

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 5268, 5319, 5322 and 5327/2010**

Decided on: 21.03.2012

IN THE MATTER OF

DAYA WANTI

NARENDER KUMAR & OTHERS

INDERJEET SINGH

UMRA DEVI

..... Petitioner in W.P.(C) 5268/2010

..... Petitioner in W.P.(C) 5319/2010

..... Petitioner in W.P.(C) 5322/2010

..... Petitioner in W.P.(C) 5327/2010

Through: Ms. Neha Gupta, Advocate with
Ms. Sidhi Arora, Advocate

versus

M.C.D. AND ORS.

..... Respondents

Through: Ms. Manpreet Kaur, Advocate for
Mr. Mukesh Gupta, Advocate for
R-1/MCD with Mr. Satish Kumar, LDC.
Mr. S.K. Rout, Advocate for R-2.
Mr. B. Ghoshal, Advocate for LR of
respondent No.3, Mr. Kumar Gaurav in
W.P.(C) 5327/2010.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. A batch of four writ petitions have been filed to challenge Resolution No.240 of the respondent/MCD dated 14.10.2009 for rehabilitation of affected persons on account of execution of the project of widening of Kishan Ganj Road Under Bridge. For the sake of convenience, the facts of W.P.(C) No.5268/2010 are being taken note of in the present judgment.

2. The facts of the case that lie in a narrow compass are that the

petitioner is the owner of shop No.77, Azad Market, Delhi. The said shop had been leased out to him for a period of 99 years by the Land and Development Officer, Government of India vide lease deed dated 02.07.1962. In the year 2007, the aforesaid shop was transferred by the L&DO to the respondent/MCD. On 23.11.1992, the Ministry of Surface Transport, Government of India approved the project for widening of Kishan Ganj Road Under Bridge (RUB). On 13.06.1994, respondent No.1/MCD had sanctioned an expenditure in the sum of ₹2436.35 lacs for transferring 121 shopkeepers from L&DO to MCD who were to be allotted a uniform size of plots. On 14.05.2009, respondent No.1/MCD held a meeting to decide the manner in which the 121 shopkeepers affected by the widening of RUB at Kishan Ganj were to be rehabilitated.

3. In terms of the decision taken by the respondent No.1/MCD as recorded in Resolution No.240 dated 14.10.2009, it was resolved that as recommended by the Standing Committee, MCD vide its Resolution No.280 dated 02.09.2009, the proposal of the Commissioner, MCD contained in his letter dated 20.08.2009, be approved. Copies of the Resolution No.280 and the letter dated 20.08.2009 issued by the Commissioner, MCD have not been placed on record. However, counsel for respondent No.1/MCD, who states that she has brought the records with her, hands over a copy of the Resolution No.280 relating to Item No.118, pertaining to rehabilitation of

affected persons on account of execution of work of project of widening of Kishan Ganj RUB. In terms of Resolution No.280, it was resolved by respondent No.1/MCD that the Corporation would approve the proposal made by the Commissioner, MCD as contained in his letter dated 20.08.2009.

4. In the letter dated 20.08.2009 addressed by the Commissioner, MCD to the Municipal Secretary, MCD, one of the issues examined was as to whether the tenants in the area, who were operating their business from the premises of the lessees for the past 20-40 years, would be entitled for any compensation. After taking into consideration the views expressed by different Departments within the Corporation and examining the legal opinion obtained by the MCD, it was proposed as below:-

“1. Xxx

2. In cases, where the leased shop of MCD have been rented out without seeking permission of MCD for a period of more than 10 years, alternative plots of the size 10'x15' (3 mtrs. x 4.5 mtrs.) may be allotted jointly in the name of the lessees and the tenants having 50% share each on lease hold basis.

3. In other cases, where the original lessees are carrying out their business themselves and who have not been allotted any other plot in Bawana, an alternative plot of the size 10' x 15' (3 mtrs. x 4.5 mtrs.) may be allotted to them on lease hold basis.

