

(2023) 01 DEL CK 0102

In the Delhi High Court

Case No : Civil Writ Petition No. 1879 Of 2022

Ajay Bajpai

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Delhi Municipal Corporation Act, 1957 — Section 507
Delhi Development Act, 1957 — Section 22

Citation : (2023) 01 DEL CK 0102

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Ruchir Midha, Bhagwan Swarup Shukla, Vikrant, Rajesh Kumar, Ramneet Kaur, Rachita Garg

Final Decision : Allowed

Judgement

Prathiba M. Singh, J

1. The Petitioner - Mr. Ajay Bajpai who had ownership rights in the land measuring 1 bigha (1000 sq. yards), bearing Khasra No. 18/17/1(0-8) and 18/16/2(0-12) situated at Village Pochan Pur, Delhi (hereinafter 'subject property') has filed the present petition.

2. The Petitioner seeks expeditious disposal of his application dated 12th June, 2003 for allotment of an alternative plot in accordance with the scheme of allotment of alternative plots in lieu of acquired land under large scale acquisition development & disposal of land in Delhi announced by Union of India - Ministry of Home Affairs.

3. The case of the Petitioner is that vide notification dated 13th December, 2001 issued under Section 4 of the Land Acquisition Act, 1894 followed by Notification of Declaration dated 7th December, 2002 under Section 6 of the Land Acquisition Act, 1894, the subject property of the Petitioner was acquired by Delhi

Development Authority (DDA) as part of acquisition done for the purpose of development of Dwarka Phase II, Delhi.

4. An award dated 9th December, 2002 was passed by the Land Acquisition Collector, Delhi, awarding compensation of Rs.4,43,268/- to the Petitioner towards acquisition of the subject property.

5. The Petitioner challenged the quantum of compensation before the Ld. Additional District Judge, however, the same was rejected. The Petitioner, thereafter, submitted an application seeking allotment of an alternative plot on 12th June, 2003 which was rejected vide letter dated 26th March, 2015. The said letter was challenged by the Petitioner vide W.P.(C) 10579/2015 titled Ajai Bajpai v. Union of India & Ors.

6. The said petition was allowed and vide order dated 2nd September, 2016 certain directions were passed by this Court. The said directions are as follows:

"Learned counsel for the petitioner submits that admittedly his case has not been considered on merits; it has been rejected only for the reason that the documents had not been furnished for which the petitioner has furnished a justifiable explanation. This Court notes this submission and is in agreement with this submission of the learned counsel for the petitioner. The communications details afore show that the efforts had been made by the petitioner to furnish all the documents to the Department and in fact most of the documents had allegedly been furnished on 19.12.2013; the Department was not justified but the next contention of the petitioner (which is borne out from his RTI application) that these letters were not addressed at his address has also been noted.

The view of the Court is that the case of the petitioner should be considered on merits. The rejection letter dated 26.03.2015 is accordingly set aside. The case of the petitioner be decided on merits. This Court also notes that the application seeking allotment of plot was within time. If all the documents have not already been furnished by the petitioner, the same shall be furnished to the Department on affidavit within three weeks from today."

7. As per the above order, the Court was clearly of the opinion that the application of the Petitioner was filed within time and the documentation was also complete. Thus, the rejection was set aside and a direction was issued to consider the application for allotment of alternate plot, on merits.

8. Despite the abovementioned order, the case of the Petitioner is that all the requisite documents have been submitted, however, decision was not taken on the Petitioner's application for an alternative plot. Thus, the Petitioner was constrained to file the present writ petition, in early 2022, seeking the following reliefs:

"A) A Writ in the nature of Mandamus inter-alia directing the Respondent no. 4 to expeditiously and without any delay, send the status report on the contents of the Application and Affidavit filed by the Petitioner before Respondent No. 3,

after affording an opportunity of hearing to the Petitioner and in accordance with law;

B) An appropriate writ in the nature of Mandamus inter-alia directing the Respondent no. 3 to decide the Application dated 12.06.2003 in a time bound manner and expeditiously, in accordance with 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; and

C) Any other writ, order or direction which this Hon ble Court may deem fit and proper in the facts and circumstances of the present case.”

