

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

Date of Order: August 16, 2018

+ **W.P.(C) 4730/2018 & CMs 18166-67/2018**

FAHMIDA ANJUM

.....Petitioner

Through: Mr. Sandeep Bajaj, Mr. Soayib
Qureshi, Ms. Aakanksha Nehra,
Ms. Kritika Sachdeva and Ms.
Shourya Mittal, Advocates

Versus

GOVERNMENT OF NCT OF DELHI

.....Respondent

Through: Ms. Ruchika Rathi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner's application for allotment of alternate plot in lieu of acquired land, was recommended on 31st August, 2017 by the Recommending Committee to the Competent Authority. Impugned order of 28th February, 2018 (*Annexure P-1*) reveals that the Competent Authority/Committee has rejected petitioner's application for allotment of alternate plot on the ground that the property in question, i.e., two rooms, is owned by petitioner and is with the tenants, who are residing there.
2. To assail impugned order, learned counsel for petitioner has drawn attention of this Court to MCD record (*Annexure P-16 colly.*), to show that property No.4634 comprises of two rooms, but without a kitchen and so, it is submitted that these two rooms cannot be considered to be

house/dwelling unit. Reliance is placed upon Supreme Court's decision in *Nahalchand Laloochand Private Limited v. Panchali Cooperative Housing Society Limited*, (2010) 9 SCC 536 and a Division Bench decision of Punjab & Haryana High Court in *Ashok Syal v. Commissioner of Income Tax, Central Circle, Jalandhar*, [2012] 209TAXMAN376 to submit that the impugned order is liable to be set aside.

3. A perusal of MCD record reveals that in property No.4634, there are two rooms, bath/latrine and a verandah. It nowhere mentions that there is a kitchen with the abovesaid rooms. May be, tenants are residing in the said two rooms and their unauthorized occupancy in these rooms, according to petitioner's counsel, relates back to the year 1930. It is relevant to note that the dimension of these two rooms in the aforesaid property No.4634 is about 10 X 15 ft. only.

4. Supreme Court in *Nahalchand Laloochand (supra)* has reiterated that a self-contained premises must have basic amenities, like cooking, sanitary, washing, etc., and in the said decision, it stands concluded that a garage cannot be considered to be a dwelling unit. A Division Bench of Punjab & Haryana High Court in *Ashok Syal (supra)* has made it crystal clear that an abode/dwelling place is required to have minimum facilities, like kitchen, washroom, etc., and where such facilities, like kitchen, bathroom, etc., are not available, then it cannot be said to be a dwelling unit/house. I see no reason to take a different view than the one already taken, as referred to above. Since two rooms in the property No.4634 in question, do not have basic facility of kitchen, therefore, it cannot be considered to be a dwelling unit and so, rejection of petitioner's

application on the ground that petitioner is in possession of a house/dwelling unit, is not justified. Impugned order of 28th February, 2018 (*Annexure P-1*) is hereby set aside with direction to respondent to re-consider petitioner's application for allotment of alternate plot in lieu of acquired land, within a period of 12 weeks from today.

5. With aforesaid directions, this petition and the applications are disposed of.

Dasti.

AUGUST 16, 2018

s

**(SUNIL GAUR)
JUDGE**



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