

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

% **Date of decision: 18th March, 2015**

+ **LPA 240/2006 & CM No.12177/2012 (of R-1 for dismissal of appeal)**

MUNICIPAL CORPORATION OF DELHI **Appellant**

Through: Ms. Mini Pushkarna and Mr.
Siddhartha Nagpal, Advs.

Versus

SADHNA GROVER & ANR. **Respondents**

Through: Mr. Hameed S. Shaikh, Adv. for R-1.
Mr. Pawan Mathur and Mr.
Himanshu Gupta, Advs. for R-
2/DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the orders dated 22nd November, 2005 and 30th November, 2005 of the learned Single Judge of this Court in W.P.(C) No.6827/1999 filed by the respondent No.1 [respondent No.2 is the Delhi Development Authority (DDA)]. Vide order dated 22nd November, 2005, the appellant Municipal Corporation of Delhi (MCD) was directed to allot to the respondent No.1/writ petitioner on license basis, 200 sq. yds. of land for running a coal depot. Vide subsequent order dated 30th November,

2005, the application of the appellant MCD for recall / modification of the order dated 22nd November, 2005 was dismissed.

2. The respondent No.1/writ petitioner filed the writ petition from which this appeal arises, pleading:

(i) that her father-in-law Sh. Madan Lal Grover was, vide letter dated 25th March, 1969 of the appellant MCD, allotted a plot / site admeasuring 200 sq. yds. neighbouring F/437-B, New Rajinder Nagar, New Delhi, on *tehbazari* basis at Rs.20/- per month, for use as a coal depot;

(ii) that the said site was given to Sh. Madan Lal Grover at the time of widening of Shankar Road in lieu of his coal depot site at Shankar Road;

(iii) that the said Sh. Madan Lal Grover constructed an office on and a boundary wall around the said coal depot plot and obtained electricity and water connection at the said site;

(iv) that Sh. Madan Lal Grover died on 19th July, 1979 and thereafter the respondent No.1/writ petitioner was paying the *tehbazari* / license fee;

(v) that on 26th October, 1999, DDA demolished the existing structure on the said plot / site, without notice and opportunity of hearing and was also not allowing the respondent No.1/writ petitioner from doing business on the said plot / site.

Accordingly, the reliefs of, (a) restraining the DDA and MCD from dispossessing the respondent No.1/writ petitioner from the said land; and, (b) of a direction to the DDA/MCD to restore the structure demolished illegally, were claimed in the writ petition.

3. DDA filed a counter affidavit in the writ petition *inter alia* stating, (I) that the respondent No.1/writ petitioner was at best a licensee with respect to the said plot / site and the license in her favour had also not been validated beyond 31st December, 1989 and in any case such license did not confer any right, title or interest in the respondent No.1/writ petitioner with respect to the said plot / site; (II) that the said land belongs to the Government of India and was transferred to the DDA vide letter dated 12th May, 1984 of the Department of Rehabilitation (Settlement Wing); (III) that finding the plot / site to be encroached upon, the encroachment was removed on 26th October, 1999 and DDA had put up its own fencing around the site; (IV) that MCD had got nothing to do with the said land, which

belonged to the Ministry of Rehabilitation and since 12th May, 1984 was under the management and control of DDA.

4. Vide ad-interim order dated 19th November, 1999 in the writ petition, status quo with respect to the plot of land was directed to be maintained. Vide order dated 5th August, 2004, the officials of the DDA and MCD were directed to find out, as to how the MCD had given a *tehbazari* right with respect to the subject plot / site, if the same belonged to DDA and to also find out, whether the subject land actually belonged to the DDA. On 1st October, 2004, the learned Single Judge was informed, (A) that there is no policy of MCD to issue *tehbazari* for coal depots, much less for sites admeasuring 200 sq. yds.; (B) that *tehbazari* sites are being allocated for an area of 6' X 4'; (C) that no *tehbazari* was ever issued to Sh. Madan Lal Grover. In view of the said stand of the appellant MCD, the counsel for the DDA stated that it was not possible for the DDA to allot any alternative site to the respondent No.1/writ petitioner. However, the learned Single Judge in the order dated 1st October, 2004 observed that that the stand of the MCD was at variance with the documents filed along with the writ petition which showed that the Land and Estate Department of the MCD allotted a 200 sq. yds. site to the late Sh. Madan Lal Grover at a monthly fee of Rs.20/- on

tehbazari basis. Accordingly, MCD which till then had not filed any counter affidavit to the writ petition was directed to file an affidavit.