9. The matter was listed on 17th January, 2023 on which date Id. Counsel for the Respondent made a submission that the Petitioner’s request for alternate plot has already been rejected vide order dated 4th December, 2019. The copy of the order which has been handed over shows that the ground on which the same is rejected is on a premise that the Petitioner/his family owns another residential property. The relevant extract of the order dated 4th December 2019 is set out below.

10. This fact had not been disclosed to the Court or the Petitioner during the pendency of the proceedings and despite repeated opportunities having been given to file the counter affidavit, the same was not filed. Vide order dated 1st November, 2022, the Registrar has closed the right of the Respondents to file the counter affidavit. In this view of the matter the following observations were made by the Court vide order dated 17th January, 2023:

“8. Today, Ms. Garg, Id. Counsel for the Respondents submits that the Petitioner’s application for alternative plot has been rejected vide order dated 4th December, 2019 passed by the SDM, (HQ), District South West. It is submitted by Ms. Garg, Id. Counsel that the said order has been communicated to her only this morning.

9. It is noticed by the Court that the Petitioner has been making representations for several years seeking early disposal of his application for an alternative plot. The said representations, emails and letters have been placed on record.

10. Notice was issued in this writ petition on 1st February, 2022, almost a year ago and time was given to the Respondents to file counter affidavit. Further time for counter affidavit was granted by this Court on 21st March, 2022. On 29th July, 2022, the Id. Registrar gave one last opportunity to file the counter affidavit. Thereafter, on 1st November, 2022 the Registrar closed the right of the Respondents to file the counter affidavit.

11. There has been no whisper of the order dated 4th December, 2019 during this entire period. Further, the purported order dated 4th December, 2019 passed by the SDM, (HQ), District South West is stated to have been communicated to Ms. Garg, Id. Counsel only this morning as per her submission. Clearly, the SDM’s office and the DM’s office have not just been recalcitrant but have been negligent

in this matter. The conduct of the SDM's office and the DM's office is unacceptable to say the least. The proceeding pending before this Court has also not been taken seriously by the concerned officials.

12. Accordingly, the said officials shall remain in Court tomorrow i.e. on 18th January, 2023:

(i) Mr. Mukul Manrai, SDM Office;

(ii) Mr. Hemant Thothwal, DM -South West, Dwarka, and;

(iii) Mr. V.K. Mongia, SDM - South West, Dwarka.

11. Today, the officials who were summoned, i.e., Mr. Mukul Manrai, SDM Office, Mr. Hemant Thothwal, DM -South West, Dwarka, and Mr. V.K. Mongia, SDM - South West, Dwarka, are present in Court.

12. Firstly, Mr. V.K. Mongia submits that this case does not pertain to his office. Insofar as Mr. Mukul Manrai and Mr. Hemant Thothwal are concerned, their stand is that the competent authority i.e., the Principal Secretary had raised some objections on 5th September, 2018 as to the Khasra number of the subject property. The note sheet of the department's file related to this application, which has been handed over to the Court today shows that the request for alternative plot has been rejected vide order dated 4th December, 2019.

13. Mr. Hemant Thothwal, submits that he has assumed charge of this office in June of 2022 and Mr. Mukul Manrai states that he in his current office from February 2022. They have tried to explain the situation by stating that there is some confusion as to the Khasra number. On a specific question as to whether there is anything on record to show that the Petitioner or his immediate family member own any property, residential plot or flat in any urban area in Delhi and if so the details thereof, none of the officers have any answers.

14. On a query from the Court, Id. Counsel for the Petitioner submits that the Petitioner does not own any residential property in the whole of India. However, his wife owns a plot in Gurgaon where he currently resides with his family. The Petitioner has only one son who is a major and also does not own any property. Id. counsel for the Respondents and the officials, who are present are unable to convince the Court that the Petitioner or his family owns any property in Delhi.

