

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : February 8,  
2007

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+ W.P.(C) 1308/1989

# DHANWANTI DEVI ..... Petitioner  
! Through Mr. S.K. Bahaduri Advocate with  
Ms. Indrani Ghosh Advocate

versus

\$ THE SECY.ALTERNATE(NORTH ZONE) & ORS ..... Respondent  
^ Through Ms.Zubeda Begum & Ms.Iram Mazid  
Advocates

**CORAM :-**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**ORDER**

**:Dr. S. Muralidhar, J. (ORAL)**

1. This writ petition has been filed seeking a writ of mandamus of allotment of an alternative plot in lieu of the land of the petitioner which was acquired pursuant to a notification dated 29.8.1967 issued under Section 4 of the Land Acquisition Act, 1894, ('Act').

2. The petitioner purchased the land in question on 28.7.1971 from M/s Laxmi Land & Trading Corporation. The land acquisition proceedings culminated in an award being made and compensation being disbursed. Pursuant to the applications under Sections 30 – 31 of the Act, an order was made by the learned Additional District Judge on 4.10.1986 directing disbursement of compensation to different land owners which included the petitioner herein.

3. By a letter dated 29.5.1978, the respondent Delhi Development

Authority (DDA) informed the petitioner that she should first claim compensation from the Land Acquisition Collector, thereafter “apply to the Secretary (Land and Building), Delhi Administration..... for allotment of alternative plot.” The petitioner states that she did make such application in the requisite form on 17.7.1978. Thereafter on 11.4.1983, another letter was sent to her by Delhi Administration, Land and Building Department with reference to her application dated 3.3.1983 asking her to apply for allotment of alternative plot. As regards the said application, by letter dated 1.8.1988, the petitioner was informed that she was “not entitled to any alternative allotment, as per the existing policy decision in this behalf”. This led to the petitioner filing the present petition.

5. In reply to the writ petition, it has been stated on behalf of respondent nos. 1 and 3 that “as per the scheme, only, the land owners at the time of notification under Section 4 are entitled for an alternative plot in lieu of acquired land and the case of the petitioner was not covered under the policy, her claim as such rightfully rejected.”

6. A copy of the notification dated 2.5.1961 issued by the Ministry of Home Affairs, Govt. of India, has been enclosed where in para 10 certain stipulations are set out for “allotment of land whether by auction or otherwise to individuals (including those whose, land has been acquired).” It is the case of the respondents that since on the date of notification under Section 4, the petitioner was not a land owner, she is not entitled to an alternative plot.

7. Learned counsel for the petitioner states that the ground on which the claim for alternative plot was rejected is not sustainable in

law in view of the judgment of the Full Bench of this Court in ***Smt. Shiv Devi Virley vs. Lt. Governor of Delhi*** AIR 1987 Delhi 46. In particular, he places reliance on para 18 of the said judgment which reads as under:-

“18. It is quite clear 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. 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 under S. 4. In fact, there is no impediment in law at all either today or earlier regarding transfers, after the Notification has been issued under S.4. There is an impediment after the acquisition notice is issued under 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.”

8. The respondents in their counter affidavit point out that the ratio in ***Shiv Devi*** is not applicable in the present case “as the land was purchased in that case before the invocation of the scheme of alternative plot.” The respondents are right in pointing out that the judgment of the Full Bench of this Court in ***Shiv Devi*** makes a distinction between persons who had purchased lands in respect of which Section 4 notification had been issued but before the date of the scheme for rehabilitation and those persons who had purchased land after the date of both the notification, and the scheme. This is clear from para 19 of the said judgment which reads as under:-

“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 under 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 which 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 under 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 government 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."

It is clear, therefore, that in ***Shiv Devi*** although the applicant for alternative land there had purchased the land after the date of notification under Section 4, such purchase was before the scheme was announced. In these circumstances, the applicant there was held to still be eligible for alternative land.

9. In the present case the respondents state that the case of the petitioner for alternative land was processed under the 1961 Scheme and they have accordingly annexed the copy of the said notification with their reply. Counsel for the petitioner on the other hand states that the ostensible ground on which the claim was rejected, was only that the petitioner was not the owner of the land on the date of the Section 4 notification, and therefore, in the light of the judgment of the Full Bench that ground cannot be invoked to reject the claim of the petitioner.

10. This Court is bound by the Judgment of the Full Bench in ***Shiv Devi*** which unambiguously states that where the purchase of land is made after announcement of the Scheme then such purchase would be viewed as being speculative and would disentitle such purchaser from being allotted an alternative land. By the judgment dated 24.8.1990 in ***Kulwant Kaur vs. Union of India 1990 (42) DLT 33*** Division Bench of this Court had occasion to discuss the entitlement of persons whose lands had been acquired. In the said judgment a reference has been made to the schemes of 1961, 1967 and 1989. The Division Bench in ***Kulwant Kaur*** explained that in ***Shiv Devi*** the “Full Bench was interpreting the scheme of 1961” which was materially different from the scheme in 1989. This much is clear from the decision in ***Kulwant Kaur*** that the scheme under which the claim in ***Shiv Devi*** was being considered was the 1961 scheme, which is the scheme under which the present claim of the petitioner has also been processed. Even if one were to apply the 1967 scheme the petitioner here cannot seek benefit there under since admittedly the petitioner purchased the land in question on 28.7.1971 long after the 1967 scheme was announced. In that view of the matter, the claim of the petitioner here for allotment of alternative land is not sustainable

in law.

11. Counsel for the petitioner makes a fervent plea for the grant of the alternative prayer in the petition that the petitioner should be awarded higher compensation. This Court cannot entertain such a request since such a claim should have been made in terms of the Act, which contains specific provisions providing a remedy for such a grievance.

12. In that view of the matter the writ petition is without merit and is accordingly dismissed.

**FEBRUARY 08, 2007**  
**raj**

**sd/-**  
**S. MURALIDHAR, J**