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

% **Date of Decision: 17th July, 2018**

+ **RSA 367/2016**

SHARDA GAUTAM & ORS. Appellants

Through: Mr.Haji Mohd. Yameen, Adv.

versus

DELHI URBAN SHELTER IMPROVEMENT

BOARD & ANR Respondents

Through: Ms.Mini Pushkarna, Adv. for R1

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure ('CPC') impugns the judgment and decree [dated 31st August, 2016 in RCA No.41/2016, New No.61049/2016 of the Court of Additional District Judge-02, Central, Delhi] allowing the first appeal under Section 96 of the CPC preferred by the respondents/defendants and setting aside the judgment and decree [dated 8th March, 2011 in Suit bearing No.558/2004, New No.519/2008 of the Court of Additional Senior Civil Judge, Delhi] in favour of the appellant/plaintiff.

2. This appeal came up first before this Court on 5th December, 2016, when notice thereof was issued and the following substantial question of law was formulated:

“Whether under the policy of Slum Clearance, a slum dweller living in his independent premises can be dispossessed without providing any alternative accommodation?”

3. Vide subsequent order dated 16th February, 2017, the trial court record was requisitioned. The appeal has since been adjourned from time to time. Counsel for the appellants/plaintiffs and the counsel for the respondent No.1/defendant have been heard and the trial court record requisitioned perused.

4. Sh.Tara Chand Gautam, the predecessor of the four appellants/plaintiffs, instituted the suit from which this appeal arises pleading:

- (i) that he had been residing in house No.2662, Ward No.8, Gali Hari Shankar, Kala Masjid, Delhi – 110006, a slum cluster, since 1974 along with his family members;
- (ii) that the aforesaid premises were demolished by the demolition squad of DDA (Slum) on 22nd June, 1984 and a certificate dated 29th September, 1984 was issued by Assistant Director (Unauthorized Construction) of the appellant/plaintiff having surrendered the said accommodation and the same having been demolished;
- (iii) that though the appellant/plaintiff was assured of allotment of alternative accommodation but inspite of repeated requests and reminders of the appellant/plaintiff, no decision was taken;
- (iv) that the Slum & JJ Department subsequently came under the MCD and a letter dated 13th November, 2001 was received by the appellant/ plaintiff asking the appellant/plaintiff to furnish certain documents;
- (v) though the appellant/plaintiff furnished the documents sought from him, but still he was not allotted alternative accommodation

and another letter dated 19th November, 2001 again asking him to furnish other documents was received;

- (vi) that vide letter dated 12th May, 2004, the Slum & JJ Department intimated the appellant/plaintiff that there was no policy in existence whereunder any flat could be allotted to the appellant/plaintiff;
- (vii) that the other residents of the locality who had also made similar applications were allotted the flats.

Hence, the suit for declaration of eligibility of the appellant/plaintiff for alternative accommodation under the policy and for mandatory injunction directing the defendant/MCD and Slum & JJ Department to allot alternate accommodation to the appellant/plaintiff.

5. The Slum & JJ Department opposed the suit by filing written statement, pleading:

- (i) that the suit was barred by delay and laches;
- (ii) that the appellant/plaintiff had no *locus standi*;
- (iii) that the appellant/plaintiff was not residing at Property No.2662, Gali Hari Shankar, Kala Masjid, Delhi – 110006;
- (iv) that the respondent/defendant, in the year 1984, had demolished the property in question under its policy;
- (v) that merely for the reason of residence of a person at slum property, he does not become entitled to alternative flat;
- (vi) that there was a cut-off date for deciding the eligibility of the occupant for the purposes of allotment of alternative accommodation and alternative accommodation was provided to those found eligible;

- (vii) denying that any surrender certificate was issued;
 - (viii) that the appellant / plaintiff, from 1984 to 2001 had kept silent.
6. On the pleadings aforesaid of the parties, the Suit Court, on 28th February, 2005, framed the following issues in the suit:
- (1) Whether plaintiff is entitled to the decree of declaration, as claimed? (OPP)
 - (2) Whether plaintiff is entitled to the decree of Mandatory Injunction, as claimed? (OPP)
 - (2A) Whether the suit of the plaintiff is bad for delay and laches? (OPD-2)
 - (2B) Whether the plaintiff has no locus standi to file the present suit? (OPD-2)
 - (3) Relief.
7. The Suit Court allowed the suit, reasoning:
- (i) that the appellant/plaintiff had proved letter dated 13th November, 2001 written by the convenor of the Allotment Committee of Slum & JJ Department in response to the application addressed by the appellant/plaintiff to the Prime Minister, asking the appellant/plaintiff to furnish documentary proof of occupation;
 - (ii) this letter showed that the appellant/plaintiff had applied for alternative accommodation;
 - (iii) this showed that the appellant/plaintiff had applied for forthwith accommodation and the suit was not bad for delay and laches;
 - (iv) the appellant/plaintiff had, from the electoral record, proved that he was residing at the property aforesaid from May, 1974 to June, 1984; and
 - (v) hence, it was declared that the appellant/plaintiff is entitled to alternative accommodation and a mandatory injunction was issued directing the respondents/defendants to allot the

flat/residential built up premises to the appellant in lieu of his demolished house in a slum cluster.

