

(2013) 10 DEL CK 0113

Delhi High Court

Case No: Writ Petition (C) 10802 of 2005

Om Parkash

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision: Oct. 29, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14
- Evidence Act, 1872 - Section 114(f)
- Land Acquisition Act, 1894 - Section 4, 6

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: Neeraj Dev Gaur, for the Appellant; R.V. Sinha, A.S. Singh, Advocates for Respondent No. 1/UOI, Mr. Sanjay Kumar Pathak, Praneet Singh, Advocates for Respondent No. 2, Ms. Shobhana Takiar and Ms. Ritagya Riti, Advocates for Respondent DDA, for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

The Petitioner seeks a writ of mandamus directing the Respondents to allot an alternative plot of land measuring 400 sq. yds in Dwarka on the ground that his father Late Harchand was owner of 25 bigha and 8 biswas of land falling in revenue estate of Village Jasola. A Notification No. 4(9)/64-L & H dated 06.04.1964 u/s 4 of Land Acquisition Act, 1894 (the Act) was issued by the Government of Delhi for acquisition of certain lands for planned development of Delhi. This was followed by another Notification No. F-4(9)/64/L & H dated 07.12.1966 u/s 6 of the Act and an award of compensation was made vide award No. 6-D/Supplementary/86-87. The Petitioner's father expired on 25.06.1986 leaving behind the Petitioner and his five sisters as his only legal heirs. The Petitioner also received the compensation for acquisition of the land on 29.01.1987. The case of the Petitioner is that as per the scheme framed and governed by the Respondents, the Petitioner was entitled to

alternative allotment of a plot measuring 400 sq. yds in Dwarka. The Petitioner alleges that as per the policy and the scheme framed, he wrote letters dated 27.01.2004 and 18.03.2004 to Respondent No. 2 informing it that he had submitted the relevant papers asked for on 27.01.2004. The Petitioner also requested the Respondents to reopen his file bearing No. 32(29)14/87/L & B/ALT. The Petitioner states that other persons, namely, Ishar Singh Chauhan, Ajit Singh Chauhan, Bhim Singh Chauhan, Sukhdev Singh Chauhan and Jai Singh Chauhan whose land was similarly acquired have been allotted a residential plot measuring 400 sq. yds. The Petitioner, therefore, says that the act of the Respondents in allotting residential land to the above stated five persons who were lower in seniority than him was arbitrary and was violative of Article 14 of the Constitution of India. Thus, as stated above, the Petitioner prays for issuance of a writ of mandamus directing Respondents to allot a plot measuring 400 sq. yds of residential land in Dwarka to him.

2. Before I advert to the counter affidavit filed by the Respondents, I may mention that the Petitioner in the writ petition is completely silent on his part if he ever applied for allotment of an alternative plot in accordance with the policy of the Respondents. However, in the rejoinder filed by him when the Petitioner was reminded about his application and the action taken by Land and Building Department of Government of Delhi, he came up with the plea that he had applied for allotment of the alternative plot within one year from the date of award of compensation paid to him. The compensation was paid to the Petitioner on 29.01.1987 and application for allotment was moved by the Petitioner on 28.09.1987. He thus stated that there was no delay on his part in applying for an alternative plot. He raised a new plea that in January, 1997, he was required to submit the death certificate, relinquishment deed, indemnity bond which he did on 31.01.1997. In the year 2003-04, the Petitioner was required to submit legal heirs certificate, etc. which he also did but the plot was not allotted to him. In the counter affidavit filed by Respondent No. 2, the acquisition of the land and award of compensation was not disputed. Respondent No. 2 (Land and Building Department, Government of NCT of Delhi) took the plea that by letters dated 17.12.1991 and 30.12.1991, the Petitioner was asked to produce requisite documents, that is, revenue record, death certificate, affidavits, etc. The Petitioner, however, failed to produce the required documents. His case was, therefore, closed due to non-submission of documents and an intimation in this regard was communicated to him by a letter dated 23.01.1992. The Respondent No. 2 took up the plea that the death certificate, relinquishment deed and indemnity bond were submitted by the Petitioner on 13.01.1997, that is, after a gap of five years. Thus, it was stated that on account of delay and latches and the Petitioner's case having already been closed, he was not entitled to an alternative allotment of a plot of land.