5. The appellant MCD filed an affidavit dated 19th April, 2005 stating, (i) that from the records, it appeared that Sh. Madan Lal Grover had been selling coal at a site, near Shankar Road in the year 1966-69, similar to that of *tehbazari*; (ii) that there was however no record that the Shankar Road site was ever allotted by MCD to Sh. Madan Lal Grover; (iii) that from the document filed by the respondent No.1/writ petitioner, it appeared that the MCD had vide letter dated 25th March, 1969 permitted Sh. Madan Lal Grover for a coal depot at a site adjacent to F/437-B in Rajender Nagar for Rs.20/- per month; (iv) that however there was no record of the said letter in the MCD files; (v) that the respondent No.1/writ petitioner had been depositing *tehbazari* charges @ Rs.20/- per month with MCD; (vi) that there was no record of any allotment in favour of respondent No.1/writ petitioner; (vii) that *tehbazari* did not give any right or entitlement to any person on the land belonging to MCD; (viii) that it was not clear from the record that on what basis in 1969, late Sh. Madan Lal Grover was permitted to use the site / plot; (ix) that as per the prevalent policy of MCD, no land is to be utilized for *tehbazari* as coal.

6. The learned Single Judge vide impugned order dated 22nd November, 2005 disposed of the writ petition with the direction aforesaid *inter alia* observing, (a) that the affidavit of the MCD did not explain, as to why MCD had on 1st October, 2004 taken a contrary stand from what was stated in the affidavit; (b) that owing to the wrong stand taken by the MCD as recorded in the order dated 1st October, 2004, DDA took a stand that the respondent No.1/writ petitioner was not entitled to any alternate rehabilitation; (c) that since MCD had put the predecessor of the respondent No.1/writ petitioner in possession of site which did not belong to it and since the respondent No.1/writ petitioner had been dispossessed therefrom by the DDA to whom the land belonged and since MCD had obstructed an amicable resolution of the dispute by taking a stand at variance with the documents issued by MCD and had in spite of opportunity failed to explain the said conduct, MCD was liable to allot, on license, 200 sq. yds. of land to the respondent No.1/writ petitioner for running a coal depot. It was further made clear in the order that the MCD will not take a stand that being not a land owning agency, could not allot a land. It was further observed that since it was MCD which prevented DDA from giving alternative site to the respondent No.1/writ petitioner, it was MCD's liability to identify a suitable land and hand over

the same to the respondent No.1/writ petitioner. A time of three months was given to the MCD for the said purpose.

7. MCD filed an application being CM No.14906/2005 before the learned Single Judge explaining the reason for non-appearance of its arguing counsel on 22nd November, 2005 and further clarifying that there is no record in the MCD that the subject plot / site was ever allotted by it, though the respondent No.1/writ petitioner had filed documents in this regard. Accordingly, recall / modification of the order dated 22nd November, 2005 was sought. However, the said application was dismissed vide impugned order dated 30th November, 2005 recording that there was no reason to recall / modify the order.

8. Notice of the appeal was issued and the appeal was admitted for hearing on 31st March, 2009. The Additional Deputy Commissioner (Land & Estate) of the appellant MCD appeared in the appeal on 31st March, 2009 and stated that in 1995, a policy decision was taken by the Delhi Administration that neither fresh licenses would be issued for coal depots nor would existing licenses be renewed. He also agreed that in view of the said decision, all *tehbazari* sites where coal depots were being run were required to be re-possessed. He however could not say, whether that was

actually being done or not. This Court in the order dated 31st March, 2009 in this appeal observed that either the respondent No.1/writ petitioner should be permitted to operate the coal depot at the subject plot / site or as per the policy decision, a uniform action must be taken where the functioning of such coal depots is brought to an end and the land repossessed. It was further observed that if the *tehbazari* right holders were entitled to carry on alternative business instead of a coal depot at the same site, then respondent No.1/writ petitioner must also get the same right, as there could be no pick and choose policy.

