

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

% Judgment reserved on : 30.08.2013
Judgment pronounced on : 03.09.2013

+ W.P.(C) 5227/2011 and CM No. 10615/2011 (stay)

P.S.DAHIYA Petitioner

Through: Mr Varinder Kumar Sharma, Adv.

versus

SLUM J.J.DEPARTMENT NOW (DELHI URBAN SHELTER
IMPROVEMENT BOARD) Respondent

Through: Mr Parvinder Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The only issue involved in this petition is as to whether the petitioner, who was allotted a staff quarter, in his capacity as an employee is entitled to ownership/perpetual lease hold rights of the said quarter. The petitioner before this Court, who is a former employee of MCD, was allotted staff quarter No.D-15A, Madipur in his capacity as an employee of the Corporation. He, however, has not vacated the said flat even on superannuation and continues to occupy the same. The petitioner claims to have applied to the Slum Department, which at that time, was under the control of Delhi Development Authority, on 29.09.1984, for grant of

perpetual leasehold rights in respect of the aforesaid flat. No such rights were, however, granted to him. Vide letter dated 27.06.2011, issued by the respondent, Delhi Urban Shelter Improvement Board, the petitioner was asked to vacate the aforesaid quarter. Being aggrieved from not being granted perpetual leasehold rights in respect of the aforesaid flat and being asked to vacate the same, the petitioner is before this Court seeking the following reliefs:-

- “i. Issue an appropriate writ by directing the respondent to consider the application Nos. 010138 dated 29.09.1984 of the petitioner as per circular and orders
- ii. Direct the respondent to give perpetual lease hold right of flat No. 15A, DDA flats, Tenements, Madipur, Punjabi Bagh, Delhi
- iii. Issue an appropriate writ by directing respondents to withdraw order dated 18.05.2011
- iv. Direct the respondent not to dispossess the petitioner from the flat No. 15A, DDA flats, Tenements, Madipur, Punjabi Bagh, Delhi.”

2. The case of the petitioner for grant of perpetual leasehold rights in respect of the aforesaid flat is based upon a circular dated 25.04.1981, issued by Municipal Corporation of Delhi and letter dated 11.06.1984, written by Government of India, Ministry of Works and Housing to the

Lieutenant Governor, Union Territory of Delhi. The Circular dated 25.04.1981, to the extent it is relevant, reads as under:-

“Consequent upon the transfer of Slum Wing to the Delhi Development Authority, the DDA have decided to give lease hold rights to the present allottees (Mpl.employees) of the quarters in Chander Shekhar Azad Colony. All the heads of the Department are, therefore, requested to stop the deduction of House Rent from their salaries after examining the documents for perpetual lease in their favour.”

3. In its counter-affidavit, the respondent has taken a preliminary objection that the petitioner allegedly applied for grant of perpetual lease on 29.09.1984, i.e., 27 years before this writ petition was filed and, therefore, the petition being highly belated is liable to be rejected on this ground alone. It is further stated that in similar circumstances, some employees of the respondent, including the petitioner, had filed W.P.(C) No. 16993-17023/2006 titled as **Raj Kumar and others vs. Union of India and others** and the said writ petition was dismissed by the Division Bench vide judgment dated 01.08.2011. On merits, it is alleged that flat No. D-15A, Madipur was allotted to the petitioner as staff quarter/accommodation when he was an employee of the respondent. The allotment was made on the terms and conditions contained in the

allotment letter. As regards the circular dated 25.04.1981, it is stated that the said circular was only for the quarter in Chandra Shekhar Azad Colony and was a one time decision taken in respect of Municipal employees, who were allotted quarters in Chandra Shekhar Azad Colony. According to the respondent, there was no such scheme in respect of staff quarters situated in Madipur. As regards letter dated 11.06.1984, it is stated in the counter-affidavit that the said letter pertains to grant of perpetual leasehold rights in respect of tenements constructed in Slum Clearance Scheme and it was not issued to give leasehold rights to the employee, who were allotted staff quarters.

