

(1991) 04 DEL CK 0069

In the Delhi High Court

Case No : Civil Writ Appeal No. 3128 of 1985

Raghu Nath Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 44 DLT 545

Hon'ble Judges : Sunanda Bhandare, J;J.K. Mehra, J

Bench : Division Bench

Advocate : Mahesh Chandra, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The land belonging to Shri Kanwar Lal, father of the petitioner herein was acquired by the Delhi Administration for the planned development of Delhi in the year 1962. Under the policy of the Delhi Administration which was notified on 2.5.1961, the persons whose land had been acquired for planned development of Delhi were to be considered for the allotment of an alternate plot of land commensurate with the area acquired from such a person. Accordingly, the Delhi Administration allotted plots of land to various persons whose land had been acquired between the period 1962-63. The petitioner's father Shri Kanwar Lal applied for allotment of such a plot. However, Shri Kanwar Lal died in the year 1975 before any allotment of alternative plot could be made to him. The petitioner, Therefore, on 3.7.1979 applied to respondent no. 3-Delhi Administration for the allotment of a residential plot of land in South Delhi in lieu of his father's land which was acquired by the Delhi Administration. The petitioner was thereafter asked by respondent no. 3 by way of a communication dated 10.10.1979 to submit the application in the requisite form which the petitioner did vide his letter dated 16.10.1979. Thereafter, the petitioner received a letter dt. 23.10.1979 from respondent no. 3 asking for an Explanation why the application of the petitioner was delayed beyond the prescribed time specified in

the Press Note issued by the Delhi Administration. The petitioner vide his letter dated 20.11.1979 explained the reasons for the delay. Thereafter, respondent no. 3 vide its letter dated 21.12. 1979 required the petitioner to file a list of legal heirs of Shri Kanwar Lal, father of the petitioner which was also furnished by the petitioner by letter dated 18.1.1980. Ultimately, respondent no. 3 vide communication dated 28.1.1980 accepted the representation of the petitioner and his brother Shri Amir Singh and recommended the case of the petitioner and Shri Amir Singh for allotment of alternate plot ad measuring 250 sq. yds. in South Zone jointly in the name of the petitioner and Shri Amir Singh. The petitioner and his brother Shri Amir Singh were informed to have direct communication with Delhi Development Authority in regard to the allotment of the said plot. Thereafter, the petitioner and his brother Shri Amir Singh requested Land and Development Officer of respondent no. 3 that instead of a joint plot of 250 sq. yds, the petitioner and Shri Amir Singh be allotted two plots of 125 sq. yds each. Respondent no. 3-Delhi Administration accepted the recommendation of the petitioner and his brother by communication dated 30.1.1980 and requested the Delhi Development Authority to allot a plot of 125 sq yds each to the petitioner and his brother Shri Amir Singh in South Zone Residential Scheme. However, thereafter vide communication dated 28.5.1982 respondent no. 3 informed the petitioner that the recommendation for allotment of alternative plot communicated to the petitioner vide letter dated 28.1.1980 stood withdrawn. It was stated in the said letter that the application for allotment of the alternative plot was submitted by the petitioner beyond the prescribed time and the application being time barred, the petitioner was not entitled to alternative plot. The petitioner and his brother Shri Amir Singh, Therefore, filed a writ petition (CWP 146/83) under Article 226 of the Constitution of India in this Court praying that the letter dated 28.5.1982 be quashed .That writ petition was heard Along with writ petition being Cwp 182 of 1983 (Raj Kumar Jain v. Union of India & Others) and was disposed of by order dated 19.10.1984 and the letter dated 28.5.1982 of Delhi Administration was quashed. This Court further directed the Delhi Administration to issue Show Cause Notice to the petitioner and take a fresh decision in accordance with law. The writ petition filed by the petitioner was disposed of mainly on the ground that the decision to withdraw the recommendation was taken in violation of the rules of natural justice. This Court further observed that a plot of land be kept reserved for the petitioner till a fresh decision, is taken by the Delhi Administration. Thereafter, the Delhi Development Authority vide letter dt. .5.2.1985 communicated to the petitioner that as per orders of the High Court plot no. B-6/Extn./21 measuring 100 sq. mts. in Safdarjung has been reserved for him. A Show Cause Notice was also issued by the Delhi Administration on 7.2.1985 to the petitioner calling upon him to explain the delay in making the application within the prescribed time. The petitioner made his representation on 6.3.1985. However, the representation of the petitioner was rejected and by letter dated 21.6.1985 the petitioner was informed that his reply to the Show Cause Notice has no force and the decision already conveyed to him would stand. It was however communicated to the

petitioner that the matter was considered afresh by the Chief Secretary, Delhi Administration and a decision was taken that the claim of such persons who did not apply within the stipulated time should be rejected and the recommendation made for an alternative plot in favor of the petitioner was withdrawn. The petitioner prays that this letter dated 21.6.1985 be quashed and seeks a writ of certiorari by way of this writ petitioner under Article 226 of the Constitution of India.

