

(2009) 08 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2414 of 2008

Paras Ram

APPELLANT

Vs

The Vice Chairman, DDA and Others

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2009) 08 DEL CK 0153

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : L.C. Goyal, for the Appellant; Ashwani, for the respondent No. 1, for the Respondent

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 7th September, 2005 rejecting the request of the petitioner for allotment of alternative plot under the scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961 on the ground that the property of the petitioner which was purchased by him was not mutated prior to the notification u/s 4 of the Land Acquisition Act. The petitioner in the circumstances has prayed for issuance of an appropriate writ for allotment of the alternative plot of 40 sq.yards as per scheme of 1961.

2 The petitioner had purchased the land measuring 1 bigha out of Khasra No. 217 situated at revenue estate at Village Shahbad Daulatpur, Delhi on 17th August, 1988 and a registered sale deed was executed in his favour which was duly registered on 17th August, 1988 with registration Number 14601, book No. 1, Volume No. 5808 at pages No. 20-22.

3. The land of the petitioner had been acquired by the Government by notification No. F11(17)/91/L&B/LA dated 28th April, 1995 u/s 4 of the Land Acquisition Act. Pursuant to this notice u/s 4 of the Land Acquisition Act, the land was finally acquired by award No. 1/98-99 dated 24th April, 1998 and the petitioner was paid compensation amounting to Rs. 2,71,297/- on 18th May,

1999 after the possession of the acquired land had been taken by the respondents.

4. The petitioner has asserted that under the policy of the respondents that is Scheme of 1961 which was to rehabilitate the agriculturists whose land has been acquired by the Government, the petitioner applied on 17th May, 2000 for allotment of an alternative plot of 40 sq.yards as the petitioner had become the real owner of the land which was purchased by him on 17th August, 1988.

5. The scheme for allotment of alternate plot categorically stipulated the conditions stipulated there had to be fulfilled for allotment of land. Since the petitioner had purchased the land through sale deed and in his case award for the acquired land was given after 1985, Clause 5 (B) became applicable to the petitioner which is as under:

B. Cases where land purchased through sale deed The following conditions are also to be fulfilled in addition to above:

4. For awards announced before 3.4.86, land should have been purchased prior to issue of notification u/s 4 of the Land Acquisition Act and mutation must have carried out in their names.

5. For awards announced post 3.4.1986 land must have been purchased 5 years earlier from the date of notification u/s 4 of Land Acquisition Act and mutation has been carried out in the name of the purchaser.

6. That where the land was purchased by an auction purchaser from the Ministry of Rehabilitation and the applicant had entered into a written agreement with the auction purchaser to buy the same, after the sale certificate was issued by the Ministry of Rehabilitation, his case would be processed for allotment on the basis of agreement and the compensation awarded by the L.A.C.

6. For the petitioner to become eligible for recommendation of alternative plot of 40 Sq. Yds, the land should have been purchased by the petitioner five years before the date of notification u/s 4 of the Land Acquisition Act and the mutation ought to have been carried out in the name of the purchaser. The petitioner had purchased the land on 17th August, 1988 whereas Section 4 notification was issued on 28th April, 1995, almost after seven years. Therefore, the petitioner fulfilled the eligibility condition for allotment of an alternative plot. Since the land of the petitioner was more than 150 sq.yards upto 1 bigha, the petitioner became eligible for recommendation for allotment of an alternative plot of 40 sq.yards.

7. The land which was purchased by the petitioner on 17th August, 1988 was, however, mutated in his name on 19th May, 1995, that is about 21 days after the issuance of notification u/s 4 of the Land Acquisition Act.

8. The respondent considered the application of the petitioner for allotment of alternative residential plot, however, rejected the same by communication dated

7th September, 2005 on the ground that the petitioner was required to be recorded owner of the land prior to the date of notification u/s 4 of the Land Acquisition Act. Since the notification was issued on 28th April, 1995 and the land was mutated in favour of petitioner on 19th May, 1995, therefore, the petitioner is not entitled for allotment of an alternative plot. Aggrieved by the order dated 7th September, 2005 the petitioner has filed the present petition.

9. The petition is contested by the respondent/DDA contending inter-alia that the land admeasuring 1 bigha in Khasra No. 217 had been validly acquired as per provisions of the Land Acquisition Act, 1894 and the award No. 1/98-99 dated 24th April, 1998 had been duly published. It is further contended that there is no right vested in favour of petitioner for allotment of alternative plot in lieu of the land acquired for the planned development of Delhi. It is further contended that there is no current policy of alternate allotment granting any right to the land owners to claim alternate allotment as a matter of right. Regarding petitioner, it is contended that he was not a recorded owner on the date of notification u/s 4 of the Land Acquisition Act, therefore, petitioner was not a recorded owner prior to the date of notification and therefore, he is not entitled for recommendation for an alternate plot. In any case it is contended that no recommendation has been received by respondent No. 1 from the respondent No. 2 for allotment of alternate plot to the petitioner. According to the respondent No. 1 its statutory function commences only subsequent to recommendation made by Land and Building Department, Government of NCT of Delhi.

10. The petition is contested by respondent Nos. 2 & 3, Government of NCT of Delhi and Deputy Director, Land and Building Department contending inter-alia that as per the policy of allotment of alternative plot the land owner whose land is acquired for planned development of Delhi and the land is placed at the disposal of the respondent No. 1, can be considered for allotment of alternative plot subject to applicant satisfying conditions namely that the application must have been filed within a period of one year from the date of receipt of compensation; that the applicant should be the recorded owner of the acquired land on the date of Section 4 of the notification; he must have received the compensation for the said land; neither he nor his spouse or any of his dependent children own any residential property in Delhi and the acquired land is more than one bigha of land.