9. In pursuance to the aforesaid order, an affidavit dated 30th April, 2009 was filed by the said Additional Deputy Commissioner (Land & Estate) Department of the MCD *inter alia* stating that a decision had been taken to repossess the *tehbazari* sites of all the coal depots which had been shut down and on humanitarian ground allot alternative sites as per the policy to all the coal depot holders and the said decision was under implementation. It was also informed that there is a proposal for allotment of *tehbazari* sites admeasuring 6'X4' to the erstwhile coal depot *tehbazari* holders.

10. DDA also filed an affidavit dated 4th May, 2009 of its Director (Lands) stating that DDA does not allot plot for *tehbazari* nor does it allot

plots for coal depot.

11. Thereafter, from time to time the appeal was adjourned awaiting the implementation of the decision aforesaid of the MCD and affidavits / status reports filed by the MCD from time to time, reporting thereon.

12. The order dated 12th August, 2011 in the appeal records that a policy had been framed for allotment of alternative *tehbazari* sites to the erstwhile coal *tehbazari* holders; the counsel for the respondent No.1/writ petitioner sought time to study the same.

13. The subsequent order dated 4th May, 2012 in the appeal *inter alia* records that the policy which was informed to have been framed had not been implemented for diverse reasons. MCD was again directed to file an affidavit in this regard.

14. An affidavit dated 17th July, 2012 was filed in compliance therewith *inter alia* stating that 42 sites were given on *tehbazari* license basis for coal depots and out of which 31 had been retrieved, 8 sites were under litigation and against 3 sites action was pending.

15. The order dated 12th July, 2013 in the appeal records that an alternative site had been offered to the respondent No.1/writ petitioner in

Karol Bagh, New Delhi area to run any alternative trade permitted under the *tehbazari* scheme; however the size of the plot would be 7' X 5'.

16. On 13th September, 2013 the counsels informed this Court that the policy formed by the MCD for rehabilitating the erstwhile coal depot *tehbazari* holders was under challenge by the respondent No.1/writ petitioner in W.P.(C) No.3455/2012. Accordingly, this appeal was ordered to be heard along with the said writ petition filed by the respondent No.1/writ petitioner. However, vide order dated 7th October, 2013, finding that the said policy was under challenge not only by the respondent No.1/writ petitioner but also by several other persons and observing that it would not be appropriate to hear this appeal along with the said batch of writ petitions challenging the policy, this appeal was de-tagged.

17. A further status / compliance report dated 22nd November, 2013 was filed by the MCD reporting on the status of the retrieval of the possession of the other coal depots.

18. We heard the counsel for the appellant MCD and the counsel for the respondent No.1/writ petitioner on 2nd March, 2015 and reserved judgment.

19. On enquiry, all counsels confirmed that the respondent No.1/writ

petitioner is not in possession of the subject plot / site. However, while the counsel for the appellant MCD stated that the appellant MCD is in possession of the said plot / site, the counsel for the respondent No.1/writ petitioner stated that DDA had taken possession of the plot / site and is currently in possession of the site.

20. The counsel for the appellant MCD drew our attention to the copy of Resolution No.417 of the Meeting of the Standing Committee of the appellant MCD held on 4th August, 2010. One of the proposals in the said meeting was for formulating a policy regarding the Coal Depots which were established on Municipal land for conducting business on the basis of *tehbazari* granted by MCD. It was recorded that the Food & Civil Supply Department of the Govt. of NCT of Delhi had revoked the coal depot licenses in the year 1995 and hence the sites were being retrieved to be put to more purposeful use of the nearby community / locality. It was decided to offer the erstwhile *tehbazari* holders of the said coal depots, *tehbazari* sites measuring 7' X 5' preferably in area near the erstwhile coal depot sites, failing which in the same zone or nearby zones. Attention was next invited to the Circular No.AO/CL&EC/2011/87 dated 6th July, 2011 of the Central Licensing & Enforcement Cell of MCD in pursuance to the decision taken

in the meeting aforesaid and laying down the policy in this regard. As per the said policy, the erstwhile coal depot *tehbazari* holders or their legal successors are to be offered *tehbazari* sites measuring 7' X 5' preferably in areas near their erstwhile coal depot sites, failing which in the same zone or nearby zones. The counsel for the appellant MCD further informs that it is the said Circular dated 6th July, 2011 which is under challenged in the other writ petition filed by the respondent No.1/writ petitioner and in other petitions connected therewith, filed by other erstwhile coal depot *tehbazari* holders. Attention is also invited to the corrigendum dated 30th January, 2013 to the Circular dated 6th July, 2011; however the same is not relevant for our purposes.

