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

+ W.P.(C) 8490/2017

OM PRAKASH & ANR Petitioners

Through: Mr Pratap Singh, Adv

versus

UNION OF INDIA & ANR Respondents

Through Mr.Yeeshu Jain and Ms.Jyoti Tyagi,
Advocates Land & Building Dept.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **22.09.2017**

Petitioner is aggrieved by the letter dated 02.01.2014 vide which the application of the petitioner seeking allotment of an alternate plot had been rejected. The rejection letter inform the petitioner that since the petitioner already had available land and his entire land not having been acquired his case could not be considered for allotment of an alternate plot. This was in view of the judgment of the Apex court reported as "*Delhi Administration vs. Jai Singh Kanwar*" (CA No.8289 of 2010) dated 14.09.2011.

Learned counsel for the petitioner at the outset submits that this ratio of the aforementioned judgment would not apply. His second submission is that there is a wrong finding returned in order dated 02.01.2014 that he still had a balance land of 5 bigha 2 biswas; what had remained with him was only 2 bighas of land which was the construction portion, his application could not have been rejected.

This court is of the view that all these submissions of the petitioner are ill founded.

In terms of judgment in Jai Singh Kanwar, the Apex Court had held that only those persons whose land has been acquired in its entirety would be entitled to an alternate plot; not those whose land still remains.

Relevant extract of para 6 of said judgment reads as under:

“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.”

This proposition of law as laid down by the Apex court clearly shows that where the land of the party has been acquired in its complete entirety i.e. the complete land; he can be considered for

allotment an alternate plot and not otherwise. Entire land of the petitioner has not been acquired. As per the record of the petitioner 5 bighas and 2 biswas of the land remained with the petitioner. As per the petitioner only 2 bighas of land remained with him. Be that as it may, land admittedly being in the possession of the petitioner his application for allotment of an alternate plot was rightly not considered in view of the ratio of judgment in Jai Singh Kanwar.

The second submission of the petitioner that 2 bighas of land which was left with him was constructed portion which could not be taken over by the Department and had necessarily to be left over is also incorrect for the reason that it is the clean case of the petitioner that upon this 2 bighas of land he has a constructed residential house. Even otherwise, in view of the object of the scheme of the allotment of an alternate plot, the petitioner's case could not be considered. The object of the scheme being only to entitle those persons for allotment of an alternate plot who had no other home or place to live i.e., those persons who have become completely homeless. Thus, the land of the petitioner not having been acquired in entirety, the impugned order dated 02.01.2014 suffers from no infirmity.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 22, 2017

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