

**Shiv Devi Vs. Lt. Governor**

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**Court :** Delhi

**Decided On :** Aug-19-1986

**Reported in :** 1986RLR557

**Judge :** D.K. Kapur,; S. Ranganathan and; S.S. Chadha, JJ.

**Acts :** Delhi Lands (Restriction & Transfer) Act, 1972; Land Acquisition Act

**Appeal No. :** Civil Writ Appeal No. 3872 of 1982

**Appellant :** Shiv Devi

**Respondent :** Lt. Governor

**Advocate for Pet/Ap. :** S.C. Gupta,; L.R. Goel,; R.K. Anand and;

**Judgement :**

**D.K. Kapur, J.**

(1) This reference to a F.B. was made by one of us (Chadha J.) because of the conflict between the judgments delivered by different Division Benches of this Court. Actually there was no conflict between the various Benches regarding the effect and meaning of the Scheme called the 'Large Scale Acquisition, Development & Disposal of Land in Delhi, 1961', prior to the decision recorded by a Bench consisting of Sachar J. and Wad J. in Krishan Kumar Malik vs Union of India. The view taken by the other Benches was that individuals whose land has

been acquired as a result of the Chief Commissioner's notification would be entitled to be considered for allotment of an alternative plot for making a residential building in certain circumstances. The question as to who was the person entitled to the benefit would depend on the question as to whose land had been acquired eventually, i.e. if the land belonged to 'A' when the notification u/s 4 was issued and it belonged to 'B' when the notification u/s 6 was issued and it belonged to 'C' when the land was actually acquired, then it was the last person who would be deemed to be the person whose land was acquired. On the other hand, when the matter came before the Bench which decided Krishan Kumar Malik's case it was held that the person who would be entitled to apply for an alternative plot was the person who owned the land at the time the notification u/s 4 was issued and not subsequent transferees.

(2) The initial judgment in this respect was of *Udai Raj Giri vs. Union of India*, decided by Parkash Narain, Cj, and B.N. Kirpal J on 22.4.83. That was CW. 591/82. In that case it was held that the person who was owning the land at the time the award, concerning the land was acted upon, would be the person entitled to get an alternative plot. This view was followed in a number of other cases, taking the view that the matter had been finally decided by this Court.

(3) When this matter came before the Bench presided by Sachar J., it took the view that *Udai Raj Giri's* case was not properly decided because the Delhi Lands (Restriction & Transfer) Act, 1972 was not brought to the notice of the Bench which decided *Udai Raj Giri's* case. This Act prevented transfers after the land was notified.

(4) Before dealing with this matter, it may be pointed out that the Scheme was framed in 1961 and it would not possibly depend on the Act of 1972. So the reason given by the D.B. differing from the previous view does not seem to be at all relevant. However, as the matter has been referred to a F.B. and there is a conflict of view, we have decided to deal with this matter on a totally fundamental basis. For this purpose, it is necessary to ascertain the background and the object of the Scheme framed in 1961.

(5) It may be recalled that large areas of land were acquired by the State for the plan' ned development of Delhi. These acquisitions began in 1957 or so and they continued over a long period so that large areas of land were available to the D.D.A. and to other Govt. agencies for the eventual development of Delhi or greater Delhi, if one may say so, according to the Master Plan. Some of these acquisitions were made before the Master Plan was framed and some were made afterwards.

(6) Before the concept of planned development through a Govt. agency was thought of, the development of land in Delhi and the construction of houses was mostly, if not wholly, in private hands. This meant that there were a number of persons who had bought plots for utilisation for building purposes. The result of most of the land being acquired by the Govt. or Govt. agencies was that the private building activity came to a standstill. There were certain difficulties that arose out of this which led to the scheme of 1961.

(7) When all the land is with a State agency, the State is placed in the predicament of drawing up a scheme by which the land is to be given to the public. The main method visualised by the Govt. was to either use the land for housing the weaker sections of society by providing cheap houses constructed through a Govt. agency or under the control of a Govt. agency or alternatively to allot the plots by auction, or to allot the plots through cooperative societies. This Scheme, framed in 1961, was framed with the object of deciding how the land was to be dealt with.