21. The counsel for the respondent No.1/writ petitioner contended that the land adjacent to Shankar Road where Sh. Madan Lal Grover aforesaid was originally running the coal depot, was allotted to him as a displaced person and the subject plot / site was allotted in lieu thereof. However, upon enquiry, whether there was any allotment in lieu of the claim for compensation under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the counsel fairly states that it was not so. We may in this regard notice that the claim of the respondent No.1/writ

petitioner in the writ petition from which this appeal arises also was only of merely being a *tehbazari* holder and the construction on the *tehbazari* site having been demolished without following the due process of law and the respondent No.1/writ petitioner in the writ petition also had not put any higher claim to the subject plot / site. The counsel for the respondent No.1/writ petitioner has otherwise highlighted the false stand taken by the appellant MCD before the learned Single Judge.

22. We have considered the matter in the light of the contention raised and the history of these proceedings as noted hereinabove.

23. Though it is quite evident from the orders made from time to time in the appeal that the direction issued by the learned Single Judge to the appellant MCD to allot a plot of land admeasuring 200 sq. yds. on *tehbazari* basis to the respondent No.1/writ petitioner has been given a go-by and it has been held that the respondent No.1/writ petitioner is entitled to the same treatment as the other erstwhile coal depot *tehbazari* holders but we may also observe that we are unable to agree with the reasoning given by the learned Single Judge for issuing the direction to the appellant MCD to allot plot admeasuring 200 sq. yds. to the respondent No.1/writ petitioner, even if on licence basis. The learned Single Judge appears to

have been swayed into passing such a direction, dismayed at the false stand purportedly taken by the official of the MCD in the course of the proceeding in the writ petition. However, the stand, even if false, taken by some officials of the MCD also does not justify conferment of a benefit of allotment of land to the respondent No.1/writ petitioner, if otherwise not entitled to. We may also observe that the stand taken by the officials of the MCD of denial of grant of *tehbazari* rights to the respondent No.1/writ petitioner / her predecessor, was in the face of no records of such grant being available in the MCD. It cannot thus really be said that the stand was false; perhaps it was not properly worded.

24. It cannot be lost sight of that the predecessor of the respondent No.1/writ petitioner was but a *tehbazari* holder. A *tehbazari* holder is merely a licensee, entitled only to use the land for the purpose licensed and has no right, title or interest in the land. It cannot also be lost sight of that the said *tehbazari* was expressly for running a coal depot. It is not in dispute that the business of running of coal depot came to an end in the year 1995 and beyond which it was not permissible in law to run a coal depot on the said land. In our opinion, the *tehbazari* of the respondent No.1/writ petitioner thus came to an end in 1995 itself and the respondent No.1/writ

petitioner has not pleaded any right in law to continue in use of the said land for other purpose or to get any alternative land. The right of the respondent No.1/writ petitioner could at best be of rehabilitation in accordance with the policy, if any in this regard, as has rightly been observed in the orders aforesaid in this appeal. Reference may also be made to our judgment in *Saptagiri Restaurant Vs. Airports Authority of India* MANU/DE/2575/2014 where, on a conspectus of case law it was held that owing to Section 64 of Indian Easements Act, 1882, a licensee, if evicted, even though grounds for revocation of licence do not exist, or is forcefully evicted, his only remedy is to recover compensation from grantor and not to resume occupation.

25. Thus, the order dated 22nd November, 2005 of the learned Single Judge impugned in this appeal cannot stand and is set aside.

26. As far as the right of the respondent No.1/writ petitioner for rehabilitation is concerned, a policy in this regard has already been framed under the directions in this appeal from time to time. However, now the respondent No.1/writ petitioner and others similarly placed as the respondent No.1/writ petitioner are not satisfied with the said policy and have challenged the same in the other writ petitions aforesaid.

27. Thus, while allowing this appeal, we observe that nothing contained herein would affect the rights of the respondent No.1/writ petitioner in the other writ petition preferred by her, challenging the Circular / policy dated 6th July, 2011.

No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MARCH 18, 2015
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