8. The First Appellate Court, on appeal being preferred by the respondent No.1/Delhi Urban Shelter Improvement Board, which had since taken up the function of Slum & JJ Department, set aside the judgment and decree reasoning that:

- (a) an individual, whose land is acquired does not have an absolute right to the allotment of alternative plot of land for residential purposes and only has a right to be considered for allotment and that too subject to various conditions;
- (b) thus, the prayer made in the suit was to be considered as a “prayer for consideration” and not a “prayer for allotment”;
- (c) that the appellant/plaintiff had failed to place on record evidence of his clear ownership / title in the property and has only pleaded that he was residing in the property;
- (d) mere occupation does not entitle the appellant/plaintiff to the relief claimed; and,
- (e) that the appellant/plaintiff took almost 20 years to approach the Court.

9. The appellant/plaintiff who had instituted the suit has since died and been substituted by his wife and children. I have enquired from the counsel for the appellants/plaintiffs as to where the original appellant/plaintiff and the present appellants/plaintiffs have been residing since 1984.

10. The counsel for the appellants/plaintiffs states that the deceased appellant/plaintiff and the present appellants/plaintiffs have since then been residing at E-9, Tagore Road, Minto Road, New Delhi, which premises have been taken on rent by the appellants/plaintiffs.

11. I have drawn the attention of the counsel for the appellants/plaintiffs to the judgment of this Court in ***Dayanand vs. Union of India*** 2015 SCC OnLine 11774, followed in ***Makhni Kaur vs. Delhi Urban Shelter Improvement Board*** 2015 SCC OnLine Del 14074, holding that in any scheme of rehabilitation, there is an element of urgency and the same are meant to prevent homelessness and to provide immediate shelter to persons who are dispossessed from public land.

12. Though the counsel for the appellants/plaintiffs states that the deceased appellant / plaintiff was not sleeping from 1984 till 27th September, 2004, when the suit was filed, since he was representing, but the fact remains that the deceased appellant/plaintiff, even if in occupation, on being dispossessed was not rendered homeless and was in a position to settle himself in alternative accommodation. Supreme Court, in ***Union of India vs. Har Dayal*** (2010) 1 SCC 394, relying on ***S.S. Rathore vs. State of Madhya Pradesh*** (1989) 4 SCC 582, has observed that merely giving representation will neither extend the limitation nor wipe out the delay and laches.

13. It is not as if any land/property of the appellant/plaintiff has been acquired. The appellants/plaintiffs were in unauthorized occupation and had no right to any alternative accommodation for there was not any property to which they had a right and from which they had been divested.

14. Having not found any scheme/policy under which the suit claim was made, I have enquired from the counsel for the appellants / plaintiffs.

15. The counsel for the appellants / plaintiffs states that though no policy was produced before the suit court or before the First Appellate Court under which the claim was made, the respondent/DUSIB before this Court has produced the policy.

16. However, there is no policy filed by DUSIB before this Court either.

17. The policy on record of this Court, is the Resolution No.521 passed in the meeting of the Standing Committee of the MCD held on 11th December, 2000. The said policy could not have been the policy in force in the year 1984.

18. The counsel for the appellants/plaintiffs states that the responsibility to produce the policy was of the respondent/DUSIB.

19. I am afraid not. The appellant/plaintiff having approached the Court, was required to lay a foundation/basis for his claim. Neither was any such foundation/basis laid in the plaint or other pleadings nor was any document found to have been filed. In the absence of the same, it is not understandable on what premise the suit court found in favour of the appellants/plaintiffs.

20. The appellants / plaintiffs having not pleaded and proved their entitlement under any policy/scheme and having not further proved their eligibility under the scheme, the appellants/plaintiffs were / are not entitled to any relief.

21. The substantial question of law framed on 5th December, 2016 is not found to adequately cover the issue as has arisen. The substantial questions of law which arise for consideration are re-casted as under:

- (I) Whether the appellant/plaintiff, under any policy/scheme of the respondent/defendant, was entitled to alternative accommodation, if found to have been dispossessed from public premises?
- (II) Whether there is an element of urgency in any scheme of rehabilitation and whether the appellant / plaintiff, for the reasons of having approached the Court nearly 20 years after dispossession, was entitled to benefit of the scheme, if any?
22. The aforesaid questions are decided as under:
- (I) Without the appellants/plaintiffs pleading and proving any scheme and their eligibility thereunder, the appellants/plaintiffs cannot be entitled to any alternative accommodation; and
- (II) There is an element of urgency in any scheme/policy of rehabilitation and a claim thereunder made after 20 years from the date when the appellant / plaintiff was dispossessed and in which time the appellant / plaintiff has already settled down elsewhere, would not lie.
23. Resultantly, the appeal fails and is dismissed.
24. No costs.
25. Decree sheet be prepared accordingly.

RAJIV SAHAI ENDLAW, J

JULY 17, 2018

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