

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

Date of decision: 31st January, 2011

+ **W.P.(C) 522/2009, CM No.1151/2009 (for stay) & CM No.8671/2009 (of the petitioner for impleadment of L&DO as a party).**

SHRI BAWA SINGH & ORS

..... Petitioners

Through: Mr. Anil Sapra , Sr. Advocate with
Mr. Manu Nayar & Ms. Vrinda
Kapoor, Advocates.

Versus

MCD & ORS

..... Respondents

Through: Mr. Ajay Arora with Mr. Sarfraz
Ahmed, Advocates for MCD.
Mr. Anuj Aggarwal with Mr.
Gaurav Khanna, Advocates for
L&DO.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner no.1 claims to be the allottee (in the year 1954) of shop No.24 *ad-measuring* 54.4 sq. yds., South Patel Market, New Delhi.

The petitioners no.2&3 are the sons of the petitioner no.1. It is the claim of the petitioners that the aforesaid shop being a corner shop, an open piece of land *ad-measuring* 60 sq. yds. existed adjacent to the shop; the petitioners in or about the year 1963 put up a temporary room over the said plot of land *ad-measuring* 60 sq. yds. and the said room has been in existence since then. Claiming that similar plots adjoining other properties had been allotted by the respondents (MCD & L&DO) to owners of adjacent properties as per policy, the petitioners claim to have approached the L&DO in this regard. The petitioners however claim that notwithstanding their representations no allotment was made in their favour. The petitioners then filed W.P.(C) No.3563/2007 (i.e. after 44 years of admitted unauthorized occupation of land) in this Court impleading L&DO and MCD as a party thereto and seeking direction to the said parties to allot the said plot to the petitioners.

2. L&DO in W.P.(C) No.3563/2007, on 14th May, 2007 stated that it had no role to play in the matter as the area stood transferred to the MCD. On the basis of the Status Report filed by the MCD in that writ petition,

this Court on 20th July, 2007 recorded that the property in question (i.e. the plot aforesaid) belonged to the MCD. The said writ petition was disposed of with the direction to the petitioners to make an application to the MCD for allotment of the said plot and with a direction to the MCD to dispose of the said application of the petitioners.

3. The present writ petition was filed again seeking the relief of direction to the MCD to transfer the land to the petitioners and to restrain MCD from demolishing the superstructure erected by the petitioners thereon.

4. In pursuance to the aforesaid order in the earlier writ petition, MCD passed an order dated 9th April, 2009. The senior counsel for the petitioners points out that in the interregnum MCD had also assured that the matter was under consideration. The MCD in the order dated 9th April, 2009 noted that L&DO had rejected the application of the petitioners for allotment of the said land and communicated the said rejection to the petitioners as far back as on 28th November, 1964 and 3rd April, 1972 on the ground that the said piece of land is meant for open space as per Layout Plan of the colony

and had called upon the petitioners to remove encroachment at the site. It was further observed that though by Notification dated 24th March, 2006 the South Patel Nagar Market had been transferred to the MCD but upon such transfer MCD was to only exercise certain powers with respect to the shops and flats in the market and which did not include a power of conferment of power to transfer land in these markets to any person. Accordingly application of the petitioners was rejected.

5. Notice of this petition was issued and vide order dated 28th January, 2009 MCD directed to maintain *status quo* with respect to the aforesaid plot of land *ad-measuring* 60 sq. yds; resultantly the unauthorized occupation and construction by the petitioners on the said plot of land continues.

6. MCD in its counter affidavit filed before this Court, besides reiterating the contents of the order dated 9th April, 2009 (*supra*) has also stated that the aforesaid plot of land cannot be allotted to the petitioners as the same would be contrary to the Layout Plan of the colony wherein all similarly situated plots at the end of the plot lines have been left vacant to

afford an effective turning point to the vehicles and to use the vacant plots as possible parking space.

7. The petitioner has filed a rejoinder controverting the counter affidavit of the MCD.

8. The petitioner has also filed CM No.8671/2009 for impleadment of L&DO as a party. L&DO again in its reply to the said application has stated that upon Notification dated 24th March, 2006 it is left with no concern whatsoever with the market and is being wrongly sought to be impleaded as the respondent.

9. Though formal order of impleadment has not been made as yet, the counsel for L&DO has also been heard today. He has today reiterated that L&DO has nothing to do with the matter and is not entitled to deal with the request of the petitioners for allotment of the land. The senior counsel for the petitioner and the counsel for MCD have also been heard.

