
(2000) 07 DEL CK 0061
In the Delhi High Court
Case No : C.W. No. 1873/86

R.K. Jain

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Citation : (2000) 86 DLT 550 : (2000) 53 DRJ 418(1)

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Vipin Sanghi, for the Appellant; Mr. Sanjay Poddar and Ms. Inderjeet Sidhu, for the Respondent

Judgement

Manmohan Sarin, J.—The petitioner by this writ petition seeks the quashing of the decision of respondent No. 1 bearing No. F. 32(34)/6/79-L&B/Vig./10236 dated 17.4.1985, rejecting the petitioner's claim for an alternative plot admeasuring 250 Sq.yds in South Zone. Petitioner's claim is rejected based on the policy decision taken by the Delhi Administration to reject the application for alternative allotment of persons, who had not applied on or before 15.12.1963, in accordance with the requirement of the public notice, published pursuant to the scheme of 1961.

2. This case has a chequered history of litigation, which is briefly recapitulated for appreciation of the controversy involved in this case.

(i) Petitioner's grand father late Sh. Mehar Chand Jain along with others owned land at Sheikh Sarai Village admeasuring 22 bighas. The said lands were acquired vide award No. 1306-1378 dated 16.5.1961. Compensation was also awarded by the Land AcquIsition Collector amounting to Rs. 17,000/- of the land on 30.10.1962. Petitioner's father late Sh. Ujgar Singh expired in the year 1941, while the grand father of the petitioner expired in the year 1972.

(ii) Petitioner's case is that his grand father was looking after the properties and it was only after his death that the petitioner, who was a young man got involved

in the affairs of the family. Petitioner claims that he was not aware that alternative land could be allotted to him in view of the land acquired. His grand father had not disclosed anything in this regard to the petitioner. It was only in the year 1979, that the petitioner for the first time became aware of the right of allotment of an alternative plot. Accordingly, an application dated 7.9.1979 was filed.

(iii) In response to the petitioner's application, respondent vide their letter bearing No. F. 32(34)/6/79L&B/Alt 30471 dated 4.10.1979, notified the petitioner that land having been acquired in 1961 the application was required to be filed by December 1963. The application filed in 1979, could not be entertained at the belated stage unless the petitioner could show cogent reasons of inordinate delay (Annexure P-3). Petitioner in response to the said letter gave his Explanation vide letter dated 12.10.1979, in which the death of the petitioner's father followed by the demise of grand father and the petitioner's ignorance about the affairs of the property were set out. Petitioner also pointed out that in none of the notices and communication received from the department, the department had pointed out the factum of the eligibility for alternate allotment in case of acquisition. It was, in these circumstances, that the petitioner was wholly oblivious of the said scheme or the petitioner's entitlement thereunder. In brief, the petitioner submitted that the delay in applying for the application was for reasons beyond his control.

(iv) Respondent Nos. 1 and 2 duly considered by the Explanation given and found the same acceptable. Having accepted the Explanation for delay and examined the petitioner's application, the respondents found him eligible and made a recommendation bearing No. F. 32(34)/6/79-L&B/Alt. dated 22.2.1980, making the recommendation for allotment of alternative plot admeasuring 250 sq.yds to the petitioner, namely, Sh. Raj Kumar Jain son of late Sh. Ujgar Singh Jain in South Zone. Subsequently, respondents also sought further documents from the petitioner, namely, Zamabandi etc., which were duly furnished by the petitioner.

(v) In March, 1982, respondents did a volte face in March, 1982 and issued a communication bearing No. F. 32(34)6/79-L&B/VC/20531 dated 28.5.1982, to the petitioner, notifying that the application of the petitioner dated 7.8.1979, for allotment of an alternative plot was required to be made by 15.12.1963. Further, that since the petitioner did not apply within the prescribed period in response to the public notice, the application was time barred and the recommendation made for allotment of plot admeasuring 250 sq.yds was withdrawn.

(vi) Petitioner aggrieved by the said communication challenged the same by a writ petition bearing No. 182/83 titled Raj Kumar Jain Vs. Union of India & Ors. The said writ petition along with other connected writ petitions was disposed of by judgment dated 19.10.1984 passed by Sh. S.S. Chadha, J. By the said judgment, the learned Judge quashed the letter on the ground that the petitioner had not been given any show cause notice. Although, the learned Judge also

observed that the petitioner's Explanation for condensation had been accepted on merits by the department and the petitioner could legitimately expect for allotment of alternative plot to him following the recommendation. A right had further accrued to the petitioner once the recommendation was made. The learned Judge, accordingly, directed the respondents to issue a show cause notice to the petitioner and take a fresh decision in accordance with law.

