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

+ **W.P.(C) 540/2015**

**MOHD. SWALEHEEN (DECEASED)**

**THR. LR MS FAHMIDA ANJUM**

**..... Petitioner**

**Through: Mr Sandeep Bajaj & Mr Aditya Chopra,  
Advs.**

**versus**

**GOVT. OF NCT OF DELHI**

**..... Respondent**

**Through: Mr Siddharth Panda & Mr Priyabrat  
Sahu, Advs.**

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

**26.08.2015**

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1. This is a writ petition directed against communication dated 08.12.2014 issued by the respondent, in which, there is a reference to the minutes of meeting dated 19.11.2014, held by the recommendation committee of the respondent.

1.1 A perusal of the impugned minutes would show that the petitioner's application dated 28.04.1989 for allotment of an alternate plot, in lieu of the acquired land, was rejected on the ground that the subject land was not acquired in entirety.

1.2 In the said minutes, the recommendation committee has noted that the petitioner, as per the record available with them, was owner of land admeasuring 11 bighas 5 biswas, and out of which only 4 bighas and 5 biswas was acquired.

1.3 Therefore, the recommendation committee, purportedly, on applying

the ratio of the judgement of the Supreme Court, dated 14.09.2011, passed in Civil Appeal No. 8289 of 2010, titled: ***Delhi Development Authority vs Jai Singh Kanwar & Ors.*** proceeded to reject the application of the petitioner.

2. The petitioner, being aggrieved, has filed the instant writ petition. The record shows that even though there was no formal notice issued, directions were issued on 27.05.2015 qua the respondent for filing a counter affidavit. Four weeks were granted for that purpose. Time was also granted to file a rejoinder in the matter. In compliance of the same, the respondent has filed a counter affidavit; though no rejoinder has been filed on behalf of the petitioner.

3. The petitioner's case, before me, is that, there is a factual error in the impugned minutes dated 19.11.2014. It is stated that the observation made in the impugned minutes that the petitioner was the owner of land admeasuring 11 bighas and 4 biswas, and that, out of which only land admeasuring 4 bighas 5 biswas was acquired, is factually incorrect.

3.1 In the petition an averment has been made that the entire land owned by the petitioner was acquired pursuant to four awards. The four awards according to the petitioner are numbered as : 27/73-74, 29/73-74, 44/73-74 and 98/83-84.

3.2 The last parcel of land, which admeasures 4 bighas and 5 biswas, was acquired vide award no. 98/83-84. This award pertained to khasra no. 320/1-3-4.

4. The petitioner's case is that, an application was made pursuant to land acquired consequent to the award bearing no. 98/83-84. It is therefore, in sum, the petitioner's argument that there is no basis for the respondent to

conclude that he was the owner of 11 bighas and 5 biswas of the land, and since, only a part of the land i.e. 4 bighas and 5 biswas was acquired, the application for allotment of an alternate plot could not be entertained.

5. Apart from the above, it is also the submission of the learned counsel for the petitioner that the decision rendered by the Supreme Court in *Delhi Development Authority vs Jai Singh Kanwar & Ors* case would not be applicable to this matter, for the reason that it dealt with a case where an award had been passed for a larger area, though possession was taken of a much smaller area.

5.1 Furthermore, learned counsel for the petitioner has also drawn my attention to office order dated 30.01.1987, issued by the respondent which, inter alia, is suggestive of the fact that applications for allotment of alternate plots could be considered even if, possession of the land to the extent of only 80% is taken. In other words, against the land area reflected in the award, if a minimum of 80% of the land was taken possession of, an application for allotment of an alternate plot would lie with the respondent.

5.2 Therefore, the learned counsel for the petitioner seeks to submit that either way the respondent's action in rejecting the petitioner's application is unsustainable both in law and on facts.