15. Id. counsel relies upon the judgment of this Court in Surinder Singh Mann v. GNCTD & Anr. [W.P.(C) 12306/2015, decision dated 25th August, 2017] to argue that if any person hold property in any part of the country, provided that it is in an urban area, alternative accommodation cannot be provided. The said judgment is clearly distinguishable as in the said case the Petitioners' wife therein was owning a plot in Janakpuri Delhi. The relevant portion of the said judgment reads as under:

1. The petitioner is aggrieved by the letter of rejection dated 19.05.2015 issued by respondent No. 1 wherein his application seeking allotment of an alternate

plot was rejected. By this letter, it was informed to the petitioner that his case for allotment of an alternate plot in lieu of his acquired land had been placed before the Recommending Committee on 25.02.2015; the Recommending Committee was of the view that the spouse of the petitioner having purchased an urbanized property bearing No.C-5/A/219, Janakpuri, Delhi in her name, the case of the petitioner would not be covered under the Policy Guidelines entitling him to an alternate plot. His case was accordingly rejected.

16. The said decision further relies upon the Full Bench decision of this Court in Shiv Devi v. Lt. Governor AIR 1987 Delhi 46 wherein it was held that plot can only be allotted to a person whose dependants do not own a house or plot in Delhi. The said portion reads as under:

"13 In a Full Bench judgment of this Court reported as AIR 1987 Delhi 46 Shiv Devi Vs. Lt. Governor, this provision had been interpreted and the relevant extract of the aforementioned order reads herein as under:-

"This shows that a plot can only be allotted to a person whose wife/husband or any of his/her dependent relations, including unmarried children do not own a house or plot in Delhi. Thus, the only beneficiaries under the Scheme of allotment in lieu of a plot are those who have no house in Delhi or whose dependant family members etc. do not have a house. No other person can get an allotment. If we see the scheme this way, we will understand that it has a distinct beneficial quality regarding the public. It is not a gift. It is a necessity for persons who would otherwise not possibly acquire any homes.

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The Scheme visualises one house per person. When there is a situation of no house or no plot when the existing plot of that person has been acquired by the State, then it is the duty of the State to given an alternative plot. That is the purpose and the end-all and be all of the Scheme."

14 Applying the ratio of the aforementioned judgment, the petitioner is not entitled to any relief. Petition is without any merit. Dismissed."

17. A perusal of the order dated 4th December, 2019 shows that the same is completely sketchy in nature. No details have been provided as to what is the property being owned by the Petitioner. The operative portion of the said order reads as under:

"Whereas, the Scrutiny Committee had examined the case on the basis of available record and the government guidelines. The Village has been declared urbanized U/s 507 of the DMC Act vide notification dated 24.10.1994 and U/s 22 of the DDA Act, 1957 vide notification dated 19.08.2002. As per available record on the file the applicant residing in the urban area and having his/her house/residential plot/flat in the urban area in the name of his/her own name or in the name of his/her wife/husband or any of his/her dependent.

In view of the Government Guidelines/Hon'ble Supreme Court order/Hon'ble High Court order mentioned above, documents/records placed on the file the Scrutiny Committee has decided not to recommend the case of Sh. Ajay Bajpai S/o Sh. K.S. Bajpai, and therefore, the recommendation of Scrutiny Committee and the record on file has been considered by the Recommendation Committee and it is decided to reject the case for allotment of alternative plot."

18. The said order also does not take into consideration the minutes of the meeting of the Recommendation Committee dated 17th July, 2018, which clearly record as under:

"Sh. Ajay Bajpai S/o Sh. K.S. Bajpai applied for allotment of alternate plot in lieu of his acquired land at village Bajpai Pochanpur vide Award No. 30/2002-03 dated 19.12.2002 and notification u/s 4 was issued on 13.12.2000 and application for allotment of alternative plot was submitted on 12.06.2003. (page No. 6-7/C).

The instant case has been rejected by the Recommendation Committee in its meeting held on 09.01.2015 (page No. 39- 40/C) on the ground that the applicant vide this office letter No. 6166 dated 08.07.2014 was asked to furnish the requisite documents as per the details given therein but the said letter received back undelivered in the absence of requisite documents the legibility of the applicant cannot be determined, hence the case is rejected and conveyed to the applicant vide this office letter no. F.31 (5)/8/2003/L&B/ Alt/257 05-707 dated 26.03.2015 (page No. 41/C). However, the applicant approached the Hon'ble High Court in WPC No. 10579/2015 titled as Ajay Bajpai vs. Union of India & Ors. and the Court vide order dated 02.09.2016 (page NO. 96-98/C) has disposed of with the direction to the respondent to once again examine the case of the petitioner uninfluenced by the earlier resolution dated 26.03.2015. The Respondent shall examine the Petitioner's case within a period of three weeks from today.