3. It is urged by the learned counsel for the Petitioner that the letters dated 17.12.1991, 30.12.1991 and 23.01.1992 were not received by him and, therefore, the

case of the Petitioner was liable to be reopened and the Petitioner was entitled to allotment of an alternative plot.

4. On the other hand, learned counsel for the Respondent No. 2 has produced the original file of the Petitioner relating to allotment of an alternative plot of land. The Petitioner did make an application dated 28.09.1987 in the prescribed proforma. He also attached the certificate issued by the Land Acquisition Collector (LAC) that the Petitioner was paid a compensation of Rs. 9,26,660/- in respect of the acquisition of the land as mentioned in the certificate. The Petitioner has further filed an affidavit stating that neither he nor any of his dependent owned any house or plot in the Union Territory of Delhi. It is sought to be contended on behalf of the Petitioner that the earlier mentioned letters were not received by the Petitioner. It is urged that the address mentioned in the letters dated 17.12.1991, 30.12.1991 and 23.01.1992 is an incomplete address. Although, this plea is being raised by the Petitioner for the first time, yet it would be relevant to mention that although in the writ petition the Petitioner has mentioned his address as 24, Village Jasola, yet in all the documents, that is, the certificate dated 22.04.1987 issued by the LAC, the affidavit dated 23.04.1987 sworn and filed by the Petitioner, the application for allotment of alternative plot, the address is simply mentioned as resident of Village Jasola. The Respondent No. 2 has also produced the original despatch register whereby the letters dated 17.12.1991 and 23.01.1992 were posted to the Petitioner. Once it is established that the letters were duly posted, a presumption u/s 114(f) of the Evidence Act, 1872 can be raised against the Petitioner that the letters must have been received by him in the ordinary course of business.

5. The learned counsel for the Petitioner relies on a Division Bench judgment of this Court in [Government of NCT of Delhi Vs. Smt. Veerwati](#), to buttress his argument that even a closed case can be reopened by the authority. In Veerwati, the case for alternative allotment of the plot was closed on 07.12.1993. The Respondent was informed about the closure of his case by a letter dated 09.12.1993. Although, the Respondent had disputed receipt of the letter, she had stated in the writ petition that when she visited the office of DDA on 10.12.1993 to find out the progress of his case, she was informed about the closure of case file due to non-submission of the relevant documents. The Respondent in that case immediately submitted the documents by a letter dated 27.12.1993 and requested the competent authority to process her case and to allot her an alternative plot. This was followed by a reminder dated 21.03.1994. In the instant case, as stated earlier, letters dated 17.12.1991 and 30.12.1991 were written to the Petitioner asking him to submit certain documents. Since the Petitioner failed to produce the same, a letter dated 23.01.1992 was written by registered post to the Petitioner informing him that his case has been closed. As stated above, although no proof of despatch of the letter dated 30.12.1991 has been produced by the Respondent, but the proof of despatch of letters dated 17.12.1991 and 23.01.1992 has very much been produced and the presumption of service u/s 114(f) which is liable to be raised against the Petitioner has

not been rebutted.

6. The instant case is covered by a judgment of this Court in W.P.(C).1515/2007 titled Smt. Mishro Devi. v. The Secretary, Land and Building Department, Government of NCT of Delhi & Anr. decided on 27.02.2007 where in similar circumstances, the Petitioner's case was closed by a letter dated 27.02.1992. The learned Single Judge held that the inaction of the Petitioner for eighteen years from the date of the allotment will indicate that she was not at all interested in the allotment of land. The Petitioner, in that case, unsuccessfully challenged the order before the Division Bench in LPA 221/2007 which was dismissed by an order dated 26.03.2007.

7. It is evident that the Petitioner was guilty of delay and latches. He did not even respond to the letters written by Respondent No. 2 in the year 1991 and 1992. He falsely took up the plea that he was asked to produce the documents in the year 1997, though he failed to produce any such letter written by Respondent No. 2 on record. Since the petition suffers from delay and latches, the same cannot be entertained. The writ petition is accordingly dismissed.