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

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Date of decision 15.01.2020

+ W.P.(C) 3245/2018

SH. MAHAVIR

..... Petitioner

Through: Mr. L.B.Rai & Mr. Kartik Rai,
Advocates

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Yeeshu Jain Standing Counsel
with Mr. Jyoti Tyagi, Advocate
Mr. Abhimanyu Walia, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition is filed by the petitioner seeking appropriate writ order or direction for setting aside letter/order dated 16.11.2017 passed by the respondent No.1.
2. The case of the petitioner is that the petitioner was the recorded owner of 1/35th share of the agricultural land measuring 39 bigha and 9 biswa comprised in Kh. No. 45 (7-10), 847/46/4Min (17-07), 53Min (12-07), 213/1 (2-05) situated in Village Ghonda Gujran Khadar, Illaqa Shahdara, Delhi. It is stated that the land was acquired vide award dated 19.06.1992 and compensation was paid to the petitioner on 19.09.2016.
3. It is stated that petitioner had applied for allotment of an alternative plot in lieu of acquired land on 19.02.2008. On 16.11.2017, respondent

No.1 rejected the petitioner's application for allotment of an alternative plot in lieu of the acquired land. The said order/letter stated that the land of the petitioner has not been acquired in its entirety and therefore, in view of the judgment of the Hon'ble Supreme Court tilted ***Delhi Development Authority v. Jai Singh Kanwar & Ors.*** in CA N. 8289/2010 dated 14.09.2011, no alternative plot can be allotted to the petitioner.

4. I have heard learned counsel for the parties. The learned counsel for the petitioner has taken me through the applicable policy vide which the petitioner had applied for allotment of alternative plot. As per the said policy any person who owns any house, plot, etc. in urbanised area of Delhi becomes ineligible for allotment of alternative plot. He submits that the plot in question owned by the petitioner is in village abadi area and does not qualify as an urbanized area of Delhi.

5. The learned counsel for the petitioner has further pleaded that the judgment of the Hon'ble Supreme Court in *Delhi Development Authority v. Jai Singh Kanwar & Ors.,(supra)* would not be applicable to the facts of the case in terms of the policy. Therefore, the petitioner is entitled to alternative plot.

6. I may look at the policy in question which has been relied upon by the petitioner. The relevant para of the policy reads as under:-

“3. The applicant/recorded owner/his wife/husband and dependant relations (including unmarried children) should not own any house/plot/flat in the urbanized area of Delhi, New Delhi and Delhi Cantt. and neither they be members of any cooperative House Building/cooperative Group Housing Society.”

7. The learned counsel for the petitioner has also relied upon Section

2(52) of DMC Act, 1957 (*hereinafter referred to as DMC Act*) which reads as follows:-

“(52) “rural areas” means the areas of Delhi which immediately before the establishment of a Corporation are situated within the local limits of the District Board of Delhi established under the Punjab District Boards Act, 1883 (Punjab Act 20 of 1883), but shall not include such portion thereof as may, by virtue of a notification under Section 507, cease to be included in the rural areas as herein defined;”

1. The argument is that only such land which is notified under Section 507 of DMC Act would cease to be part of the rural areas and become an urban area. It is pleaded that the land of the petitioner situated in Village Abadi remains a Rural Area as there is no notification under Section 507 of the DMC Act.

2. Reference in this regard may be had to the judgment of the Hon'ble Supreme Court in the case of *Delhi Development Authority v. Jai Singh Kanwar & Ors.*, (*supra*). That was the case in which as per the policy a person who owned a house/residential plot/flat in village abadi would be ineligible for an alternative plot. Based on the said facts, the Supreme Court passed the following judgment:-

“5. We find that the High Court has not addressed the crucial and fundamental issue relating to eligibility. Under the scheme, only a land loser who did not own a house/residential plot/flat in his own name or in the name of his spouse or dependant relation, and who was not a member of any Co-operative Housing Society was entitled for allotment of plot. The relevant date for this purpose is the date of award, namely, 24.11.1969. Chhajju Singh did not make an application under the said scheme even though he was alive till 1976. Among his six sons, only one son made an application on 04.12.1985 sixteen years after the award.

6. 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. This 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 not 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.”

3. The Division Bench of this Court in the case of ***Ranjeet Singh v. Government of NCT of Delhi & Anr.*** in LPA 173/2017 dated 27.09.2017 also dealt with identical facts. The Court has held as follows:-

“19. It is also argued that the respondents have sought to place an extremely restricted interpretation on the scheme, which is beneficial as regards the dispossessed landowners and has to be construed as a benevolent provision. Counsel submitted that though the appellants, as erstwhile landowners cannot claim a vested right to allotment of alternative plots in view of the decisions of this Court, they have a right to fair consideration of their applications in accordance with the terms of the scheme, which has not been done.

