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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2887/2015**
SANDEEP RANA

..... Petitioner

Through Mr. V.P. Rana and Mr. S. Gumber,
Advs.

versus

GOVT. OF NCT DELHI AND ANR.

..... Respondents

Through Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advs. for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.08.2016**

The petitioner is aggrieved by the communication dated 28.08.2014 wherein his application seeking allotment of an alternate plot had been rejected on the ground that he still had excess land left and the entire land had not been acquired. This communication dated 28.08.2014 had relied upon the ratio of the judgment delivered by the Apex Court in Delhi Administration Vs. Jai Singh in C.A. No.8289/2010 decided on 14.09.2011.

The petitioner is aggrieved by this communication. His submission is that this letter of rejection is neither correct on facts nor on law. The contention is that the petitioner had only 5 bigha and 11 biswas of agricultural land which was admittedly acquired. The land measuring 2 bigha and 2 biswas was residential and 6 biswas (being

within laldora) was an industrial plot. This has been stated by him in para 5 of the petition. Attention has also been drawn to the documents in support thereof. The documents at pages 20 & 21 states that 1 bigha and 1 biswa and thereafter another 1 bigha and 1 biswa of land had been sold by the petitioner in khasra No. 106/298 on 26.11.2001. Submission is that this sale was prior in time to the acquisition of his land as the Award passed in this case is of the year 2002. Submission being reiterated that the petitioner had only 6 biswas of industrial plot left with him which is not a residential plot. He is accordingly entitled to an alternate allotment.

Record shows that the land in question i.e. forming part of khasra No. 75/23 & 75/24 situated at Village Khera Kalan, Delhi was acquired on 27.10.1991. This was pursuant to the Notification issued under Section 6 of the Land Acquisition Act, 1894. Possession of the land was taken over by the Government on 05.05.2000. Award dated 30.05.2002 was passed. The petitioner had applied for an alternate plot on 13.02.2003. A communication dated 14.10.2013 was issued to him asking him to submit documents. On 28.08.2014 his claim for alternate allotment had been rejected and the reasons have been noted supra.

Counter affidavit has been filed by the respondent. This affidavit states that the documents produced by the applicant nowhere state that the applicant on affidavit had stated that he did not own a plot or a flat or a residential house or that he was not a member of any Co-operative Housing Society; this was the fundamental requirement

for making an application; this was absent; the object of the scheme was not met with.

Learned counsel for the petitioner at this stage submits that consolidation proceedings of this village had taken place. He was although originally allotted 7 bigha and 19 biswas of agricultural land but pursuant to these consolidation proceedings 5 bigha and 11 biswas remained as agricultural land; 2 bigha and 2 biswas became residential land and 6 biswa was an industrial plot. This submission that it was pursuant to the consolidation proceedings that the nature of the land which was admittedly earlier agricultural land (7 bigha and 19 biswas) has now changed has nowhere been averred in the petition. This writ petition does not speak a word of the change of the use of the land in the consolidation proceedings. It was on repeated queries put to the learned counsel for the petitioner that he has come up with this strategy informing the Court that the nature of the agricultural land (which was admittedly originally 7 bigha and 19 biswas) became 5 bigha and 11 biswas as agricultural land; 2 bigha and 2 biswas became residential land and 6 biswas was an industrial plot. At the cost of repetition, this change of use of the land in the consolidation proceedings has nowhere been mentioned in the writ petition. This thus did not give a chance to the respondent to answer this oral submission.

Be that as it may, since it is the record which speaks, this Court is of the view that the record as emanating clearly shows that out of 7 bigha and 19 biswas of land, 5 bighas and 11 biswas alone had been

acquired. The submission of the petitioner that 2 bigha and 2 biswas of land had been sold vide documents at pages 20 & 21 on 26.11.2001 to Tanka Kapoor and Raj Bala also do not form a part of the pleading in the writ petition. It has nowhere been mentioned in the body of the petition that 1 bigha and 1 biswa had been sold on 26.11.2001 to either Tanka Kapoor or Raj Bala on 26.11.2001. This Court notes that the documents which have been filed in support purport to be true copies of some record; the original record is not here; even otherwise, the photocopies are wholly undecipherable. This Court also notes that a document can only be read in support of the pleading and cannot be read in the absence of a plea not having been taken in the body of the petition. At the cost of repetition, this fact now argued that 2 bigha and 2 biswas of land had been sold on 26.11.2001 to the aforementioned two persons does not find mention in the writ petition. A bald averment has also been made in para 6 of the petition that the Consolidation Officer had issued a letter to the petitioner and for this proposition, attention has been drawn to Annexure P-4 (page 22 of the paper book). This is also a copy of the document. The original has not seen the light of the day. This Court is thus not in a position to comment on the authenticity and validity of this document. Again at the cost of repetition a document even otherwise cannot be read dehors the pleadings; authenticity of this document is doubtful; they are only computer printouts. This Court is not inclined to rely upon them.

This Court also notes that the argument now raised before it has not been averred in the petition. The repeated submission of the learned counsel for the petitioner that he only has 6 biswas of industrial plot left with him not having been averred in the petition and his additional submission that in the Consolidation Proceedings, the original 7 bigha and 19 biswas of agricultural land had become converted into 5 bigha and 11 biswas of agricultural land and 2 bigha and 2 biswas became residential plot and the balance 6 biswas had become an industrial plot is also not averred in the petition.

The rejection letter, in this background, noting only 5 bigha and 11 biswas of land had been acquired out of 7 bigha and 19 biswas which was originally owned by the petitioner suffers from no infirmity.

The judgment of Jai Singh Kanwar squarely applies to the facts of the instant case.

This Court is in agreement with this submission of the learned counsel for the respondent. Para 6 of the aforementioned judgment reads herein as:-

“Neither the application nor the documents produced by the applicant Om Singh Kanwar averred or established that Chhajju Singh did not own a plot or flat or residential house and that he was not a member of any Co-operative Housing Society. In the circumstances, the fundamental requirement for making an application was absent. The object of the Scheme is that when the

land owned by a person is taken away in entirety and he is left without any house or plot, he should be allotted a plot. The Scheme therefore provided that only a person who does not own a house / residential plot / flat will be entitled to apply. The first respondent did not deny the fact that the Chhajju Singh did own a house in the year 1969. That apparently is the reason why he did not apply under the scheme. Nearly a decade after his death, an application was made by one of his sons. But what is to be considered is the position of the land loser on the date of the award. Therefore the appellant, who is one of the grand sons of Chhajju Singh is not entitled to seek allotment of a plot under the scheme by suppressing the fact that Chhajju Singh owned a house in 1969.”

It would be fully applicable.

Since the entire land of the petitioner has not been acquired, it could not be said that the petitioner has become homeless or landless; he had still a roof to cover his head; land not having been acquired in entirety, his application for allotment of an alternate plot was rightly rejected. The whole object of this policy which has been framed firstly in the year 1961 which was followed subsequent by the policy framed in the year 1964 was to provide succour to those persons who are completely landless or not having any house to live in. The object of both the policies was to combat such a situation. The object of the scheme was to give relief to those landless persons whose land had been taken over in entirety.

This not being the situation in the present case, the letter of rejection suffers from no infirmity.

Petition is without any merit. Dismissed with cost of Rs.20,000/-.

INDERMEET KAUR, J

AUGUST 11, 2016
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