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

+ **W.P.(C) 6192/2017 and CM No. 25760/2017**

LAND & BUILDING DEPARTMENT

..... Petitioner

Through: Mr Sanjay Kumar Pathak, Mrs K. Kaomudi Kiran Pathak, Mr Sunil Kumar Jha and Mr Kushal Raj Tater, Advocates.

versus

PREM CHAND

..... Respondent

Through: Mr Sanjay Sharawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the orders dated 28.05.2015, 16.03.2016, 22.04.2016 and 06.07.2016 passed by the Central Information Commission (hereafter 'the CIC') in Second Appeal No. CIC/SA/A/2015/000037 preferred by the respondent under Section 19 (3) of the Right to Information Act, 2005 (hereafter 'the RTI Act'). By the order dated 28.05.2015, the CIC had called upon the Public Information Officer (PIO) of the petitioner to show cause why the maximum penalty under the RTI Act should not be imposed. The PIO was further called upon to also show cause why suitable compensation should not be provided to the respondent.

2. Although, certain observations have been made in the order dated

16.03.2016; however, the operative part of the said order is in the nature of a notice to show cause why the action proposed by the CIC not be taken. By the order dated 22.04.2016, the CIC granted time to the Ministry of Home Affairs “to have a comprehensive consideration of the serious problem of keeping up the promise/condition of the agreement that the State would pay compensation and provide alternative plot at a rate to those whose land were acquired”. This order also cannot be construed as determinative of the controversy involved. In view of the above, it is not necessary to consider the petitioner’s challenge to the aforesaid orders considering that the petitioner’s appeal was finally disposed of by the order dated 06.07.2016 (hereafter referred to as ‘the impugned order’).

3. The learned counsel appearing for the petitioner has also advanced contentions focused on the directions issued in the impugned order.

4. The directions issued by the CIC are set out in paragraph 51 of the impugned order, which reads as under:-

“Hence for the reasons detailed above, the Commission directs the public authority, within one month from the date of receipt of this order, to-

- a) Pay Mr Prem Chand Rs. 50,000 as compensation for the “loss” under Section 19(8)(b) of RTI Act,
- b) Provide for the ‘other detriment’ (second phrase in S. 19(8)(b) by paying value of the land as compensation and other entitlements prescribed in the Act of 2013, for acquiring his plot,
- c) Conduct inquiry into ‘missing file’, and recommend disciplinary action on officers found guilty of missing file as

explained in paragraphs 37 & 38 above,

- d) Search for missing file, if not available adopt all possible alternatives including reconstruction and provide certified copies of entire record.”

5. The present petition was moved on 24.07.2017 and this Court had observed that insofar as the directions to conduct inquiry into the missing files is concerned, no orders are called for as it is the duty of the petitioner to ensure that all the files are traced and to take such appropriate steps as may be necessary. The notice in the present petition was limited to the directions contained in Paragraph 51(a) and (b) of the impugned order.

6. The controversy involved in the present petition relates to the respondent's request for obtaining an alternative plot of land/compensation for his land stated to have been acquired by GNCTD/DDA.

7. The respondent claims that on 04.01.1972 he purchased a plot of land measuring 200 sq. yards in Khasra No. 56-64 in Sarai Papal Thala, Mahindra Park, Delhi (hereafter 'the said property'). The sale deed in regard to the said property was executed on 04.01.1972 and registered with the Sub Registrar, Delhi (bearing no. 3618 dated 05.04.1972). He also claims that he had constructed one room and boundary walls in May, 1975.

8. The petitioner claims that the said property was acquired by Government of GNCTD and DDA to establish a residential colony called Jahangir Puri. The respondent states that he had applied for an alternative plot/compensation by an application dated 24.07.1978, which was duly received by the petitioner. He states that he received a letter dated 11.02.1980 by the Housing Commissioner (RR) in response to this

application directing him to produce the original documents of ownership of the said property in his office on 18.03.1980 at 2.00 p.m. The respondent claims that he complied with the said requirement and produced the original documents at the prescribed time and venue. It is not relevant to set out the complete details of events in regard to the respondent's endeavours to obtain an alternate plot or compensation for the same. However, it is sufficient to state that it does appear from the averments made by the respondent that he had approached the authorities several times and was directed by one authority to another without any satisfactory resolution of his claim.

9. The respondent filed an application under the RTI Act, on 02.02.2014, seeking information in relation to his application for allotment of an alternate plot in lieu of acquisition of the respondent's property. Since the respondent did not receive any satisfactory response to the information sought, he filed an appeal before the First Appellate Authority (FAA) on 23.06.2014. The said appeal was disposed of by an order dated 09.07.2014 by advising the respondent to check the list on the website of the department and to furnish the seniority number so that the case could be considered on the basis of seniority.

10. Since the information sought for by the respondent was not available on the website, the respondent preferred a second appeal before the CIC (CIC/SA/A/2014/001212). The second appeal was allowed by an order dated 09.03.2015 and the PIO of the petitioner was directed to provide the information as sought for by the respondent as per his application after verifying the same within one month of the receipt of the order.

11. The said order has attained finality and the petitioner has not challenged the same.

12. It is stated on behalf of the respondent that despite the orders of the CIC, he has not received the necessary information as yet. In the meanwhile, prior to passing of the CIC's order, the respondent filed another application on 01.09.2014 under the RTI Act, *inter alia*, seeking inspection of certain files. The said application reads as under:-

“PIO, Land and Building Department,
Govt. of NCTD of Delhi,
“C” Block Vikash Bhawan (RTI) Branch,
New Delhi.