(2) It was submitted by the learned Counsel for the petitioner that the reasons for delay in submitting the application were furnished by the petitioner vide his letter dated 20.11.1979 itself and after considering the Explanation of the petitioner, the Delhi Administration had recommended the allotment of alternate plot to the petitioner and in fact thereafter the request of the petitioner and his brother Shri Amir Singh to give two separate plots of 125 sq. yds to the petitioner and his brother instead of one plot of 250 sq. yds was also accepted by the Delhi Administration. Learned Counsel submitted that it is now not open to the Delhi Administration to reconsider the question of delay and withdraw the allotment already made. Learned Counsel further submitted that in any event the petitioner's application was not time barred because the father of the petitioner had applied for an alternative plot during his life time and within the prescribed time and the petitioner had only renewed the application in 1979. Learned Counsel submitted that from the impugned letter it is clear that a decision in that regard was taken by the Chief Secretary and not because the Explanation given by the petitioner was found to be unsatisfactory. Learned Counsel referred to a judgment of the Supreme Court reported as S.B. Kishore Vs. Union of India and others, and submitted that even in a case where the application was made 19 years after the prescribed time the Supreme Court directed the respondents to make allotment of alternative plot to the appellant in this case.

(3) The respondents have neither chosen to file their counter-affidavit nor has any one appeared on behalf of the respondents to oppose the relief sought for by the petitioner.

(4) We find great force in the contention of the learned Counsel for the petitioner. This Court vide judgment dated 19.10.1984 in Cwp 182 of 1983 directed the Delhi Administration to issue Show Cause Notice and take afresh decision after considering the Explanation for the delay. On perusal of the impugned letter dated 21.6.1985 it is clear that what has weighed in taking the impugned decision in withdrawing the recommendation is the decision taken by the Chief Secretary, Delhi Administration and not because the Explanation is not satisfactory. In fact, the impugned letter does not indicate whether the Explanation furnished by the petitioner was at all considered by the Delhi Administration, Furthermore, the petitioner had already submitted his Explanation for the delay in submitting the application in the year 1979 itself and his Explanation was considered at that time and only thereafter the recommendation to allot a plot ad measuring 250 sq. yds was made by the Delhi

Administration on 28.1.1980. We find that the respondents have not given any reason in the impugned letter dated 21.6.1985 for reviewing the decision dated 28.6.1980. The petitioner has also averred in the writ petition that some other persons who had also applied beyond the prescribed time were also given alternative plots by the respondents. Thus, it appears that in cases in which Explanation was found to be satisfactory, the Delhi Administration has been using its discretion to condone the delay and granted alternative plots. The Delhi Administration having once accepted the Explanation of the petitioner and recommended the allotment of alternative plot and Delhi Development Authority having reserved a plot for the petitioner, we find it difficult to sustain the subsequent action of the respondents withdrawing the allotment on the basis of the general policy decision taken by the Chief Secretary, Delhi Administration at some later stage.

(5) Undoubtedly, the Supreme Court in S.B. Kishore's case (supra) had directed the Delhi Administration to make allotment of alternative plot to the appellant in that case after condoning the delay for 19 years, however, we find that the Supreme Court has passed that order confined to the facts of that case and has observed that it shall not be treated as a precedent. We are of the view that the case of the petitioner be rein stands on a stronger footing because, according to the petitioner, the petitioners father had applied within the time prescribed and the application of the petitioner was only in continuation of the request made by his father. This fact is not controverted by the respondents. Thus, under the policy the petitioner becomes entitled to a plot in lieu of the land acquired for planned development of Delhi.

(6) In the circumstances, the writ petition is allowed. The impugned letter dated 21.6.1985 is quashed. The Rule is made absolute. The Delhi Development Authority had reserved plot no. B-6/Extn./22 measuring 100 sq. mts. in Safdarjung for the petitioner. Learned Counsel for the petitioner however is unable to tell us whether this plot still stands reserved for the petitioner. Thus, if the same plot is not available for allotment, we direct the respondents to allot a plot of land equivalent to the reserved plot at the same rate in South Zone to the petitioner within 8 weeks from today. There will be no order as to costs.