

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

+ **RSA No. 11/2008 & CM No.700/2008**

Date of Decision: April 28, 2010

JAMALUDDIN Appellant

Through: Mr.Bahar-U-Barqi, Advocate.

versus

MOHD. USMAN (NOW DECEASED & ORS. Respondents

Through: Ms.Suparna Srivastava,
Standing Counsel for MCD.
Mr.O.P.Saxena, Advocate.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) Whether reporters of local paper may be allowed to see the judgment? | |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

RSA No. 11/2008

1. Appellant (plaintiff) filed a suit for declaration and mandatory injunction seeking a decree for declaration against the respondent that he is entitled to a plot of 80 square yards in Light Industrial-cum-Commercial Complex, Shahjada Bagh, Delhi at pre-determined rate.

2. In brief, case of the appellant is that he was residing in property No.3359/VIII, Turkman Gate, Fatak Telian, Delhi and was using the property for commercial-cum-residential purposes. He was running the business of kerosene oil. Said property was demolished in April, 1976 and appellant was issued demolition slip No.9119 dated 16th April, 1976. He was also issued possession slip bearing No.8829 dated 8th July, 1976. He was allotted an alternative plot of 12 ½ square yards bearing No.41, Block No.16, Trilokpuri. Since the same was not suitable for his business, he did not accept it nor took possession of the said plot. Appellant made representation to the respondent requesting it to allot an alternative plot at Shahzada Bagh or Mayapuri Industrial Area or built-up shop at Turkman Gate. However, his request was declined by the respondent on 5th October, 1992. This resulted into issuance of a notice dated 7th December, 1992 by the appellant under sections 477/478 of DMC Act. Respondent department raised preliminary objection to the maintainability of the suit and also averred that appellant was allotted plot No.41, Trilokpuri, which he then transferred to Mohd. Salim against terms of allotment. Representation of the appellant for allotment of a shop at Turkman Gate was rejected thrice by the Allotment Committee and therefore, he was not entitled to any alternative plot as claimed.

3. Appellant lost his suit in the Trial Court. He also lost his

appeal in the First Appellate Court. Hence, this appeal suggesting some substantial questions of law to be formulated.

4. It is a common case of the parties that in lieu of residential accommodation he was allotted accommodation in J.J. Colony, Trilokpuri. Appellant was issued possession slip for commercial plot at Trilokpuri. However, appellant refused to take possession of the said plot on the plea that the plot was not suitable for his business and he was not interested in the said allotment. Allotment given to the appellant was never cancelled. On these admitted facts and after analyzing other evidence on record, while disposing of issues No. 2 and 3, in its judgment dated 21st February, 1998 Trial Court observed:-

“.....Perusal of the various documents would show that the plaintiff have been issued possession slip in respect of the plot at Trilok Puri. PW1 has stated that the said slip was handed over at site by the deft to the plaintiff and not in office. In his cross examination he has stated that the plaintiff at any point of time come to their office to complaint that the plot in question was not vacant. I have gone through the various representations made by the plaintiff to the defenant at various points of time, in all the representations the plaintiff has only asked for allotment of shop at Turkman Gate. He has not stated anywhere that he was not allotted plot or that the plot was not vacant. On the contrary the

plaintiff has himself given an affidavit before the deft Ex. Pw3/a and also the affidavit of Md. Saleem is on record. The plaintiff has clearly expressed his desire to handover the plot in question to DDA as he does not benefit by getting the said plot in any manner.

I have also considered the copy of the judgement of our own High Court in the case of Imamuuddin vs. UOI reported in 1997 Vol. 45, DLT Page: 510 wherein the High Court has dismissed the petition of the brother of the plaintiff on almost similar grounds. Perusal of the guidelines would show that the case of the plaintiff is not covered in the said guidelines. Even otherwise the allotment committee has found that the plaintiff is not eligible for the allotment of the built up shop at Turkman Gate, Shahjadabagh etc.

Plaintiff has failed to show any breach of legal obligation by the defendant in any manner. This issue is hereby decided against the plaintiff and I hold that the plaintiff is not entitled to any plot of 80 sq. yards area as he has been allotted already plot at Trilokpuri in respect of which he has been issued possession slip by the defendant. Further he is not entitled to any relief of declaration and injunction as asked for in the plaint.”

5. It is pertinent that Imamuuddin, brother of the appellant had also filed a writ, which was dismissed. Facts and circumstances of both the cases are similar; rather identical. Appellant and his brother Imammudin were residing in the same property, which was demolished and a common

demolition slip was issued to both the brothers. Besides, a possession slip bearing No.656 dated 29th May, 1976 was also issued to Imammudin. He did not take possession of the allotted shop at Trilokpuri, with the result, allotment made in his favour was cancelled. Trial Court took into consideration Imamuddin's case, reported in 1997, volume 45 DLT Page 510.

6. Appellate Court reassessed the entire evidence of the parties and found no infirmity and illegality in the judgment and decree of the Trial Court.

7. Learned counsel for the appellant submitted that appellant was entitled to relaxed guidelines and was, therefore, entitled for allotment of an alternative plot measuring 80 square yard. While disposing of Imamuddin's case, Division Bench of this Court also considered a similar plea raised by Imamuddin and concluded that petitioner was not covered under the relaxed guidelines of 1991. The relaxed guidelines were issued only for those cases where the allotted plot was not available for occupation by an evictee because of re-allotment thereof by the Department to some other person.

8. In the present case, plot No. 41, Block No.16, Trilokpuri was allotted to the appellant, but he did not occupy the same and failed to pay

the license fee.

9. As discussed above, appellant himself had decided not to accept the allotment of the said plot on the plea that it was too small for his business.

10. Appellate Court in paras 12 and 14 of its impugned judgment observed:-

“12. The question of applicability of relaxed guidelines is no more rest integra in view of decision of Hon’ble High Court in Immamuddin (supra). It was held in the said case that the relaxed guidelines were applicable to those cases only where the allotted plot was not available for occupation by an evictee because of re allotment thereof by the department to some other person. Due to failure of the allottee to occupy allotted plot and paying the license fee resulted in cancellation. “In that case the petitioner had admitted that he himself did not accept the allotment of alternative plot no. 27/56 Trilok puri as the same was too small for his business. In the instant case the appellant has admitted that he did not like the allotment of alternative plot no.41 as the same was too small.

14. The real dispute is whether possession of the alternative site slip was issued or actual physical possession was also handed over to the plaintiff. To my mind there is no difference between handing over possession slip and

giving of physical possession. The purpose of handing over slip is to enable the allottee to take the physical possession. If the allottee himself refuses to take the physical possession, the MCD can not be blamed for it. This what has happened in the present case.”

11. Under these circumstances, when substantial question of law, as proposed by the appellant has already been finally determined by this Court in a writ petition, filed by appellant's brother Imammudin on identical grounds, I am of the view that no such substantial question of law arises in this appeal. It is pointed out by counsel for the respondent that appellant after allotment of the plot has transferred the same to some other person and the said allotment has not been cancelled till date.

12. Hence, I find no merits in this appeal. The same is accordingly dismissed.

CM No.700/2008 (for direction)

13. Since the appeal is dismissed, this application has become infructuous and the same is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**APRIL 28, 2010
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