6. I have heard the learned counsels for the parties. What has emerged from the record, is that, the petitioner had four parcels of land, which were, acquired via four different awards. As adverted to above, the last parcel of land was acquired vide award bearing no. 98/83-84. This award related to land situate in khasra no. 320/1-3-4 and admeasured 4 bighas 5 biswas. For the sake of convenience, the details with regard to the four awards and the parcels of land acquired, along with the land area it covered, are set out in a

tabulated form hereinbelow:

| S. No. | Award No.    | Khasra No.              | Total land in Khasra number | Share of the petitioner            |
|--------|--------------|-------------------------|-----------------------------|------------------------------------|
| 1      | 27/73-74     | 325/2                   | 0 bigha 8 biswas            | 3.33 biswas (5/12 <sup>th</sup> )  |
| 2      | 29/73-74     | 320/2                   | 1 bigha 7 biswas            | 11.25 biswas (5/12 <sup>th</sup> ) |
| 3      | 44/73-74     | 318/2<br>319/2<br>320/5 | 2 bighas 14 biswas          | 22.5 biswas (5/12 <sup>th</sup> )  |
| 4      | 98/83-84     | 320/1-3-4               | 4 bighas 5 biswas           | 4 bighas 5 biswas                  |
| 5      | <b>Total</b> | ---                     | 8 bighas 141 biswas         | 6 bighas 2 biswas                  |

6.1 The record also shows that the petitioner, admittedly, owned land admeasuring 6 bighas 18 biswas. Consequently, the petitioner is, undoubtedly, left with land admeasuring 16 biswas; total land acquired under various awards being 6 bighas and 2 biswas. Therefore, factually, what is stated in the impugned minutes dated 19.11.2014, is not the correct position.

7. The counter affidavit of the respondent does not set out the basis on which the recommendation committee has come to a conclusion that the petitioner was the owner of land admeasuring 11 bighas 5 biswas. Learned counsel for the respondent has not been able to shed any light on this aspect of the matter; his arguments are based, entirely, on what is stated in the counter affidavit.

8. In these circumstances, on this short ground alone, the impugned communication deserves to be set aside.

9. In so far as other submission of the learned counsel for the petitioner

is concerned, which is, that the ratio of the judgement in *Delhi Development Authority vs Jai Singh Kanwar & Ors* case, is not applicable to the facts of this case, in my view, has much merit.

9.1 The facts of that case reveal that an award was passed with regard to the land admeasuring 24 bighas 16 biswas. Out of the said area, the Delhi Administration had acquired land admeasuring only 7 bighas and 1 biswas; qua which compensation was paid.

9.2 The facts as set out in the judgment also reveal that there was no denial by the applicant, in that case, that he did not own a house when, the award, was pronounced in respect of the land in issue.

9.3 The Supreme Court, on account of these reasons, it appears, came to the conclusion that the applicant could not take benefit under the scheme for allotment of an alternate plot as the scheme provided such a benefit only to those whose land is taken away in its entirety, and who, are left without any house or plot.

10. This submission of the learned counsel for the petitioner gains further traction in view of the office order dated 30.01.1987, issued by the Delhi Administration, Land & Building Department. The relevant portion of the office order is extracted hereinbelow for the sake of convenience:

“.... It has been decided that henceforth, the recommendation for the allotment of alternative plots may be made even where the possession of the entire land acquired has not been taken by the concerned departments of the Government/ Agencies. But the Zonal officers while scrutinizing such cases will take into consideration the possession of land to the extent of 80% and not lesser than 80% of total land for which award has been announced....”

(emphasis is mine)

10.1 A perusal of the aforesaid extract would show that, it appears to be the policy of the respondent to consider applications for allotment of alternate plot if, a minimum of 80% of the total land area, reflected in the award, is taken possession of. In this particular case, possession has been taken of the entire land reflected in the award.

11. Therefore, having regard to the totality of the facts and circumstances of the case, I am inclined to allow the writ petition and set aside the impugned communication dated 19.11.2014, which was forwarded to the petitioner vide letter dated 08.12.2014. It is ordered accordingly.

12. The recommendation committee, so constituted by the respondent, is directed to reconsider the case of the petitioner. For this purpose, the recommendation committee will issue a notice to the petitioner indicating therein the date, time and venue at which he would be required to present himself. The notice will indicate the documents, if any, which the petitioner is required to place before the recommendation committee. The recommendation committee will accord a personal hearing to the petitioner and, thereafter, pass a speaking order. The petitioner will be furnished a copy of the speaking order within two weeks of the same being passed.

13. Needless to say, the aforesaid exercise will be completed with due expedition, though not later than four (4) months from today. In case the application of the petitioner is allowed by the recommendation committee, the petitioner, will retain the same seniority as he would have obtained, had his application been allowed in the first instance.

14. The writ petition is, accordingly, disposed of.

**RAJIV SHAKDHER, J**

**AUGUST 26, 2015/kk**