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24. As far as the first contention is concerned, that the

executive's interpretation that the landowner should not be left with any lands at all is contrary to the letter of the scheme, this Court is unpersuaded by the argument. The object of the scheme clearly stipulates that it is to provide alternative plots to "*farmers whose lands are acquired*". To take the logic of the appellants, conceivably, one individual may own land in four different parts of Delhi, in three different villages. To say that if portions of land in two villages, affecting two pieces of such landholding are acquired, he would still answer the description of a *farmer whose lands are acquired* would be stretching the meaning and intent of the scheme. The broad understanding of the authorities and officials of the Govt. of NCT of Delhi, who considered Jai Singh Kanwar (supra) and granted or allowed applications only where no lands were left at all, with the land owners, is, from this perspective, wholly reasonable. The object, as we understand, of the scheme is not to provide all landowners whose lands are acquired but only to extend benefit to those who lost all their landholdings due to acquisition.

25. The above reasoning can be illustrated by facts in a few cases, which are disposed of by this judgment. In LPA 375/2017 Chhanga Singh, the appellant owned 100 bighas in village Kureni, Narela. Lands were notified for acquisition in 1963 and for which the award was made on 19.09.1986. The appellant's application for alternative plot was rejected on the ground that 71-11 bighas was not acquired. Again, in LPA Nos. 619/2017, 629/2017; 631/2017; 637/2017; 643/2017 and 650/2017, the appellants land in Village Nangli, Razapur were acquired by Award No.16/92-93 dated 19.06.1992. Their applications were rejected on the ground that of 1749.02 bigha owned by them 881.04 bigha had been acquired and the balance 868.13 bigha had not been acquired. These facts and the reason given for declining to allot an alternative plot, are premised on the broad view that such applicants cannot be said to answer the description of "land losers" who are entirely deprived of any holding. The impugned orders cannot be faulted, on this score.

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54. It is clear from the above facts that in each appeal, the committee applied the same criteria consistently, i.e. whether any applicant was entirely displaced by acquisition proceeding. The adoption of this interpretation is, in our opinion, a fair one, given the limitations that executive agencies would undoubtedly face in dealing with a vast multitude of claims. Even the appeals before this Court have shown that several claimants, mostly co-sharers or joint owners invariably make separate claims. These naturally need to be analyzed. If in fact the respondents were to accede to each request (including the demands of each co-sharer) it is doubtful whether all developed lands would be sufficient to meet the demands. Here again, the Court notices that the scheme contains guidance (“Where, as a result of clubbing of the shares of nearest blood relations, the area of the acquired land comes to 150 sq. yds. or more, allotment of one plot can be made in their joint names.”) Yet, in most cases, clubbing does not appear to be resorted to by co-owners who seem to approach through different applications.

55. The Court notices that the appellants’ argument that ownership of land or residential property in the village or extended abadi is not to be construed as a bar is, no doubt, justified. Yet, the fact that a dispossessed land owner has ownership or possession of a residence in the village, *ipso facto*, cannot entitle him or her to make an enforceable claim for allotment of alternative plot. Particularly when the left over lands with appellants are urbanized ones.”

4. In my opinion, paragraph 55 of the aforesaid judgment is clearly applicable to the facts of the present case. The Division Bench has clearly stated that if a dispossessed land owner has ownership or possession of a residence in the village, *ipso facto*, cannot entitle him or her to make an enforceable claim for allotment of alternative plot.

5. The object of the scheme was to provide alternative plots to the

farmers whose full land was acquired. The object was not to provide an alternative land to the owners whose land is acquired in part due to acquisition proceedings. Consequently, in view of the judgment of the Division Bench of this Court, the petitioner is ineligible for allotment of alternative plot.

6. Apart from above, in my opinion, as per the policy the petitioner is not entitled to allotment of an alternative plot. The policy states that the owner of the acquired land and his dependent relations should not own a plot in the urbanised area.

7. The word “urbanized area” has been defined as per common English usage to mean the area has become like a city or has acquired characteristic of a city. Therefore, the “urbanised area” would include a property in the village Abadi land also.

8. The insistence of the petitioner to apply DMC Act for interpreting the term “urbanized area” in respect to the said policy is misplaced.

9. It is an admitted fact that the petitioner owns a plot in the village abadi area. Hence, the petitioner clearly fails to satisfy the conditions of the policy for allotment of an alternative land.

10. There is no merit in the petition. The same is dismissed. The pending applications, if any are also dismissed.

JAYANT NATH, J

JANUARY 15, 2020/hk