

(2001) 03 DEL CK 0098

In the Delhi High Court

Case No : Civil Writ Petition No. 5634 of 1999

Yash Pal

APPELLANT

Vs

Delhi Administration and Another

RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Delhi Lands (Restrictions on Transfer) Act, 1972 — Section 6
Land Acquisition Act, 1894 — Section 4

Citation : (2001) 5 AD 321 : (2001) 60 DRJ 647

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. N.S. Bisht, for the Appellant; Mr. Sanjay, Poddar, for the Respondent

Judgement

Manmohan Sarin. J.

Rule.

With the consent of the parties, the writ petition is taken up for disposal.

1. This is the petitioner's second round of litigation. Petitioner, whose land has been acquired by the Delhi Administration, claimed allotment of a plot in lieu thereof under the scheme of the respondent.

2. Petitioner had purchased 5 bids was of land at village Bahapur by Sale Deed dated 27.11.1958, which was the subject matter of acquisition. The notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) was issued on 13.11.1959. The Sale Deed was registered subsequent thereto on 30.12.1959.

3. Petitioner's claim is sought to be rejected by the respondent on the ground that on the date of the Notification u/s 4 of the Act, he was not the recorded owner and hence was not eligible under the guide-lines and scheme. Counter affidavit is stated to have been filed by the respondent. Rejoinder filed by the petitioner is on record. Respondent failed to remove objections and counter

affidavit had not been placed on record. Mr.Poddar has handed over a copy of the counter affidavit during the course of proceedings, which is taken on record.

4. Petitioner had earlier filed Civil Writ Petition No.1435/86 dated 6.5.1994, as his claim for allotment of a plot in lieu of the acquisition of his land was rejected. A learned Single Judge of this Court disposed of the writ petition, directing consideration of the petitioner's case on merit under the Scheme as under:-

"The land in question was purchased on 27th November, 1958. The receipt of having paid the consideration is also dated 27th November, 1958. The document for registration was presented before the Sub-Registrar on 27th November, 1958. The statements of attesting witnesses to the registered sale deed were also recorded before the Sub Registrar on 27th November, 1958. If the Sub Registrar for the reasons best known to him recorded the entry of the sale deed in his register on 30th December, 1959 then it cannot be said that the sale deed was of 40th December, 1959. The prima facie proof that the land was purchased on 27th November, 1958. The possession of the property was taken over by the petitioner after having paid the consideration in pursuance to the registered sale deed, hence his case ought to have been considered by the Delhi Administration on merits rather than rejecting it on technical grounds."

5. From a perusal of the order, it is seen that the contention of the respondent that petitioner was not the owner was negated. The Court directed the respondent to consider the petitioner's case on merits and if otherwise eligible, he should be allotted plot.

6. Respondent has rejected, vide communication dated 26.9.1999, petitioner's claim for allotment of alternate plot on the ground that petitioner does not satisfy provisions of the Scheme of allotment of alternate plot contained in Government of India, Ministry of Home Affairs communication bearing No.37/16/60 Delhi (I) dated 2.5.1961. From the counter affidavit, it is seen that respondent has found the petitioner as ineligible under the Scheme on the ground that notification u/s 4 of the Act was issued on 13.11.1959 and the sale deed in petitioner's favor was registered on 30.12.1959. As per the respondent petitioner was not the recorded owner of the land in question and had failed to furnish the mutation certificate, showing his ownership on the date of notification. Learned counsel for the respondent submitted that petitioner has no vested right to an alternate plot by placing reliance on the full bench decision of this Court in Ramanand Vs. Union of India - AIR 1994 Delhi 29. The said decision would not be of any avail and advance the respondent's case, as the rejection of petitioner's case is based on the alleged ineligibility under the Scheme.

7. The criteria adopted by the respondent is contrary to the judgment of the Full Bench of this Court in Smt.Shiv Devi Virley Vs. Lt.Governor of Delhi and others- AIR 1987 Delhi 46. The Full Bench in the aforesaid judgment has held that, "A person who acquires land, after Section 4 Notification issued in 1957 cannot be treated to be a non-owner for the purposes of the Scheme which was framed in

1961. In fact, there is nothing in the Scheme, which shows that it is restricted to owners when the land was notified being one which the Government contemplated to acquire. It is quite clear from the Scheme that any one whose land has been acquired as a result of the Notification mentioned in Cl.8 of the Scheme is entitled to apply for allotment of plot. By anyone is meant the owner of land at the time of acquisition and not the owner of land at the time of the issue of the Notification u/s 4 of the Act. In fact, there is no impediment in law at all either today or earlier regarding transfers, after the Notification has been issued u/s 4. There is an impediment after the acquisition notice is issued u/s 6 of the Delhi Lands (Restriction on Transfer) Act, but that too applied after 1972."

8. From the foregoing, it would be seen that those who purchased the land ever after the Notification u/s 4 is issued but prior to the Notification u/s 6 would be eligible under the Scheme for alternate allotment. In the instant case, Sale Deed was dated 27.11.1958 i.e. even prior to the notification u/s 4. It had been presented for registration on 27.11.1958. The registration was, however, completed on 30.12.1959. The learned Single Judge while disposing of CWP. No.1435/86 had correctly held that if the Sub-Registrar for reasons best known to him completed the registration on 30.12.1959, petitioner could not be faulted for the same. It would thus be seen that the petitioner purchased the land even prior to the date of notification u/s 4. The Sale Deed being of 27.11.1958, petitioner had admittedly received the compensation thereof. Especially in view of the judgment of the Full Bench in Smt.Shiv Devi Virley Vs. Lt.Governor of Delhi and others - Supra the purchase of land could even be after the date of notification u/s 4 of the Act. The decision of the respondent Therefore, holding that petitioner is ineligible under the Scheme is liable to be struck down.

9. In view of the foregoing discussion and the judgment of the Full Bench in Smt.Shiv Devi Virley Vs. Lt.Governor of Delhi and others - Supra, a writ of certiorari be issued quashing the decision of the respondent communicated vide letter dated 26.9.1999, holding the petitioner ineligible under the Scheme. A writ of mandamus shall issue, directing the respondent to process the case of the petitioner for allotment of a plot forthwith.

10. The writ petition is allowed with the aforesaid directions.