(vii) Pursuant to the said judgment, Delhi Administration issued a show cause notice dated 22.2.1985. As noticed earlier, respondents vide their letter bearing No. F.32(34)/6/79-L&B/Vig./10236 dated 17.4.1985, rejected the reply to the show cause notice given on the ground that a policy decision had been taken by the Chief Secretary, Delhi Administration, that claims of persons, who did not apply within the stipulated time should be rejected and the recommendations for an alternative plot made in their favor be withdrawn. It is this communication of 17.4.1985, which is impugned in the present writ petition.

3. Learned counsel for the petitioner, Mr. Vipin Sanghi, has urged before me that it was not open to the respondents having once accepted the Explanation of delay tendered by the petitioner to reagitate the same issue. There is merit in this submission. It is not necessary to reexamine the adequacy or inadequacy of the Explanation for condensation of delay. Be-sides, learned counsel submits that in any case, the present rejection by the respondents is not based on the respondents having found the Explanation tendered by the petitioner not satisfactory. Rather it is based on the policy decision taken by the Chief Secretary that the claims for allotment of alternative plot by a person, who apply after the date given in the public notice are not be entertained. Learned counsel for the petitioner has placed reliance on Jagat Ram Vs. Union of India & Ors-CW. 1160/85, a division bench decision of this Court in support of his contentions. In Jagat Ram Vs. Union of India & Ors. (Supra) the petitioner applied in 1979 for allotment of alternative plot i.e. beyond the cut off date of December, 1963. Respondents had sought Explanation of the petitioner for delay, which was tendered and found acceptable. Recommendation was made for allotment of plot in the South Zone to the petitioner. A letter of allotment was also given followed by the execution of lease and handing over of possession. Respondents belatedly sought to withdraw the recommendation following the policy decision of 1982. The said decision was quashed by the Division Bench holding that having sought the Explanation, satisfied itself and condoned the delay, the respondents were estopped from cancelling the allotment on the ground of delay. The Court proceeded on the basis that a valuable right had accrued in favor of the petitioner. Further, that there was no other reason except a policy decision for not accepting the representation of the petitioner. Learned counsel for the petitioner has also placed reliance on Raghu Nath Singh Vs. Union of India and Others, to which I shall have the occasion to advert to a little later.

4. Learned counsel for the respondent Mr. Sanjay Poddar, has opposed the writ petition before me urging that this was a case where there was no tenable

Explanation for the delay in making the application. Learned counsel urges that the petitioner's grand father, who was the owner and who died in 1972, had failed to move any application during his lifetime. There was no Explanation on behalf of the grand father as to why the application was not submitted from 1963 to 1972. Further, the Explanation regarding the petitioner having discovered the documents in 1979 did not inspire any confidence. Learned counsel also sought to distinguish the case of Jagat Ram Vs. Union of India (Supra) on the ground that in the said case lease had been executed, possession had been handed over and construction had been raised by the petitioner in the said case. Learned counsel urged that in Jagat Ram's case petitioner had altered the position based on action of the respondents and, Therefore, the plea of estoppel could be raised while in this case, petitioner had not altered the position, based on any action of the respondents.

5. On consideration of the matter, I find that there is a considerable merit in the submission of the petitioner. Respondents had sought the Explanation for delay from the petitioner, which was tendered and found acceptable. There has been no change of circumstances, which would entitle the respondents to reopen the said decision except the policy decision. Petitioner had tendered his Explanation, wherein it was pleaded that the petitioner was not aware of the public notification and there was no Manadi or beat drum in the village and it was only after coming of it in 1979, the petitioner without any loss of time submitted the application. It is not disputed before me that in several cases where the department had found the Explanation for delay cogent and acceptable, allotments have been made prior to the policy decision taken by the respondents of not making such allotments. Petitioner in fact had given instances in the writ petition of various other members of their community, who held the land in the same village being allotted alternative plot after their Explanation of delay had been accepted. I find that the petitioner's case is fully covered by the decision of the Division Bench in Raghu Nath Singh Vs. Union of India & Ors., (Supra). In Raghu Nath Singh's case also Explanation of delay had been accepted and delay condoned. In the present case, the withdrawal of the recommendation was based on the decision taken by the Chief Secretary and not because the Explanation given by the petitioner was found to be unsatisfactory. In Raghu Nath Singh Vs. Union of India & Ors., the Division Bench after noticing the facts held as under:

"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."

The above observation squarely applies to the present case.

In view of the foregoing discussion, I find that the petitioner is entitled to succeed in the case.

This Court vide order dated 12.11.1986, noticed the submission of the petitioner's counsel that the DDA had reserved plot No. A-2, Kalkaji Extension measuring 160 sq.yds for the petitioner. Accordingly, the writ petition is allowed. The impugned order bearing No. F. 32(34)/6/79-L&B/Vig./10236 dated 17.4.1985, is set aside. Respondent DDA is directed to allot and execute the lease in respect of the plot reserved for the petitioner within a period of three months, subject to the petitioner complying with all the formalities and payment of requisite charges and premium.