10. It has, at the outset, been enquired from the senior counsel for the petitioners as to what is the right, if any, of the petitioners to claim such

allotment. The senior counsel draws attention to page 85 of the paper book being a letter dated 28th January, 1980 of the Department of Rehabilitation, Govt. of India to the Dy. Chief Settlement Commissioner (G), Settlement Wing of the Department of Rehabilitation with subject “Disposal of strips of land in the Rehabilitation colonies in Delhi”. The same records the decision on the terms and conditions governing the disposal of additional strips of land in the rehabilitation colonies in Delhi/New Delhi. The senior counsel for the petitioners urges that policy contained in the said letter entitles the petitioners to allotment of the aforesaid land. There is ambiguity in the language of the said document as to whether it would apply to such plot of land or not. However even if the contention of the petitioners were to be accepted the said terms and conditions are subject *inter alia* to the condition that “it has to be ensured first that the strips of land are not required by the government in public interest”.

11. The reason given by MCD of the land being required to be left vacant to afford effective turning point to the vehicles on for use as possible parking space, is definitely in public interest. The petitioner has

no indefeasible right to allotment even under the said document. The senior counsel for the petitioners has however argued that MCD has rejected the request of the petitioners vide order dated 9th April, 2009 for the reason of being not empowered to consider the said request and not for the reason of allotment not being in public interest. He contends that thus till date no authority has considered the request of the petitioners under the policy aforesaid. He states that both L&DO and MCD are washing their hands off the same. It is contended that MCD in the earlier writ petition did not state that it was not empowered to consider the request and allowed the writ petition to be disposed of with the direction to it to consider the said request. However, now MCD has taken a stand of being not competent to deal with the request. The senior counsel seeks a direction for consideration of the request of the petitioners by the appropriate authority.

12. Being aghast that the petitioners in the manner aforesaid have managed to remain in unauthorized occupation of valuable plot *ad-measuring* 60 sq. yds. in the heart of the city and to the deprivation of public, for nearly half a century, it has been enquired as to what is the right

of the petitioners to continue in possession even if their request has not been considered by the appropriate authority. The senior counsel again draws attention to the policy contained in the letter dated 28th January, 1980 (supra) which while providing the rates to be charged for disposal of the strips of land, also deals with a situation where the land is under unauthorized occupation of the prospective buyer. However the same is again on the condition that the “occupation is unobjectionable”. Here, from the documents on record it is borne out that the occupation by the petitioners of the aforesaid land was objected to by the L&DO to whom the petitioners had then applied, as far back as on 28th November, 1964 when the petitioners were directed to remove the encroachment immediately. Notwithstanding the same the petitioners have continued in occupation for the last nearly 50 years.

13. In my opinion, the petitioners have no right to continue in occupation of the aforesaid land irrespective of their plea of their application having not been considered. The petitioners are liable to immediately remove themselves from the said land. The present petition as

also the earlier writ petition (supra) are in fact found to be in abuse of the process of this Court. The request of the petitioners for allotment was rejected on 28th November, 1964. The petitioners did not challenge the said order and allowed it to attain finality. The petitions however again applied and which was also rejected on 3rd April, 1972. The petitioners, by repeatedly applying for allotment, and which they are not entitled to have perpetuated their unauthorized occupation of public property.

14. The MCD in its counter affidavit as aforesaid, besides reiterating the order dated 9th April, 2009 has also stated that the plot of land cannot be given to the petitioners as being required to be kept vacant to afford an effective turning point to the vehicles and for public use as parking space. The MCD along with the counter affidavit has also filed a key plan according to which similar corner plots have been left vacant adjacent to other corner shops in the colony also.

15. The senior counsel for the petitioners has argued that the MCD has intentionally concealed the Layout Plan and not produced the same. He has during the hearing handed over in the Court a copy of the Layout Plan.

However the argument on the basis thereof is more to challenge the plea of the MCD of the open plot being also required for parking purposes. It is contended that no parking is possible thereon and there are other parking spaces available in the vicinity. Though the petitioners in their rejoinder have generally denied that the other similarly situated plots at the end of plot lines have also been kept vacant but the petitioners have not been able to show that the same have been allotted to the owners of the shops adjacent thereto. The senior counsel for the petitioners has drawn attention to a list filed of plots which pursuant to the said policy are stated to have been allotted but there is nothing to show that those plots were corner plots as is the case over here.

16. The reason given by the MCD for keeping the plot open is found to be in public interest. Even otherwise, I am of the opinion that with many more floors being added to the erstwhile single/double storyed properties in the locality and increase in the vehicular population in the city, the reasoning of the MCD wanting to keep the said plot of land open cannot be found fault with. Further in view of the reiteration by the counsel for

L&DO, that the market has been vested in the MCD and MCD itself is entitled to take decision, the decision of the MCD even if it be in its counter affidavit to not allot the said plot to the petitioners is found reasonable and not liable to be interfered with in writ jurisdiction.

17. Thus while dismissing this petition, the petitioners are directed to remove themselves from the said plot of land on or before 1st March, 2011 failing which the concerned Executive Engineer of MCD is directed to within 15 days thereafter demolish the construction on the aforesaid plot of land and to re-possess the same.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JANUARY 31st 2011
PP