4. xxx

5. xxx”

5. The grievance of the petitioners is that by virtue of Resolution No.240, the tenants of the shops have been allotted 50% undivided share in the plots allotted by MCD in Sanjay Gandhi Transport Nagar, which is impermissible as they cannot be equated with the petitioners, who are the owners of the properties from where they are being relocated.

6. Learned counsel for respondent No.1/MCD seeks to justify the aforesaid decision by contending that such of the lessees of the MCD, who had leased out their shops for a period of over 10 years, without seeking prior permission from MCD had been allotted alternative plots jointly with the tenants, solely on the ground that the said tenancies were created illegally without informing the Corporation and further, in view of the fact that the occupants of the shops, who were tenants under the lessees, had been carrying on their business from the said shops for the past 10-40 years. She explains that Resolution No.240 came to be passed in view of the fact that the Corporation was of the opinion that the tenants were also entitled to compensation on the same pattern as other tenants are entitled to compensation under the Land Acquisition Act, whereunder old tenants, staying in the premises to be acquired for a period of 30-40 years, are normally offered 60-70% monetary compensation by the Land Acquisition Collector and further, the aforesaid manner of apportionment of compensation between landlords and tenants has been examined and upheld

in various decisions of the Supreme Court and the High Court.

7. The Court has heard both the sides and considered their respective submissions. Resolution No.240 dated 14.10.2009 as also the letter dated 20.08.2009 issued by the Commissioner, MCD have also been carefully examined. A perusal of the letter dated 20.08.2009 issued by the Commissioner, MCD reveals that before taking a decision as to the manner of offering compensation to affected persons to be rehabilitated on account of execution of the subject project, the views of various Departments including the Land & Estate Department and that of the Director, Sanjay Gandhi Transport Nagar were obtained. However, having received divergent views from the Departments as also the members of the Standing Committee, a legal opinion was obtained from the Standing Counsel, MCD. Apart from obtaining a legal opinion and considering the divergent views of the Departments within the Corporation, notice was also taken of the observation made by the Lt. Governor, Govt. of NCT of Delhi, that was to the effect that the Corporation might have to rehabilitate both, the lessees as also the shopkeepers, namely, the tenants since the latter had remained in occupation of the shops for a period spanning over 20-40 years.

8. At the time of passing Resolution No.240, MCD was mindful of the fact that while laying down the rehabilitation policy, the main object was to rehabilitate the affected persons, which included both, the lessees as also

the tenants in occupation of the shops. The existing policy of the Government of India for rehabilitation of those affected by such projects was considered by the respondent No.1/MCD. As per the aforesaid policy of the Government of India, it was prescribed that in case of allotment in lieu of the acquired shops, the persons doing business, whether in the capacity of owners of the land/shop or as a tenant, would be considered eligible for rehabilitation. What weighed finally with the respondent No.1/MCD was its apprehension that it might be called upon to compensate/rehabilitate both, the lessees and the tenants and to overcome the aforesaid financial liability, the Corporation decided to go ahead with the proposal to apportion the total compensation between the lessees and the tenants in the ratio of 50% each in all such cases, where tenants had been occupying the shops continuously for a period of over 10 years. Consequently, the respondent No.1/MCD decided to make allotments of plots measuring 10' x 15' at Sanjay Gandhi Transport Nagar jointly in the names of the lessees and the tenants, while apportioning their shares to the extent of 50% each on leasehold basis.

9. The inherent fallacy of the aforesaid decision taken by the respondent/MCD is twofold. Firstly, respondent No.1/MCD erred in arriving at a conclusion that tenancies had been created by the petitioners/lessees without seeking prior permission from respondent No.1/MCD. It is pertinent to note that originally, the shops in question had been leased out by the

Land and Development Officer, Government of India to lessees like the petitioners herein by executing lease deeds for a period of 99 years. A perusal of the covenants incorporated in the said lease deed reveals that one of the embargoes placed on a lessee was as below:-

“(b) The Lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor.