Reg: Information under RTI Act, 2005; request for Inspection
of files.

Dear Sir,

Brief History: I am owner of and was in possession of Plot no. M-5 bearing Khasra no. 56 and 64, measuring 200 Sq. Yards, situated in village Sarai Pipal thala, Mohindra Park Delhi. The said plot was acquired by Govt. Of NCT Delhi and DDA to establish a residential colony known as jhangir Puri. I applied for an alternate plot/compensation on 24.07.1978, completed all formalities and produced all the documents on 18.03.1980 as desired by the authorities but my claim has not been settled so far. In this context I want to inspect the following files:

1. File no. F-39(91)/350/78 L&B/RR, a copy of correspondence letter bearing the said file number is enclosed for ready reference.

2. File in which letter no. 100(5) 200/RN/408/4499 dated 06.03.2000 of OSD to LG has been dealt by the L&B Department which was forwarded to your Department vide DDA letter dated 10.04.2000 (Copy enclosed).

In this regard please find enclosed Postal order No. Dated for Rs.10/-

Thanking you.”

13. The respondent states that he did not receive any response to the said application within the prescribed time and, therefore, he filed an appeal before the First Appellate Authority (FAA) on 07.11.2014. The respondent was afforded an opportunity of being heard by the FAA and his appeal was disposed of by an order dated 01.12.2014. In the said order, the FAA, observed that as per the existing guidelines only those applicants whose minimum one bigha land has been acquired, become eligible for alternative plots and, therefore, *prima facie*, the respondent was not eligible for an alternate plot. In regard to the compensation for the property acquired, the FAA directed that a copy of the order be served on ADM (LAC) North with a request to furnish the requisite information to the appellant as per the Land Acquisition Act, 1894.

14. It is relevant to note that the order dated 01.12.2014 passed by the FAA did not mention the petitioner's request for inspection of the specified files.

15. Aggrieved by the order dated 01.12.2014, the respondent preferred a Second Appeal under Section 19(3) of the Act before the CIC

(CIC/SA/A/2015/000037). This appeal was disposed of by the impugned order.

16. Mr Sanjay Kumar, the learned counsel appearing for the petitioner advanced contentions on two fronts. First, he contended that the procedure adopted by the CIC was flawed. He stated that the second appeal preferred by the respondent had been disposed of by an order dated 09.03.2015 and, therefore, the CIC had no jurisdiction to *suo moto* take up the matter once again. Second, he contended that the compensation awarded by the CIC was wholly without jurisdiction.

17. Mr Sharawat, the learned counsel appearing for the respondent readily conceded that directions as contained in paragraph 51(b) of the impugned order directing that respondent be paid compensation equivalent to the value of the said property was not sustainable. Clearly, the direction to the petitioner to pay compensation equivalent to the value of the land is unsustainable. The right of the respondent to receive compensation for the property stated to have been acquired has not been established and, in any event, the CIC has no jurisdiction to award the same.

18. Insofar as the petitioner's contention that the CIC had no jurisdiction to reopen the matter is concerned; it rests on an erroneous assumption and is, therefore, flawed. The respondent's second appeal, which was disposed of by an order dated 09.03.2015 was a separate appeal, which arose from the order dated 09.07.2014 passed by the FAA. The second appeal disposed of by the impugned order arose from the FAA's order dated 01.12.2014, which is related to the respondent's application dated 01.09.2014.

19. Apparently, the show cause notice issued to the petitioner by the CIC referred to the date of the respondent's application as 21.02.2014 and the date of the first appeal as 23.06.2014. The learned counsel appearing for the petitioner contended that in view of the same, the petitioner had assumed that the said notice pertains to the second appeal bearing no. CIC /SA/A/2014/001212. The said contention is unmerited. Although, the notice mentioned incorrect particulars of the application and the FAA's order, the impugned order clearly indicates that the respondent had filed a second application under the Act seeking inspection of the specified files. As stated above, the same was subject matter of appeal before the FAA, which was disposed of by an order dated 01.12.2014. The above facts were clearly within the knowledge of the petitioner; however, the petitioner has proceeded on the basis that the respondent had not filed the first appeal under Section 19 of the RTI Act in respect of the application dated 01.09.2014 and had approached the CIC directly. The contention that the CIC had no jurisdiction to directly entertain the second appeal is based on an erroneous assumption that the respondent had not filed the first appeal. The said contention is thus rejected.

20. Insofar as the direction to pay compensation of ₹50,000/- is concerned, the undisputed facts are that the respondent has been repeatedly approaching the authorities but has not been provided the information that he is seeking. The inspection of the relevant files had not been provided to him as the said files appear to have been misplaced/lost. In this view, this Court is not inclined to interfere with the directions to award a compensation of ₹50,000. This Court considers the same to be reasonable considering that

the respondent is an aged person and has had to approach the CIC twice by way of second appeals. Concededly, the respondent has not been provided the inspection of the relevant files as sought by him.

21. The petition and the pending application are, accordingly, disposed of by setting aside the impugned order to the extent that it directs payment of compensation equivalent to the value of land claimed to be acquired by GNCTD/DDA.

FEBRUARY 08, 2018

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VIBHU BAKHRU, J



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