In view of the above, the matter was placed before the Competent Authority and it has been duly approved (page NO. 99-101/C) to accept the order of the Hon'ble High Court and accordingly placed before the Recommendation Committee for consideration.

In view of above, the applicants were granted opportunity of personal hearing on 12.01.2017 (page no. 95/C) before the Recommendation Committee and deficiencies were conveyed to the applicant vide this office and applicant submitted documents in this department.

And in compliance of the Hon'ble High Court order the Committee reconsidered the case on the basis of documents produced by the petitioner and it was observed by the Committee that:

1. Sh. Ajay Bajpai S/o Sh. K.S. Bajpai applied for allotment of alternative plot in lieu of his acquired land vide his application dated 12.06.2003 (P.6-7 /C) in the

area of village Pochanpur.

2. The Applicant purchased the land so acquired measuring 1-00 in Khasras No. 18/17 1(0-08) and 18/16/1(0-12) in area of village Pochanpur through Sale-Deed (P.20-23/C), which was executed and registered on 28.11.1986. Since, land of applicant was acquired vide Award No. 30/2002-03 dated 09.12.2002 and date of notification for the acquisition of the same was issued by LAC on 13.12.2000. Since, applicant purchased said land before five years from the date of notification for the acquisition of the land in area of village Pochanpur. Hence, as per policy for allotment of alternate plot in lieu of acquired land, applicant is eligible.

3. As per LAC report dated 28.07.2017 (P.139/C), the land of the applicant measuring 1-00 Bigha having full share was acquired vide Award No. 30/2002-03 dated 09.12.2000 and the notification for the acquisition of the same was issued by LAC on 13.12.2000.

4. Further as per report of Kanungo on page 19/N based on the revenue record available in the file, the land has been acquired in entirety,

5. Sh. Ajay Bajpai S / o Sh. K.S. Bajpai, the applicant was the recorded owner of acquired land at the time of issuance of notification (P.118- 120/C).

6. Sh. Ajay Bajpai S/o Sh. K.S. Bajpai has been furnished the Indemnity Bond (P. 111-114/ c) and Affidavit (P 115-117 /C) stating therein that has no land remained and for not owning immovable property in urban area of Delhi in the name of himself or his dependent unmarried children including membership in any Group Housing Society in the territory of Delhi and also furnished other requisite document.

7. Sh. Ajay Bajpai S/o Sh. K.S. Bajpai received the compensation of the acquired land on 13.02.2003 (P. 45C) and copy of award & Statement-A (P. 143- 165/ C) is placed in the file) and Sh. Ajay Bajpai S/o Sh. K. S. Bajpai applied for allotment of alternative plot within the prescribed time limit.

The committee also observed that clarification was required from the LAC as regard Khasra No. 18/16/1 of village Pochanpur. Since, the applicant has submitted the Sale Deed executed and registered on 28.11.1986 on the basis in which the land got mutated in the name of the applicant and in the aforesaid Sale Deed Land measuring (0-12) Bigha has been shown under khasra No. 18/16/2 situated in village Pochanpur. While in the LAC report as obtained vide letter no. ADM/LAC/SW12017-18/956 dated 28.07.2017, the land measuring 0-12 Bigha has been shown under Khasra no. 18/16/1 and the same.

And accordingly a letter dated 31.01.2018 was sent to the concerned LAC and subsequently HS. Puneet Kulshrestha, Tehsildar, Dwarka furnished a report vide letter No. F.8/THE/DW/Misc./2018/16 02 dated 22.05.2018 informing therein that:

Mr. Ajay Bajpai S/o Late Sh. K. S. Bajpai is the owner of Khasra NO. 18/16/1 (0-12) and 18/17/1 (0-18) of village Pochanpur, which was acquired vide Award NO.30/2002-03 dated 09.12.2002.