(c) The Lessee can transfer the land after obtaining the permission of the Lessor aforesaid and the Lessor will not share any unearned increment in the value of the land (being the difference in the premium paid by him to the Lessor and the market value of the land then prevailing) for permitting such transfer. The Lessor will, however, be entitled to claim and recover the unearned increment in the value of land in the event of any subsequent transfer of the land by a transferee the amount so to be recovered being 50% of the unearned increment in the value of the land.”

10. A perusal of the aforesaid covenants reveals that only if a lessee proposed to assign/transfer the demised premises or any part thereof, was a written approval required from the lessor. However, no such stipulation had been imposed in the lease deed if a lessee proposed to let out the demised premises to a tenant. In other words, a tenant cannot be treated as an assignee/transferee under the lease deed as understood by the respondent

No.1/MCD.

11. The second flaw in the decision making process of the respondent No.1/MCD was to equate the possessory rights of a tenant with the ownership right of a lessee which is incomprehensible and unjustified, apart from being contrary to the settled law that a tenant shall always remain a tenant. Furthermore, the decision to rehabilitate the lessees and the occupants of the shops by allotting a single plot and apportioning the same between them in the ratio of 50% each, is also misconceived. This would result in saddling a tenant with a landlord and vice-versa, in perpetuity by treating them on the same footing. If the respondent No.1/MCD was keen to compensate/rehabilitate both, the lessees and the tenants, it ought to have laid down a policy in such a manner that relief of monetary compensation/compensation by way of allotment of plots could have been granted independently to both the parties, i.e., the lessees and the tenants, without insisting that they be clubbed for grant of the said relief.

12. Counsels for the respondent No.2/tenants have drawn the attention of this Court to the decision taken by respondent No.1/MCD in its meeting held on 01.02.2005 regarding alternative allotment for the displaced persons of the DMRC project at Tilak Marg and Prem Nagar, Delhi, to submit that such persons, who had been displaced on account of demolition of the properties falling on land acquired by the government for

being placed at the disposal of DMRC at Tilak Marg and Prem Nagar, were compensated in both, monetary terms as also by way of allotment of alternative shops. A perusal of the documents handed over by the counsels for the respondent No.2/tenants in support of the aforesaid submission does not clarify as to whether alternative allotments were made in favour of both, the owners and occupants or only one of them. However, it is an undisputed position that the allotments that had been made were not joint, as done by respondent No.1/MCD in the present case.

13. In view of the aforesaid discussion, the inevitable conclusion is that the Resolution No.240 dated 14.10.2009 passed by respondent No.1/MCD, insofar as it relates to rehabilitation of tenants operating their business from the shops of the petitioners/lessees for the past 20-40 years, is unsustainable in law and therefore liable to be struck down. As a result, that part of the aforesaid Resolution, wherein respondent No.1/MCD had decided that in cases where leased shops of the MCD had been rented out for a period of more than 10 years, without seeking permission of the Corporation, alternative plots measuring 10' x 15' would be allotted jointly in the names of the lessees and the tenants having 50% share each on leasehold basis, is set aside and quashed and it is directed that the aforesaid issue No.2, as framed in the impugned Resolution No.240 of the MCD shall be reconsidered by the respondent No.1/MCD while taking into consideration

the guidelines laid down by the government agencies in similar cases of rehabilitation and by examining the provisions of the Land Acquisition Act and the judicial pronouncements on this aspect. Thereafter, a fresh decision shall be taken by the respondent No.1/MCD within a period of eight weeks from today, under written intimation to the petitioners as also to the respondent No.2/tenants.

The petitions are disposed of while leaving the parties to bear their own costs.

MARCH 21, 2012
'anb'/rkb

(HIMA KOHLI)
JUDGE