

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.1018 of 2015 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> Mr. Shobhit Saharia, Advocate for the petitioner. Mr. Siddhartha Sah, Advocate for respondent nos.1 to 7. Mr. Rajesh Pandey, Standing Counsel for the State of Uttarakhand. 2. By means of this writ petition, petitioner has challenged the order dated 22.07.2014 passed by Director, Rehabilitation. By the impugned order, Director, Rehabilitation directed T.H.D.C. to allot plots of agricultural land to all the private respondents, in place of cash compensation. 3. Tehri Hydro Development Corporation India Ltd. has challenged the said order on the ground that, as per the Rehabilitation Policy applicable to the private respondents, they are only entitled to cash compensation and not land, in lieu of land, which was acquired from them. Reliance has been placed upon Government Order dated 22.08.1983, whereby earlier Government Order dated 26.05.1981 was modified. 4. Learned counsel for T.H.D.C./petitioner submits that, as per the Government Order dated 26.05.1981, landless agricultural labourers and owners of very small holding were to be allotted land in lieu of land, which was

			acquired from them. However, by the Government Order dated 22.08.1983, it was provided that persons, whose less than 50% holding is acquired, would be paid only cash compensation. He further submits that, as per Clause No.2 of Government Order dated 22.08.1983, the displaced families, which are earning their livelihood from sources other than agriculture, shall be paid only cash compensation and they would not be entitled to allotment of land. Learned counsel for the petitioner further submits that private respondents had earlier filed WPMS No.1000 of 2011, seeking the following reliefs: “i) Issue a writ, order or direction, in the nature of certiorari quashing the impugned order dated 28.2.2011 issued by the Director, Rehabilitation annexed as Annexure No.14 to the writ petition. ii) Issue a writ, order or direction, in the nature of mandamus commanding the respondents to reconsider the petitioner’s claim for grant of rehabilitation benefits as claimed on 27.10.2007 and all consequential benefits thereof.” 5. Learned counsel for the petitioner submits that, in the said writ petition, the Government Order dated 22.08.1983 was criticized in the pleading. He submits that Coordinate Bench of this Court vide order dated 04.04.2013 set aside the earlier order passed by Director, Rehabilitation, on 28.02.2011 and gave liberty to private respondents to make claim before Director, Rehabilitation, however, no relief was granted to them against the Government Order dated 22.08.1983. He further submits that the private respondents jointly owned 550 sq. mtr. Land, which was spread out in 3 villages, namely, Motana, Timalichak and
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		Cham, District Tehri Garhwal and none of the private respondents was dependent upon their land for sustenance. He further submits that none of the private respondents are residing in District Tehri Garhwal, therefore, they cannot be said to be earning living out of the land which was acquired and the Director, Rehabilitation erred in directing to provide 2 acres land to each of the four brothers. He further submits that the claim of the private respondents for allotment of land has been allowed solely on the basis that 5 other similarly situate persons with small holdings, who were not dependent upon their land for sustenance, were allotted land under the Rehabilitation Policy, therefore, private respondents are also entitled to similar benefit. He, thus, submits that negative equality could not have been granted to the private respondents by the Director, Rehabilitation contrary to the express provision of the Rehabilitation Policy applicable in the matter. 6. Learned counsel for respondent nos.1 to 7, however, submitted that, as per the Rehabilitation Policy framed by T.H.D.C. Ltd. issued on 09.12.1998, his clients had a valid claim for allotment of land, as the said Policy nowhere provides that one should earn living from the land, which has been acquired and the area of land is also immaterial for allotment of land under Rehabilitation Policy. 7. From perusal of the impugned order, it is revealed that Director, Rehabilitation has allowed the claim made by the private respondents, based
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			on Government Order dated 22.08.1983. Under the said Government Order, one of the condition for allotment of land under Rehabilitation Policy is that person affected by land acquisition must be earning living out of the land, which was acquired. In the impugned order, Director, Rehabilitation has held that since the Government Order dated 22.08.1983 was violated in respect of 5 other persons, therefore, it should be violated in favour of private respondents also. The reasoning given by Director, Rehabilitation is unsustainable, as no one can claim negative equality. Anything, which is done in violation of Rules/Policy, cannot be made precedent for claiming similar benefit by others. 8. In such view of the matter, the impugned order dated 22.07.2014 is liable to be set aside and is hereby set aside. The writ petition stands allowed. (Manoj Kumar Tiwari, A.C.J.) 20.12.2023 Arpan
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