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

+ **W.P.(C) 6856/2014 & CM No. 16180/2014**

ISHWAR CHAND SAINI & ORS

..... Petitioners

Through: Mr N. S. Vashisht and Mr Rakesh
Saini and Ms Jyoti Kataria Bajaj,
Advocates.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Ms Urvi Kuthiala with Ms Varinda
Kapoor, Advocates for R-3/DDA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 23.06.2014 (hereafter 'the impugned order') passed by the Deputy Secretary (ALT), Land & Building Department, Government of NCT of Delhi, whereby the petitioners' application for an alternate plot in lieu of certain acquisition of certain lands, was rejected. The petitioners claim that that they are entitled for allotment of an alternative plot based on the right of their predecessor late Shri Durga Prasad.

2. The petitioners state that Shri Phoru Singh owned agricultural land bearing Khasra No.24/5, 25/1, 24/26 & 51, measuring 25 bighas 07 biswas, situated in the Revenue Estate of Village Kureni, District North-West, Delhi

(hereafter 'the said land').

3. After the demise of Shri Phoru Singh, the said land was mutated in the name of his sons, Shri Durga Prasad and Shri Panna Lal, on 26.01.1959.

4. On 30.10.1963, a Notification under Section 4 of the Land Acquisition Act, 1894 was issued, *inter alia*, for acquisition of the said land for the planned development of Delhi. This was followed by a declaration under Section 6 of the said Act, which was issued on 16.01.1969. The award of compensation in respect of the said land was rendered on 19.09.1986 and the possession of the said land was taken on 23.09.1986.

5. It is stated that Shri Durga Prasad expired on 28.02.1982 and Shri Panna Lal died on 13.04.1972. After the demise of Shri Durga Prasad and Shri Panna Lal, and while the acquisition proceedings were pending, the said land was mutated in the name of Shri Om Prakash, Shri Balbir Singh, Shri Hari Singh and Shri Ishwar Chand (petitioner no.1).

6. Shri Lalit Chaudhary and Shri nitin Chaudhary are sons of Late Shri Balbir Singh and Shri Dinesh Saini is the son of Late Prem Lata Saini, the widow of Late Shri Om Prakash.

7. Shri Balbir Singh, Shri Ishwar Chand and Smt. Prem Lata Saini (hereafter 'the applicants') made an application dated 28.09.1998 for allotment of a residential plot under a scheme referred to a "Large Scale Acquisition, Development & Disposal of Land in Delhi, 1961" (hereafter 'the Scheme')

8. The said application was rejected by the Recommendation Committee

in its meeting held on 25.04.2014 on the ground that the said applicants had a share in urbanized property bearing no.2470, Chatta Jam Beg, Darya Ganj, New Delhi. This was communicated to Shri Balbir Singh (since deceased) by the impugned order.

9. It is the case of the petitioners that the entitlement of the applicants for an alternate residential plot is to be considered on the basis of the entitlement of their predecessors – late Shri Durga Prasad and Shri Panna Lal. The said contention is not disputed; on the contrary, it is common ground that the question whether the applicants (and consequently the petitioners) would be entitled to a residential plot would have to be examined on the basis of the eligibility of Shri Durga Prasad and Shri Panna Lal for such allotment. This is so because on 30.10.1963 – the date of the notification under section 4 of the Land Acquisition Act, 1894 – they were the recorded owners of the said land.

10. The learned counsel appearing for the respondents has also referred to the decision of the Supreme Court in the case of ***Union of India v. Shri Shivkumar Bhargava & Ors.: JT 1995 (6) S.C.274*** wherein the Supreme Court had clearly explained that the right to seek alternative land would accrue to the person who was the owner of the land on the date when the same was acquired. The relevant extract of the said decision is set out below:-

“4. The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition, and he alone will be entitled to allotment of alternative site. A person who

purchases land subsequent to the Notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had but, he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which Notification under s. 4(1) was published. This was the view of this Court in another case while considering the Full Bench Judgment of the Delhi High Court.”

11. Thus, the question whether the applicants (and consequently the petitioners) are entitled to an alternate plot, in terms of the Scheme is dependent on whether late Shri Durga Prasad and Shri Panna Lal were entitled to an alternative plot of residential land in lieu of acquisition of said the land.

12. The learned counsel appearing for the respondents has drawn the attention of this Court to a copy of the Will of Late Shri Durga Prasad, wherein he has declared that he is the absolute owner of house no. 2470, Chatta Jam Beg, Darya Ganj, New Delhi. In terms of clause 10 of the Scheme, a person owning any residential property in Delhi would be ineligible for an alternate plot under the Scheme.

13. The relevant extract of the scheme framed for providing alternative property reads as under:-

“(10)(a) No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children own a house or residential plot of land in Delhi, New Delhi or Cantonment.”

14. Since Shri Durga Prasad was not entitled to an alternate plot in terms of the Scheme, the question of the petitioners acquiring any right for an alternate plot, through him does not arise.

15. At this stage, Mr Vashisht, the learned counsel appearing for the petitioners submits that the petitioners have not examined the question whether Shri Durga Prasad was entitled to an alternative plot in terms of the Scheme.

16. In view of the above, this Court finds no ground to interfere with the impugned order. However, since the petitioners state that they have not examined whether Late Shri Durga Prasad was entitled to an alternate plot, this Court considers it apposite to observe that the petitioners would be at liberty to pursue with the concerned authorities, if they are able to establish that Late Shri Durga Prasad did not own any residential property at the material time or notwithstanding the same was entitled to an alternate plot in terms of the Scheme.

17. The petition is disposed of with the above observations. The pending application also stands disposed of.

VIBHU BAKHRU, J

FEBRUARY 13, 2018
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