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

+ LPA No.209/2016

% Date of decision : 27th April, 2017

GNCT OF DELHI Appellant
Through : Mr. B. Mahapatra, Adv.

versus

HARI KISHAN & ORS Respondents
Through : Mr. N.S. Vasisht and Ms.
Jyoti Kataria Bajaj, Advs.
for R-1 to 3.
Mr. Karan Sharma, Adv. for
DDA/R-5.

**CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE ANU MALHOTRA**

JUDGMENT (ORAL)

ACTING CHIEF JUSTICE

1. This appeal has been filed by the Government of NCT of Delhi challenging an order dated 6th August, 2015 whereby W.P.(C)No.3007/2014 was allowed. The writ petition was directed against a communication dated 29th January, 2014 which was issued by the Land and Building Department of the Government of NCT of Delhi rejecting the application of the respondents for allotment of an alternate plot against the land belonging to the

grandfather of the respondents which had been acquired. The rejection was premised on the ground that the allotment policy did not envisage consideration of the applications who claim their entitlement on the basis of a Will executed by an erstwhile land owner in their favour.

2. The Id. Single Judge found substance in the challenge and by the impugned order dated 6th August, 2015 granted the prayer of the applicants for consideration of the application made by them.

3. So far as the essential facts giving rise to the present appeal are concerned, it appears that the three respondents are grandson of one Late Hari Singh who was the recorded *Bhoomidar* of 1/4th share in land which was acquired by the Union of India under the Scheme titled as “*Large Scale Acquisition, Development and Disposal of Land in Delhi*” in the year 1961. It is undisputed that acquisition stands completed and possession of the subject land was also taken on 14th August, 2002. The award of the Land Acquisition Collector was passed on 23rd October, 2002.

4. It appears that Shri Hari Singh, grandfather of the respondents herein, on 27th February, 2003, executed a registered Will in their favour. About four months after the execution of the said Will, on or about 3rd of June 2003, Late Shri Hari Singh submitted an application to the appellants for allotment of an alternate plot under the Scheme being operated by them. The appellants obtained a report dated 13th August, 2004 from the Land Acquisition Collector as well.

5. The controversy arose thereafter when on the 22nd of April 2011, Shri Hari Singh expired.

6. The respondents herein fulfilled all requirements informed by the appellants regarding submission of additional documents including revenue records; affidavits etc. by their communication dated 23rd September, 2013. The death certificate of Shri Hari Singh as well as the registered Will dated 27th February, 2003 was also placed before the appellant's Recommendation Committee constituted by the appellants for scrutiny of the applications for alternate plots. The request of the respondents was considered in a meeting held on 1st of January 2014 by the Recommendation Committee who concluded that the application was to be rejected. On 29th January, 2014, this decision was communicated to the respondents.

7. The respondents contested the conclusion of the appellants and the rejection of their application on the plea that the scheme formulated by the appellants includes those who claimed a right based on a testament such as a Will. In this regard, reliance was placed on a Division Bench pronouncement of this court reported as **162 (2009) DLT 12 (DB), Dharam Pal & Anr. v. Delhi Administration & Anr.** The Id. Single Judge considered the rival contentions and concluded that the expression "*legal heirs*" in the scheme stood authoritatively considered and decided by the decision in **Dharam Pal** to mean and include those who are the beneficiaries under the testament such as a Will.

8. We note that there was no dispute at all with regard to the genuineness of the Will.

9. It was consequently observed that if the beneficiaries under the Will were to be excluded, the “*legal heirs*” of the deceased land owner would have to be considered for allotment of the alternate plot as per the scheme. In the case in hand, there is no dispute that the respondents are the grandsons of Late Shri Hari Singh and would form his legal heirs.

10. It was further been noted by the Id. Single Judge in the impugned order dated 6th August, 2015 that if land had been allotted to Late Shri Hari Singh in his life time, he would have been free to deal with it in any manner of his choice including vesting right, title and interest in the land so allotted by way of his Will and testament.

11. As held by the Id. Single Judge, we also find that the scheme does not empower the appellants to reject the application on the ground that legal heirs or other beneficiaries of the applicant do not require rehabilitation.

12. On a consideration of the matter, we are of the view that the above reasoning cannot be faulted on any legally tenable grounds. The Id. Single Judge has also carefully noted that the only right which enures in favour of the respondents was the right to be considered for allotment of the alternate plot. Consequently, by the impugned judgment dated 6th August, 2015, the Recommendation Committee has been directed to apply the provisions of the scheme with equal rigour to the present respondents, similar to the

treatment which would have been afforded to the original applicant i.e. Late Shri Hari Singh.

13. While concluding, the Id. Single Judge set aside the impugned communication dated 29th January, 2014 and directed the respondent nos.1 and 2 (the appellants herein) to revisit the issue for which purpose the respondents were directed to issue a notice to the petitioners (the respondents herein) indicating the date, time and venue at which they will have to present themselves.

14. We are informed by Id. counsel for the appellants that notice in terms of the said judgment dated 6th August, 2015 stands issued and the matter is pending consideration before the Recommendation Committee.

15. The respondents shall appear before the Recommendation Committee of the appellants at 11:00 am on the 11th of May, 2017 when they shall be given an opportunity of hearing.

16. In case, there is any objection to the application, the same shall be informed to the respondents and they shall be given an opportunity to make good any such objection by the respondents. The application of the respondents shall be decided by a speaking order which shall be passed within a period of one month thereafter and shall be communicated forthwith to the respondents.

17. In case, the respondents are aggrieved thereby, needless to say, the same would be amenable to challenge by the legal proceedings.

18. In view of the above, we find no merit in this appeal which is hereby dismissed with costs which are quantified at ₹25,000/- to be paid by the appellants to the respondents within a period of four weeks from today.

19. Dasti.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 27, 2017

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