(8) In this process of acquisition one class of persons which was most affected were persons who had purchased land for their personal residential houses and who lost the lands through the large scale acquisitions made for planned development. These persons who lost their land through the acquisition and got a, small compensation in return were faced with the predicament of acquiring other land for building purposes either at public auctions or through membership of a cooperative society. The Govt. appears to have realised that this would lead to exceptional hardship. To give an instance, the land might be acquired at the rate of between Rs. 2.00 to Rs. 15.00 per sq. yard, but land would be available to such persons at an auction at prices which may range between Rs. 500.00 to Rs.

1.500.00 per sq. yard. For these persons, therefore, the Govt. has provided an exception. They are to get lands at pre-determined rate as specified in the Policy.

(9) The pre-determined rates and policy for these persons is set out in sub-clause 8 of the Scheme. That portion reads as follows :-

'(8)As a general policy, disposal of developed land should be made by auction and the premium should be determined by the highest bid, except in the following cases, where land may be allotted at predetermined rates, namely the cost of acquisition and development plus the additional charge mentioned in sub-para (7) above, (i) to individuals whose land has been acquired as a result of the Chief Commissioner' notification dated the 7.3.57,3.9.57,13.11.59 and the 10.11.60 or other such subsequent notifications, provided that this concession will not be available in the case of individuals affected by the notifications dated the 7.3.57 .and the 3.9.57, if the acquisition proceedings have been completed and payment madeor .deposited in Court by the 1.1.61. In these cases : (a) If a residential plot is to be allotted, the size of such plot, subject to the ceilings prescribed, may be determined by the Chief Commissioner, taking into consideration the area and the value of the land acquired from the individual and the location and value of the plot to be allotted ; and (b) if an industrial plot is to be allotted, its size may be determined with reference to the requirement of the industry to be set up, provided that the setting up of such an indus- try is in accordance with the Master Plan and the industrialists concerned has the capacity to establish and run such industry and provi- ded further that the extent of land allotted at predetermined rates should not exceed the area acquired from the industrialist concerned. In making such allotments for industries the Chief Commissioner will be advised by an Advisory Committee to be nominated by him. (ii) to industrialists who are being asked to remove their factories from their present locations. Such allotments will be subject to the condition that the location of the industry concerned within the urban area is in accor- dance with the Master Plan. The Advisory Committee referred to in the previous sub- paragraphs should be consulted in making such allotments. (iii) to individuals in the low-income group. These allotments will be made by drawing of lots under the supervision of an Advisory Committee to be nominated by the Chief Commissioner. A suitable percentage of the area developed for private housing by

the Delhi Development Authority may be reserved for this purpose. (iv) to cooperative house-building societies' and cooperative societies of industrialists and manufacturers.'

(10) The important [part of the Scheme is that it is dating back to four years before it was actually framed. The Scheme was framed in 1961 and covers acquisitions made in 1957. Such persons are to get the land according to the rate specified in Sub-clause (7). An additional charge, over and above the costs of acquisition and development, which should be merged in the price of land, should be charged at the following rates (Developed residential plot of) the first 200 sq. yds. or part thereof Rs. 3.00 per sq. yd., the next 200-Rs. 4.00, the next 200-Rs. 5.00, the next 200-Rs. 6.00, the next 200-Rs. 7.00, thereafter at Rs. 8.00 per sq. yd.

(11) Thus, the charge to be made for allotment of such plots is the cost of acquisition, plus the cost of development, plus the additional charge mentioned in para 7. Even in such cases the price would be higher than the price actually given as compensation to the previous owner. But, still it would be a recompense for losing the building plot.

(12) Another limitation was regarding the persons who were to get these plots at the lower predetermined rates. This is in clause 10, of which only a portion is :

'(10)(A)No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot of land in Delhi, New Delhi or Cantonment. The question of making an exception in the case of persons living in a congested locality or whose family has outgrown should be considered after some experience has been gained of the working of the scheme.'

'(10)(B)The allottee of a plot should be required to construct the house in accordance with the sanctioned plans within two years of the date of allotment, failing which the land would be liable to be resumed.'

