *Nazul* Rules came to be discussed in some detail. Two questions were answered by the Full Bench, which are as under:-

“1. Whether a person whose land has been acquired for planned development of Delhi has got a vested right to the allotment of alternative plot of land for residential purposes?

2. What is the relevant date with reference to which premium at predetermined rates would be chargeable from such a person for allotment of the residential plot-should it be the date when his land is acquired, or when he makes the application to the Administrator of the Union Territory of Delhi for allotment, or when the Administrator makes the recommendation for allotment, or when the allotment is made by the Delhi Development Authority under the *Nazul* Rules?”

14. In a nutshell, as regards the right to allotment asserted by the petitioner, alluding to Section 21³ of the Act, Clause (8) of the 1961

² 1993 SCC OnLine Del 397

³ **21. Disposal of land by the Authority or the local authority concerned.**—(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of—

- (a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon; or
- (b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.



Scheme published by the Central Government, and in the alternative, flowing from Section 22 of the Act as well as Rules 4⁴ and 6 of the *Nazul* Rules, it was held that Section 21 of the Act does not apply to acquired land, which continues to vest in the Central Government and is known and described as ‘*nazul* land’.

15. As regards clause (8) of the 1961 Scheme, it was held that the said clause merely envisaged a general policy to the effect that disposal of developed land should be made by way of an auction and

(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

(3) Nothing in this Act shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

⁴ **Persons to whom Nazul land may be allotted-**

(1) The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, [body of persons, firms, companies], public and private institutions, co-operative house building societies, other co-operative societies of individuals, co-operative societies of industrialists and to the departments of the Central Government, State Governments and the Union territories.

(2) The Authority shall, in conformity with plans and subject to the provisions of these rules, dispose the Nazul land by auction to the following institutions:

- (a) hospitals;
- (b) dispensaries;
- (c) nursing homes;
- (d) higher or technical education institutions;
- (e) community halls;
- (f) clubs;
- (g) schools;

Provided that nothing contained in this sub-rule shall affect the allotment of land to the Central Government, State Government, Union territory, local body, autonomous bodies or organizations owned by the Central Government.



the premium should be determined by the highest bid except that allotment of land had pre-determined rates in the case of certain individuals including those individuals whose land had been acquired. In any case, it was held that such clause cannot be construed to mean that a right to allotment of alternative plot is conferred on any individuals whether on premium or otherwise.

16. Further, holding that Section 22 of the Act regulates development and disposal of *nazul* land, for which sub-Section (1) empowers the Central Government to place *nazul* land at the disposal of the DDA for the purpose of development, whereas sub-Section (2) prohibits development of such *nazul* land by anybody except by, or under the control and supervision of DDA, it was held that sub-Section (3) stipulates that after the land has been developed, it shall be dealt with by the DDA in accordance with the rules and directions given by the Central Government. It was categorically held that upon a combined reading of Section 22 vis-à-vis Rules 4, 6 and 12 of the *Nazul* Rules, no right can be set up by individuals to alternate accommodation on *nazul* land or otherwise.

17. Insofar as Rule 6 is concerned, it was held that it controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein. It was held as under:

“24. Rule 6, in reality, controls the rates of premium chargeable only in those cases where land is allotted to the persons mentioned therein. In other cases, the rules provide for sale of land at the market price determined by the highest bid on public auction of land. Thus, the principle expressed in the form of ‘exception’ in clause 8 of the 1961 Scheme, which has already been discussed above, is embodied into the *Nazul* Rules. Where the DDA decides to allot *Nazul* land to the persons named in this rule, it is bound to



charge premium from the allottees only at the predetermined rates. The right and corresponding duty contained in this rule is of a different kind than that sought to be invoked by the petitioner. The right or entitlement of any one to allotment of Nazul land is not regulated by this rule. It regulates only the rate at which premium shall be chargeable in certain cases, and it restricts the liability of allottees, in specified cases, to pay premium for allotment of Nazul land at the pre-determined rates, and no less and no more.

25. Rule 6(i) Proviso, undoubtedly, provides for determination of the size of the plot by the Administrator if an individual is to be allotted a residential plot. But, the power to make the allotment lies within the domain of the DDA. The Administrator, being the land acquiring authority, is to verify whether the land of an individual applicant is acquired, and the area and value thereof. On these facts, then, the DDA, who is entrusted with the power and function of development and disposal of land, would examine the matter, in the light of the plans and the other rules, and decide whether a plot may be allotted to him, and, if so, of what size and where. It cannot be said, on the basis of this provision, that the right to allotment of a plot would accrue, merely on verification of the claim, and even on the basis of recommendation made by the Administrator in favour of the individual whose land is acquired.”

18. In conclusion, it was held that a mere recommendation by the Delhi Administration for allotment to any person does not carry any legal commitment for allotment of the alternate plot. Thus, applying the same analogy in the present matter, the reliance by the petitioner placed on the letter dated 03.10.2017 is only recommendary in nature and it does not create any legal right in favour of the petitioner. In the final analysis, the petitioner is not entitled to alternate plot of land for residential purposes. Indeed, he was eligible for allotment of a plot, subject to certain conditions; however, there is no accrued right to the allotment of an alternate plot for residential purposes.

19. In fact, the proposition of law laid down in the aforesaid case by the Full Bench of this Court was upheld by the Supreme Court in the



case of **Amolak Raj v. Union of India**⁵, wherein the appellant was allotted plot of land in Rohini Residential Scheme bearing Plot No. 52, Pocket-16, Sector-20, measuring 250 Sq. Yards but he was not satisfied and filed a writ petition before the High Court seeking directions to the DDA for allotment of plot of land measuring 800 Sq. Yards. It was held that the petitioner, whose land had been acquired, had no absolute vested claim for allotment of plot as a matter of right under the *Nazul* Rules. It was further held that the appellant cannot claim allotment of a particular plot in a particular area of his choice and even if there are any recommendations made in his favour by any other government authority/agency, it could only be subject to availability of plot with the DDA and the said recommendation has no binding legal commitment.

20. In view of the above, this Court has no hesitation in dismissing the present writ petition. The same is accordingly dismissed.

21. The pending application also stands disposed of.

DHARMESH SHARMA, J.

SEPTEMBER 05, 2024

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⁵ JT 2002 (10) SC 86