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

+ **Date of Decision: 25.03.2019**

% **W.P.(C) 11856/2015**

SHRI INDERJEET SINGH Petitioner
Through Mr. I.S. Dahiya, Advocate.

versus

GOVT. OF NCT OF DELHI Respondent
Through Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. By the instant writ petition, the petitioner, in effect, seeks issuance of a writ of certiorari to quash the communication No.F.33 (64)/06/2004/L&B/Alt./6857 dated 07.07.2015 issued by the respondents, whereby, an application made by the petitioner for his substitution in place of the original recorded owner Smt. Surinder Kaur, seeking an alternative plot in lieu of the acquired land, was rejected.
2. To cut short the factual conspectus, which gave rise to the filing of the instant writ petition, advertance to the impugned communication would substantially serve the purpose, which is, as under:-

“(Snty. No.2291)
GOVT. OF NCT OF DELHI
LAND & BUILDING DEPARTMENT
(ALTERNATIVE BRANCH)
VIKAS BHAWAN, IP ESTATE, NEW DELHI-02

No.F.33(64)/06/2004/L&B/Alt./6857

Dated: 07/07/2015

To,

Shri Inderjeet Singh
S/o Shri Kartar Singh
R/o H.No.43, Krishna Cloth Market
Chandni Chwok, Delhi-06.

Sub: Allotment of alternative plot in lieu of acquired land – reg.

Sir,

With reference to the above-mentioned subject, I am directed to inform you that your case for allotment of alternative plot in lieu of acquired land has been placed before the meeting of Recommendation Committee held on 10.04.2015 and the letter dated 07.04.2015 of the applicant's nephew was considered vide which he requested for grant of one month's time to produce the requisite documents as the applicant Smt. Surinder Kaur has been expired on 01.01.2013. He further requested to substitute his name as legal heir on the basis of will. As per policy the will cannot be considered. Since the policy is meant for rehabilitation and the case does not cover under the policy, hence REJECTED.

Yours faithfully,

Sd/-

Dy. Secretary (Alt.)”

The impugned communication by itself reveals that the application for alternative plot made by the petitioner was rejected on the sole ground that as per the policy of the respondents, the substitution sought by the petitioner on the basis of the Will was not permissible.

3. It emerges from the record, especially para 4 of the counter-affidavit, Ms. Surinder Kaur, the original recorded owner, by herself had made an application for alternative plot and after her death, the petitioner sought to be substituted, being the beneficiary under the Will, purportedly, executed by her. The impugned order however does not advert to the merits of the application, but, for the application being rejected technically on the premise that the petitioner could not seek substitution on the basis of the Will as per the extant policy of the respondent. As regards such stance taken by the respondent, Mr. Dahiya, learned counsel for the petitioner has placed reliance upon ***Dharam Pal & Anr. vs. Delhi Administration & Anr.***, 162 (2009) DLT 12 (DB) and strenuously contends that in a case where the recorded owner had died after notification under Section 4 of the Land Acquisition Act, a person acquiring rights of such person ought to have been considered. Relevant to the subject in hand observations made in the case of ***Dharam Pal*** (supra) are as under:-

“14. Here, in this case, the relevant provisions under the Scheme state that if the Recorded Owner of the land acquired dies after the issuance of the Notification under Section 4 of the Land Acquisition Act, 1894, “all legal heirs are entitled to one plot of the size to which the deceased would have been entitled”. Since the expression, “legal heirs” has not been statutorily defined anywhere and has also not been explained or defined in the Scheme of allotment and in view of the aforesaid meanings accorded to this expression by Black’s Law Dictionary, 6th Edition, specially the fact that the expression, “heirs” is frequently used in a popular sense to designate a successor to property either by a Will or by law, we consider it necessary to examine the scope and intent of the aforesaid re-habilitation

Scheme to decide whether the expression, "legal heir" should be construed in the restricted sense of the English common law to mean persons who would be entitled to succeed to the property of an intestate or whether the term has been used in a more popular sense to also designate a successor to property by Will as defined by Black's Law Dictionary (supra). In the re-habilitation Scheme, a limited right to be considered for the grant of alternative plot has been granted to those whose lands have been acquired under, "Large Scale Development and Disposal of Land in Delhi" provided they satisfy the various requirements mentioned in the Scheme (see Ramanand vs. Union of India AIR 1994 Delhi 29). A perusal of the Scheme would show that it contemplates a large number of cases and situations under which the allotment of an alternative plot may be recommended. In particular, paragraph "C" titled "Other Cases" is relevant for our purpose. It states as follows:-

"1. When the recorded owner of the land acquired dies before notification u/s 4 of L.A. Act, allotment is to be made separately to all the legal heirs of the deceased, according to their shares recognized by the LAC, but if he dies after the notification u/s 4 of L.A. Act, all legal heirs are entitled to one plot of the size to which the deceased would have been entitled."