11. The respondent Nos. 2 & 3 admitted that the petitioner had applied for allotment of alternate plot on 17th May, 2000 and the case of the petitioner was considered by the Allotment Committee of the department and was rejected on the ground that he was not the recorded owner of the land on the date of notification u/s 4 of the Land Acquisition Act on 28th April, 1995 as the land was mutated in the name of petitioner on 21st May, 1995. Reliance has also been placed by the respondents on the Full Bench Judgment, AIR 1994 Delhi 29, Ramanand v. Union of India in the counter affidavit filed by the respondents.

12. No one is present on behalf of respondent Nos. 2 & 3 despite passing over

the matter once. The learned Counsel for the DDA has contended that the land should have been mutated prior to the date of notification u/s 4 of the Land Acquisition Act entitling petitioner for recommendation for allotment of a plot under the scheme. Though the respondent Nos. 2 & 3 have detailed the conditions entitling the petitioner to become eligible for allotment of 40 sq.yards plot, however, the recommendation of respondent Nos. 2 & 3 to the respondent No. 1 is denied only on the ground that the petitioner became the recorded as the owner of the property after the notification was issued u/s 4 of the Land Acquisition Act though he had purchased the property about seven years prior to issuance of Section 4 notification. In the circumstances, the other eligibility condition stipulated in the affidavit filed on behalf of respondent Nos. 2 & 3 must have been complied with by the petitioner. In any case, the facts disclosed by the petitioner reveal that he had complied with other terms and conditions as he had received the compensation on 18th May, 1999 and petitioner had applied on 17th May, 2000 within one year, the petitioner has already received the compensation of the lands and the land acquired is 1 bigha as per the policy for allotment of an alternative land which also stipulates the entitlement of a person commensurating with the extent of land acquired, it cannot be denied that the petitioner would be entitled for 40 sq.yards plot as that is the size of plot under the policy for those applicants whose acquired land is above 150 sq.yards to 1 Bigha.

13. The point for consideration in the circumstances is whether the petitioner can be denied recommendation by respondent Nos. 2 & 3 to respondent No. 1 on the ground that the land which was purchased by the petitioner on 17th August, 1988 about seven years before the Section 4 notification was issued on 28th April, 1995, on the ground that the land was recorded/mutated in the name of the petitioner on 19th May, 1995 and not "prior" date of notification u/s 4 of the Land Acquisition Act. This is not disputed that the petitioner had acquired the land by execution of a sale deed in his favour.

14. The learned Counsel for the respondents have contended that Clause B(5) of the policy should be read so as to mean that the land should have been mutated in the name of the petitioner prior to the date of issuance of notification u/s 4 of the Land Acquisition Act. This cannot be disputed that the plain grammatically meaning should be given to the relevant clause. The word should be read correctly and exactly and not loosely and inexactly. It is not allowable to read words which are not there. A word "prior" which is not in the clause B(5) is not to be read in the facts and circumstances which is sought to be incorporated by the respondents. Wherever the requirement of "prior" mutation contemplated, the word "prior" has been issued. Under the eligibility conditions in the policy, in respect of ancestral land it is categorically stipulated that the persons who are recorded owner "prior" to issuance of notification u/s 4 of the Land Acquisition Act shall be eligible for allotment of an alternate plot. The word "prior" has been conspicuously missing from the clause B(5) in the policy which pertains to the lands purchased through sale deed and where the awards were announced post

3rd April, 1986. In the circumstances, the clause B(5) cannot be read in a manner that the property which has been acquired ought to have been or must have been mutated in the name of the owner `prior" to the notification u/s 4 of the Land Acquisition Act. The requirement is only that the land should have been purchased five years before the notification u/s 4 of the Land Acquisition Act and that the property should be mutated in the name of the owner. The eligibility condition, therefore, is that the application seeking alternative plot should have been made within one year from the date of receipt of compensation. Therefore, on the date of filing the application, the land should have been mutated in the name of the owner. The strict grammatical meaning of the word is the only safe guide in the facts and circumstances and the word `prior" cannot be read in the appropriate clause.

15. Consequently, on the ground that the notification was issued on 28th April, 1995 and the property was mutated in the name of the petitioner on 19th May, 1995, the recommendation of an alternate plot of 40 sq.yards by the respondents No. 2 & 3 to the respondent No. 1 cannot be denied to the petitioner. The petitioner, however, shall be entitled for such a plot only pursuant to the recommendation made by respondent Nos. 2 & 3 to respondent No. 1 and according to his seniority for allotment of an alternative plot.

16. Consequently, the order dated 7th September, 2005 rejecting the prayer of the petitioner for alternate plot of 40 sq.yards on the ground that the land was mutated 21 days after the issuance of notification u/s 4 of the Land Acquisition Act on 28th April, 1995 is quashed. The petitioner shall be entitled for recommendation of respondent Nos. 2 & 3 to the respondent No. 1 for allotment of a residential plot of 40 sq.yards to the petitioner. The respondent No. 1, however, shall allot the plot of said size to the petitioner according to the seniority of the petitioner.

17. For the foregoing reasons the letter dated 7th September, 2005 rejecting the claim of the petitioner for recommendation of the respondents No. 2 & 3 to the respondent No. 1 for alternative plot under the scheme of Large Scale Acquisition Development and Disposal of Land in Delhi, 1969 on the ground that the mutation of the land of the petitioner was not done prior to notification u/s 4 dated 28th April, 1995 is set aside. The respondents No. 2 & 3 are directed to issue an appropriate letter recommending the allotment of alternative plot to respondent No. 1 which respondent No. 1 shall do according to the seniority of the case of the petitioner.

18. With these directions, the writ petition is disposed of. Parties are, however, left to bear their own cost.