(13) This shows that a plot can only be allotted to a person whose wife/husband or any of his/her dependent relations, including unmarried children do not own a

house or plot in Delhi. Thus, the only beneficiaries under the Scheme of allotment in lieu of a plot are those who have no house in Delhi or whose dependant family members etc. do not have a house. No other person can get an allotment. If we see the scheme this way, we will understand that it has a distinct beneficial quality regarding the public. It is not a gift. It is a necessity for persons who would otherwise not possibly acquire any homes.

(14) If we examine the facts of the present case, the true effect of the Scheme as applicable to this case would be apparent. It would also be apparent that the effect of the Act of 1972, referred to in the D.B. Judgment in Cw 255/84 is absolutely nil. In the present case, the land was acquired for a public purpose, after the petitioner had purchased the same in 1959. The area purchased by the petitioner was 5 Biswas, situated in Khasra No. 314, situated in Village Hamayunpur, Delhi. The Sale Deed was registered on 5.1.59. Prior to this probably in September 1957, a Notification u/s 4, seeking to acquire this land was issued. The award relating to this land was given on 1.6.61. So, all the events had occurred practically before the Scheme of May 1961 came into operation. The petitioner applied for allotment of land in accordance with the Scheme, but many years later she was asked as to why she has applied so late. She replied on 20.6.79 that she did not know that an alternative plot could be allotted to her. Having given this Explanation, the Delhi Administration issued a letter stating that 125 sq. yards of land should be allotted to the applicant in the South Zone residential Scheme, because she had been found to be entitled to get the same. There was a subsequent letter asking her to make certain deposits towards the plot and there was also a Scheme by which a draw of lots had to take place in the Scheme. Eventually, Plot No. 248, Block No. 3, in Malviya Nagar Residential Scheme was allotted to the petitioner on 28.8.80. She was asked to pay a premium of Rs. 9,615.00. In response to this letter she actually sent the money and she was informed that she could take possession of the plot. This was by a letter dated 31.10.80. When she went to take possession she was told that another date would be intimated to her. Certain other formalities were then asked to be fulfilled. She wrote that the matter was being very much delayed as she was already 90 years old. But, she was informed that she had been unable to prove the ownership of the land in lieu of which the allotment had been given to her. Later the recommendation was withdrawn. No reason at all was

given for withdrawing the recommendation except that the petitioner had failed to submit papers to prove the ownership.

(15) It may be mentioned that the petitioner had a registered sale Deed in her favor dated 5.1.59, but it was not the case of the respondent that the reason for not granting the plot was the fact that the petitioner had bought the land after the S. 4 Notification.

(16) There are two parts of this case. Firstly, there is the question whether the date of the S. 4 Notification is at all relevant in the matter of allotment of an alternative plot; and the second is why has the petitioner's allotment been cancelled As already pointed out, the only reason for the reference is the view of the D.B. that the operative date is the date of the S. 4 Notification.

(17) We have examined this question in some detail from many aspects. The acquisition proceedings taken under the Land Acquisition Act have certain phases. Firstly, there is a Notification u/s 4 stating that the Govt. intends to take action. This is followed by objections u/s 5A and then there is a Notification u/s 6, when the government decides that it has to acquire land and later on the Govt. actually takes the lands by means of an Award and gives compensation in lieu of the land to the owner thereof. It does not appear to us that there is any impediment in law for the owner of land to transfer the same merely because a Notification u/s 4 has been issued. No doubt, after the Act of 1972. called the Delhi Lands (Restriction & Transfer) Act, came into force in Delhi, nobody can transfer the land after the Notification u/s 6 has been issued, except after getting permission u/s 4 of the Delhi Lands (Restriction & Transfer) Act. But, there is no mention of the S. 4 Notification in this Act. We do not see how a person who acquires land, after the S. 4 Notification has been issued, can be treated to be a non-owner for the purposes of the Scheme framed in 1961. In fact, there is nothing in the Scheme, which has been re-produced earlier, which shows that it is restricted to owners when the land was notified as being one which the Govt. contemplated to acquire. Something can be said for the argument that after the S. 6 Notification the Govt. decision to acquire the land becomes more or less definite. But, even then, the Govt. has power to withdraw from the acquisition by reason of S, 48 of the Land Acquisition

Act. We are, therefore, unable to accept the reasoning in the judgment of Krishan Kumar Malik.