4. As far as the Circular dated 25.04.1981 is concerned, the same applies only to the quarter in Chander Shekhar Azad Colony and, therefore, no benefit of the said circular can be claimed in respect of flat situated in Madipur, which is an altogether different colony.

5. The letter dated 11.06.1984, to the extent it is relevant, reads as under:

“I am directed state that the allottee of houses constructed in Delhi under the Slum Clearance Scheme were allowed to purchase the houses in the term and conditions prescribed in this Ministry’s letters No. 28/15/63-H-I dated 2/3-8-1963. In 1979 orders were issued for liquidation of the slum

tenements in New Moti Nagar, Jhilmil Colony and other slum colonies in occupation of in eligible persons in accordance with the terms and conditions mentioned in this Ministry's letter No. K-17012/7/76-DDIIB/IA dated 21.12.79. However, due to various reasons, most of the allottees/occupants had not applied for the lease hold rights.

2. After careful consideration, the Government have decided that, in supersession of all the earlier orders, perpetual lease hold rights in respect of all the slum tenements in Delhi should be granted to the allottee/occupants on the following terms and conditions:-

i. The cost of liquidation of the tenement would be fixed as 20 times the annual economic licence fee.

ii. The lease hold right will be granted either to the authorized allottee or to the "unauthorized occupant" except trespassers.

.....The Competent Authority (Slums) shall ensure that in future, allotment of slum re-housing flats are made strictly on lease-hold basis."

3. It is requested that the allottee/occupant of Slum tenements constructed under the Slum Clearance Scheme in Delhi may be informed of the above decisions and asked to apply for transfer of lease hold rights within the prescribed time limit. A suitable draft agreement for transfer of ownership rights may also be prescribed by Delhi Administration."

6. As regards the letter dated 11.06.1984, it is quite evident from the reading of the said letter that it applied only to those persons who were affected under a Slum Clearance Scheme and were allotted slum tenements in certain slum colonies. This Circular does not at all apply to the staff quarters, which were allotted to the employees of the Municipal Corporation of Delhi. No decision vide this letter was taken by Government of India to grant perpetual leasehold rights in respect of staff quarters to the employees who were allotted such quarters by virtue of their being on the rolls of the Corporation and not on account of their being affected under the Slum Clearance Scheme of the Government. Therefore, reliance upon the aforesaid letter dated 11.06.1984 is wholly misplaced.

7. A perusal of the decision of the Division Bench in **Raj Kumar and Ors. vs. Union of India** W.P(C) No. 16993-17023/2006 would show that the petitioners in that case were employees of MCD who had approached their employer for occupation of the houses that had not been allotted to the slum dwellers and to whom MCD allotted the said houses on account of their being employees. The terms and conditions of such allotment

letters have been reproduced in the judgment and to the extent it is relevant, the allotment letter reads as under:

“2. If the allottee failed to take over possession of quarter by the stipulated period, then the allotment made in their names shall be cancelled. He will be disentitled for department accommodation for one year and the other eligible employees shall be given allotment of said quarter.

4. The Licence Fee shall be applicable from the date of taken over the possession or 15 days from the date of issue of this letter whichever is earlier. The licence fee shall be charged from the allottee under FR-45.

8. The allottee shall not sub-let any portion of quarter.

9. The allottee shall ensure that he/she produce NOC's from the D.V.B. as well as D.J.B. and also further ensure that he/she furnish the disconnection certificate/surrender certificate of the Electricity/Water Meter to the concerned agencies at the time of vacation of the staff quarter so that the subsequently no bills are charged against the subsequent allottee or the department.”

The Division Bench, on considering the terms of the Allotment Letter, inter alia, held as under:-

“4. On a perusal of the same, it is quite clear that the allotment was not a sale or transfer but allotment made was of W.P. (C) No. 16993-17023/2006 department accommodation and as a

part/term of employment. Right and title of the house was not transferred to the employee but the employee was granted right to use the same during his/her employment or till the allotment was cancelled. The allotment was not given to them as a slum dweller. No payment was made or received towards costs. By no stretch of imagination, the employee allottee can be treated as a tenement holder under the slum clearance scheme. The employees were/are required to pay licence fee under FR-45. In paragraph 9 of the aforesaid allotment order it has been stated that NOC is required to be produced by the allottee with regard to electricity/water meters at the time of vacation of the staff quarter so that no arrears are charged from the subsequent allottee or the department.