The Committee, therefore, observed that since this is a post 03.04.1986 award case and the total share of the applicant is 01-00 Bigha. Hence Sh. A jay Bajpai S/o Sh. K.S. Bajpai is entitled for allotment of a plot measuring 40 sq. yards.

The Committee thus recommends for allotment of alternative plot for a size of 40 sq. yards to the Applicant and further for placing the same for approval of the Competent Authority. The Recommendation Committee has arrived on the above decision on the basis of the documents furnished by the Applicant and the averment therein."

19. It is seen that the said Committee consisted of five senior officials of the Land and Building department. The above recommendations have clarified all aspects of the Petitioner's application. The Committee's findings are:

- * That the applicant is eligible;
- * That the applicant is the recorded owner of the land which was acquired;
- * He was also disbursed the compensation;
- * The confusion regarding the khasra number is also sorted out and clarified;
- * The application for alternate plot was within the time limit;
- * The petitioner has given an affidavit that he or his family members do not own any immovable property in the urban area of Delhi;
- * He has been recommended for an alternate plot of 40 sq. yards.

20. As against the above detailed recommendations, the order date 4th December, 2019 is stated to have been passed on the basis of a Scrutiny Committee Report dated 30th September, 2019. Even the said report of the Scrutiny Committee does not give any details of the property owned by the Petitioner or his immediate family. The relevant portion of the Scrutiny Report is set out below:

"The Scrutiny Committee had examined the case on the basis of available record and the government guidelines. As per guidelines the applicant should not own a house/residential plot/flat (out of village abadi) in the urban area in his/her own name or in the name of his/her wife/husband or any his/her dependent relations including unmarried children. As per available record on the file the applicant residing in the urbanized area and having his/her house/residential plot/flat in the urban area in the name of his/her own name or in the name of his/her wife/husband or any of his/her dependent.

Since, the case does not fall under the category of eligible applicant for allotment of alternate plot, the Scrutiny Committee has decided to not to recommend the

case of Sh. Ajay Bajpai S/o K. S. Bajpai for allotment of alternate plot.”

21. Thus, clearly there is no impediment in the Petitioner being allotted an alternate plot. At this stage, it is pointed out by Mr. Mukul Manrai that there is a sale deed dated 13th April, 2000 by one Mr. Jaswant Rai in favour of Mr. Vinod Kumar Tyagi where the Petitioner has acted as the Attorney of Mr. Jaswant Rai. Even this may not affect the Petitioner in as much as the Petitioner is merely described as a power of attorney holder of Mr. Jaswant Rai. The sale deed dates back to 2000 and at best shows that the property has been sold by the Petitioner as a power of attorney holder for someone. This would not in effect disqualify the Petitioner as this sale deed showing sale is prior to the acquisition of the Petitioner’s land. The authority would look into this sale deed and seek a clarification, if needed, from the Petitioner who shall attend a personal hearing.

22. Under these circumstances, this Court is of the opinion that there is no reason to deny relief to the Petitioner. The decision on the application for alternate plot shall now be taken by the concerned authorities by 15th February 2023, on the basis of the recommendation made by the earlier Recommendation Committee which has considered the matter in detail and dealt with each and every aspect. The subsequent objections raised by the Competent authority on 5th September 2018 are without any basis. The order dated 4th December 2019 was never communicated to the Petitioner prior to the last date of hearing before this Court. Even the file notings show that the decision to reject was not communicated.

23. It is, accordingly, directed that the order dated 4th December, 2019 shall stand set aside.

24. For the conduct of the Respondents in this matter, of having not disclosed the passing of the order dated 4th December 2019 and for having compelled the Petitioner to approach this Court twice as also the manner in which the application for alternate allotment has been delayed without any basis, costs of Rs.50,000/- is imposed on the Respondents which shall be paid to the Petitioner within two weeks.

25. The present petition is allowed in the above terms. All pending applications, are disposed of.

26. The Petitioner is permitted to move an application if the matter is not disposed of within two weeks in accordance with law.