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

+ **W.P.(C) 3007/2014**

HARI KISHAN & ORS Petitioners
Through: Mr N.S. Vashisht & Mr Vishal Singh,
Advts.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr Siddharth Panda & Mr Priyabrat
Sahu, Advts. for R-1 & 2.
Ms Urvi Kuthiala & Ms Vrinda Kapoor, Advts. for
R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

06.08.2015

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1. This is a petition which is directed against the communication dated 29.01.2014, issued by respondent no.2, whereby the application of the petitioners for allotment of an alternate plot was rejected. A perusal of the impugned communication would show that the rejection of the application was predicated on the ground that the policy did not envisage consideration of allotment of alternate plot in favour of those applicants, who claim their right on the basis of a Will, executed in their favour.

2. Aggrieved by the aforesaid rejection, the petitioners have approached this court by way of the captioned petition under Article 226 of the Constitution. Upon notice being issued in the writ petition on 13.05.2014, counter affidavits have been filed on behalf of respondent no. 2 and 3, to which rejoinders have been filed by the petitioners. In so far as respondent no.1 is concerned, which is the Govt. of NCT of Delhi, no counter affidavit

has been filed, though the said respondent is also represented by the counsel appearing for respondent no.2. Learned counsel for respondent no.2 submits that the stand of respondent no.1 would be identical to the one taken by respondent no.2 in its counter affidavit.

3. In order to adjudicate upon the issue raised in the writ petition, the following brief and relevant facts are required to be noticed.

3.1 The petitioners, who are three in number, are the grandsons of, one, Late Sh. Hari Singh who was the recorded bhoomidar of 1/4th share, in the land, which was acquired by the Union of India under a scheme titled as: Large Scale Acquisition, Development and Disposal of Land in Delhi (hereafter referred to as the Scheme). This scheme was formulated in 1961.

3.2 Pursuant to the scheme, acquisition took place in Delhi and, consequently, land of the Late Sh. Hari Singh was also acquired. Upon possession being taken over of the land, after fulfilment of necessary formalities under the Land Acquisition Act, 1894, which included issuance of notification under Sections 4, 6 & 17, possession was taken of the subject land on 14.08.2002. It is also the agreed case of parties that an award in respect of the said land was pronounced on 23.10.2002.

3.3 Apparently, on 27.02.2003, Late Sh. Hari Singh, grand-father of the petitioners herein, executed a registered Will in favour of the petitioners. Within almost four months of the execution of the Will, Late Sh. Hari Singh made an application to respondent no.3 for allotment of an alternate plot under the scheme. This application was apparently made on 03.06.2003. Thereafter the process of calling for information commenced and consequently, a report of the Land Acquisition Collector dated 13.08.2004, got generated in the process.

3.4 Unfortunately for the petitioners, Sh. Hari Singh expired on 22.04.2011.

3.5 Upon respondent no.2, issuing a letter dated 02.09.2013, calling upon them to submit additional documents, which included submission of revenue records etc., supported by affidavits, the petitioners herein responded to the same vide communication dated 23.09.2013.

3.6 It is also the case of the petitioners that at that stage they submitted not only the necessary documents sought by respondent no.2, but also the death certificate and the registered Will dated 27.02.2003.

3.7 Evidently, the application and documents submitted by Late Sh. Hari Singh, as also additional documents submitted by the petitioners, were put up before the Recommendation Committee formed under the aegis of respondent no.2. The Recommendation Committee considered the request of the petitioners in their meeting held on 01.01.2014. Upon consideration, the Recommendation Committee came to the conclusion that the application had to be rejected. This decision, as indicated above, was communicated vide communication dated 29.01.2014.

4. Mr Vasisht, who appears for the petitioners, has assailed the said communication of respondent no.2 on the ground that the policy does not exclude consideration of an application for allotment of an alternate plot only for the reason that original applicant had expired and his cause was represented by the beneficiaries to the Will. It is his contention that the expression 'legal heirs', which obtains in the scheme so formulated, would include those who claim a right based on a testament, such as, a Will. In support of his contention Mr Vasisht has relied upon a Division Bench judgement of this court passed in the case of: ***Dharam Pal & Anr. vs Delhi***

Administration & Anr., 162 (2009) DLT 12 (DB).

5. As against this, learned counsel for the respondent submits that the impugned decision is in line with the policy and hence ought not to be disturbed. It is also his contention that the scheme so framed is for the benefit of those who required rehabilitation.

6. I have heard the learned counsels for the parties. I am of the view that Mr Vasisht's contentions deserve to be accepted for more than one reason but before I do so the following preface needs to be added.

6.1 The policy so envisaged only requires consideration of the request for allotment of an alternate plot in lieu of land acquired. Therefore, there is undoubtedly no vested right either in the applicant or his descendants, or those who claim a benefit under a testament, executed by the applicant.

6.2 Coming to the reasons as to why I would allow this writ petition, are as follows:

(i) First, the expression 'legal heirs' in the scheme has been interpreted by the Division Bench in the case of ***Dharam Pal & Anr. vs Delhi Administration & Anr.*** to mean, to include, those who are beneficiaries under a testament, such as a Will. In this case, there is no dispute raised that the Will is not genuine.

(ii) Second, that even if one were to exclude the beneficiaries under a Will, quite clearly, the "legal heirs" would have to be considered for allotment of an alternate plot even as per the scheme. In the instant case, the petitioners are the grandsons of the applicant i.e. Late Sh. Hari Singh.

(iii) Third, to my mind, it is quite obvious that if the alternate plot had been allotted to Late Sh. Hari Singh, in his life time, he would have been free to deal with it in any manner of his choosing, including vesting right,

title and interest in the land so allotted by way of a Will.

(iv) Lastly, the scheme does not empower the department to reject an application on the ground that the legal heirs or other beneficiaries of the applicant do not require rehabilitation. The Recommendation Committee has to consider the case by placing the successors whether via the testament route or the intestate route in the same position in which the applicant was placed. If the applicant required rehabilitation, then certainly that is a ground which requires consideration by the Recommendation Committee.

7. Therefore, having regard to the aforesaid, according to me, the reasons given in the impugned decision cannot sustain. While coming to this conclusion, I am conscious of the fact that the right which enures in favour of the petitioners is only a right to be considered and is in the nature of a right of a spes successionis at the moment, therefore, while setting aside the impugned decision, the Recommendation Committee, is directed to apply the provisions of the scheme with equal rigour to the petitioners herein as they would to the original applicant i.e. Late Sh. Hari Singh.

8. Accordingly, the impugned communication dated 29.01.2014, is set aside. Respondent no. 1 and 2 will re-visit the issue. For this purpose, they will issue a notice to the petitioners indicating therein the date, time and venue at which they have to present themselves for due consideration of their case by the Recommendation Committee. The notice will indicate as to whether or not any fresh information or documents are required. The petitioners will carry those documents, as required by the Recommendation Committee. The Recommendation Committee, after giving due opportunity to the petitioners, shall pass a speaking order. A copy of the order so passed, will be served on the petitioners within two weeks thereafter.

8.1 Needless to say, the aforesaid exercise will be conducted with due expedition though, not later than four (4) months from today.

9. The petition is, accordingly, disposed of.

10. Dasti.

RAJIV SHAKDHER, J

AUGUST 06, 2015

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