5. Thus, the submission of Mr. Chakraborty that the allotment was in favour of the employees as slum dwellers is sans substance.”

8. In view of the authoritative pronouncement of the Division Bench, in a writ petition to which petitioner before this Court was also a party, it is not open to the petitioner to re-agitate the same issue by seeking grant of perpetual leasehold rights in respect of the staff quarters allotted to him at Madipur. The aforesaid flat allotted to him as an employee and not as a slum dweller. Therefore, on superannuation from MCD, he was legally obliged to vacate the said quarter. Since he failed to do so, the respondent was very much entitled to evict him from the said house and also recover damages for unauthorized occupation of the said quarter for

the period the occupation of the petitioner was unauthorized.

9. The petitioner has relied upon the decision of this Court in **Kalyan Samiti Nimri Colony vs. Municipal Corporation of Delhi**; W.P.(C) No. 203 of 1972. A perusal of the judgment would show that Nimri Municipal colony was built by the Corporation after taken loan from Delhi Administration under the scheme “Low Income Group Housing”. Clause 8 of the said scheme, *inter alia*, provided that the ownership of the houses would vest with the local bodies which could rent them out to their low paid staff and who were also free to sell those houses outright or on a hire purchase basis to their low paid staff. The Corporation passed a Resolution, deciding to sell those houses to the allottees. The initial resolution provided for allotment of no profit no loss basis, but on the objection being raised by the auditors, it was decided to make allotment on the market value of 1974, which had already been calculated in the case of 11 quarters of the said colony sold to unauthorized occupants. The Corporation thus fixed the market value of the quarters in question as it existed in the year 1974. It was on these facts that this Court held that the Court allowed the writ petition seeking sale of the houses to the members of the petitioner-society. However, the facts of the case before

this Court are altogether different. The flats in Madipur have not been constructed in terms of a scheme such as “Low Income Housing” under which the flats under Nimri colony were constructed. In the case relied upon by the petitioner, the scheme permitted the local bodies to sell the houses to their low paid staff either on outright sale or on hire purchase basis. No such provision, however, exists in respect of the flats at Madipur. More importantly, in the case of Nimri colony, Corporation passed various resolutions deciding to sell those flats to the allottees, whereas no such resolution has been passed in respect of the flats at Madipur. Therefore, the reliance upon the said decision is wholly misplaced.

10. Though the petitioners have no case on merits, the writ petition is also liable to be dismissed on account of laches and delay. The petitioner claims to have applied for grant of leasehold rights way back on 29.09.1984. The writ petition came to be filed sometime in July, 2011, i.e., after about 27 years. There is no explanation from the petitioner as to why he did not come to the Court soon after applying for grant of leasehold rights. In fact, there is no material on record to show that the petitioner, even represented to the respondent between 29.09.1984 to

09.11.2010, i.e, for more than 26 years, for grant of leasehold rights in respect of the aforesaid flat. The petitioner, therefore, is deemed to have waived his right, if any, by delay, laches and gross inaction on his part.

11. Yet another reason why no relief can be granted to the petitioner is the dismissal of W.P.(C) No. 16993-17023/2006. One of the reliefs claimed in the aforesaid writ petition was to issue a writ of Mandamus to treat the petitioners at par with the allottees of the staff quarters of MCD at Nimri colony, Chander Shekhar Azad Colony, Seelampur and Inderlok. Yet another relief claimed in the said petition was to grant leasehold/ownership rights to the petitioners in respect of the tenements occupied by them at Madipur at pre-determined rates. Since no such relief was granted by the Court, another writ petition seeking grant of leasehold rights in respect of the flat at Madipur cannot be entertained.

For the reasons stated hereinabove, the writ petition is dismissed. There shall be no order as to costs.

V.K.JAIN, J

SEPTEMBER 03, 2013

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