(18) It is quite clear that any one whose land has been acquired as a result of the Notifications mentioned in clause 8 of the Scheme is entitled to apply. By anyone is meant the owner of the land at the time of acquisition and not the owner at the time of the issue of the Notification u/s 4. 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, but that too applies after 1972. We have not yet come across a case in which the acquisitions of planned development were made after 1972. We would not like to comment upon them.

(19) There is another side of this picture, which must be mentioned for completing the discussion. It is just possible that persons may acquire some land concerning which a Notification has been issued u/s 4 or S. 6, merely for the sake of taking advantage under the Scheme promulgated in 1961. Of course, that could not happen in the present case because the petitioner acquired the land in 1959, which was long before the Scheme was promulgated. It is, however, possible that someone might buy land with the object of getting an alternative plot under the Scheme. This means that there may be a person who, seeing that there is a Notification u/s 4, buy some land at a relatively low price, merely to get a plot under the Scheme. If such a case comes up, it may well be said that it is a fraudulent use of the Scheme for the purpose of acquiring a residential plot at an inexpensive rate. Considering the value of land at the present time, it is possible for somebody to buy up land scheduled or intended to be equipped by the Govt. merely to get an alternative residential plot. However, the chances of this being done are very small, for one thing, only one plot can be bought by one person. That is the whole scheme. No allottee can get land under the Scheme if he already owns a house or plot. So, only a non-owner of a plot or a non-owner of a house can get an allotment. Hence, the chances of the misuse of the Scheme are very much reduced.

(20) Then, there is another aspect of the case. There is some land notified u/s 4. It is a large area of land. Before the Notification u/s 6 is issued, several hundred persons buy small plots. But the land is acquired finally and vests with the Government, Now it can be said that if you look at the position when the S. 4 Notification was issued, then only one residential plot was to be given, but if you look at the situation following the subsequent transfers to other persons, then several hundred plots have to be allotted.

(21) We think we should look at this problem from quite a different angle. The Govt. has decided to undertake the planned development of Delhi. It is to see that the population of Delhi is properly housed and has the means for acquiring residential houses. If a person has bought a residential plot privately and the State chooses to acquire that land at a very meagre price, then surely it is the duty of the State to give an alternative plot at a moderate price to those persons who have been deprived of possible residential houses, which they could have constructed on the land they have acquired. The planned development is for the good of the people and not for the good of the State. There is public element involved in the planned development and that public element is the housing of the population of Delhi. The Scheme visualises one house per person. When there is a situation of no house or no plot when the existing plot of that person has been acquired by the State, then it is the duty of the State to give an alternative plot. That is the purpose and the end-all and be all of the Scheme. We do not think that it is doing violence to the Scheme that plots are allotted to persons who have lost their residential plots as a result of the acquisition proceedings under the Land acquisition Act.

(22) For these reasons and several others, which may not be necessary to be dealt with in this judgment, it seems that it is in the public interest that the poorer classes of society who have lost their plots as a result of the large scale acquisition of land should be given alternative plots.

(23) The land in the case of this petitioner was acquired in 1961. We are told that she is about 90 years old. The land was only 5 bids was in area. The State decided to give her a plot of 125 sp. yards. She actually gave the money. There

is not the slightest reason why the plot should not have been given to her.

(24) We have already referred to the case where there may be a misuse of the Scheme to acquire several plots indifferent names before the acquisition is complete and then to get alternative plots. The present case is a genuine case of a sale made even before the Scheme was announced and, so, it cannot be a case of misuse of the Scheme. There is absolutely no reason why the plot allotted to the petitioner should have been withheld from her. Consequently, we would issue the writ and direct the plot to be allotted to her in accordance with what was first decided in her favor. She has already paid for the plot. Now the plot should be put at her disposal. The petitioner will get her costs.

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