This shows that if the Recorded Owner happened to die before the date of Notification under Section 4 of the Land Acquisition Act, 1894, allotment is to be made to all the legal heirs of the deceased according to their shares. However, if the Recorded Owner dies after the issuance of Notification, then also, all his legal heirs are together entitled to allotment of one plot of the size to which the deceased would have been entitled. At the same time, from a reading of the Scheme, it is clear that once the eligibility conditions are satisfied, the Recorded Owner

of the land which is being acquired is entitled to consideration for allotment of an alternative plot. It goes without saying that any alternative plot, that is so allotted to the Recorded Owner would become his absolute property and he would be within his rights to dispose of the same in any way including by Will. That being so, the intention of the framers of the Scheme could only have been to allot such an alternative plot in lieu of property acquired, as further recompense, with a view to re-habilitating the person who was divested of his property by the Government. If that be so, we can see no logic or reason, and in fact none is given in the Scheme, or addressed at the bar, to conclude that the Government intended to limit the disposing power of the person entitled to be considered for allotment and make this entitlement available only to those heirs of the Recorded Owner who would succeed by intestate succession whilst excluding any heir who succeeds under a Will. Such an interpretation, to our mind, does not conform to the scope and intent of the Scheme. Admittedly, if the allotment in fact was made during the life time of the Recorded Owner, that plot of land could have been validly bequeathed by him through Will, failing which, ownership thereof would devolve through intestate succession. At the same time, it is not as if the right to be considered for alternative allotment will vanish in case the Recorded Owner dies either before or after the Notification under Section 4 of the Land Acquisition Act, 1894. The Scheme itself contemplates that in such a case, his legal heirs will be entitled to the same. Therefore, even if it is assumed for a moment that Harphool had no children, his entitlement would not vanish into thin air. In such a case, his entitlement would pass on to the other heirs specified in class II under the Schedule to the Hindu Succession Act, 1956. In other words, if the heirs claiming under a Will are to be excluded, the allotment would still go to the heirs of the deceased under the law pertaining to intestate succession. This is

indubitably contemplated by the Scheme itself. Under the circumstances, to our mind, it would be illogical to restrict the scope and meaning of the expression "legal heir" used in the aforesaid portion of the Scheme, to only those heirs who would succeed to the estate of the deceased in the case of intestate succession. There is nothing in the scope or object of the Scheme that would persuade us to apply such a narrow construction in this case. It is not as if the Scheme enables the government to save the plot of land that would have gone to Harphool had he lived. In case Harphool had died intestate, his class I legal heirs, if any, would have been entitled to the land. If he had no class I legal heirs, it would have gone to the next in line in terms of the Schedule as aforesaid. The possibility of the entire line of succession set down in the Schedule failing, and the property then reverting to the State, is really too remote to be considered as a relevant consideration that may have weighed with the framers of the Scheme to restrict the devolution to intestate succession only by knowingly using the expression "legal heirs" in a restricted sense. Under the circumstances, to hold that the Scheme did not have within its contemplation testamentary succession, is illogical."

4. In view of the foregoing observations, rejection of the application on the limited ground that Will cannot be considered, is not sustainable. It therefore, follows that substitution sought by the petitioner is required to be considered on its own merits on consideration of the respective pleas of the parties, which may include the question of genuineness of the Will, propounded by the petitioner.

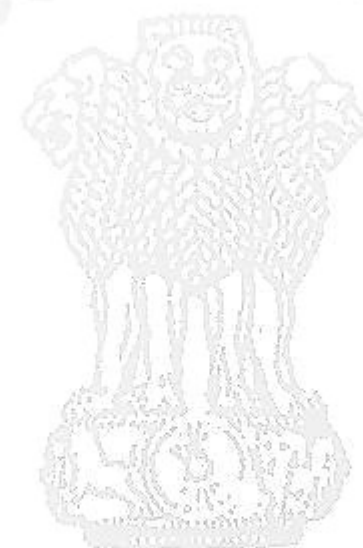
5. In view of the foregoing, the impugned communication No.F.33 (64)/06/2004/L&B/Alt./6857 dated 07.07.2015 is quashed and the matter is

remanded back to the Recommendation Committee of alternative plots for fresh consideration of the application made by Ms. Surender Kaur on its own merits in view of the foregoing observations. If desired, the petitioner would also be given a personal hearing. Since, the matter relates to the acquisition way back in the year 2003, it is expected of the Recommendation Committee to dispose of the application, preferably, within four months from today. The writ petition stands disposed of accordingly.

A.K.CHAWLA, J.

MARCH 25, 2019

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