

\$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 186/2016, C.M. APPL.10238/2016 & 10239/2016

SADHU RAM

..... Appellant

Through : Sh. Alok Sharma and Ms. Swati Kumar,
Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through : Sh. Parvinder Chauhan, Standing
Counsel, for DUSIB.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

21.03.2016

1. The present appeal is directed against an order dismissing the writ petition.
2. The appellant had claimed that the respondent's refusal to allot the premises under his occupation is contrary to law. The appellant's case set-up before the learned Single Judge in the writ proceeding was that as an occupant of a portion of No.10830/3, Balmiki Colony, Karol Bagh (hereafter referred to as "the suit premises"), he was entitled to its allotment under the prevailing policy formulated by the Slum Wing of the Municipal Corporation of Delhi [hereafter "Slum Wing"]. The premises were originally allotted to one Bhagwan Sahai [hereafter "original allottee"]. The later policy of the Slum Wing enabled those in possession to seek regular allotment. The appellant contended that he was lawfully inducted as tenant by the heirs of the original allottee and, therefore, in that capacity continued in

possession. He thus claimed to be entitled to allotment.

3. Proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* were initiated. The Estate Officer (EO), by an order dated 28.06.2005 held *inter alia* that the appellant was an unauthorised occupant and ordered his eviction. The appellant felt aggrieved and filed an appeal to the concerned authority, i.e. District Judge [hereafter “the Appellate Authority”]. By an order dated 03.02.2007, the Appellate Authority upheld the eviction and affirmed the finding that the Appellant was an unauthorized occupant. At that stage, the Appellant approached this Court by filing W.P.(C) 2/2008, contending his claim to be a lawful occupant and that, therefore, his right to be considered for allotment in accordance with the policy dated 11.06.1984 [hereafter “the 1984 policy”]. A direction for considering his claim was passed by the learned Single Judge of this Court by order dated 04.01.2008, while disposing of the petition. Subsequently the Slum Wing, after considering the circumstances – including the appellant’s documents lying with the authority regarding his occupancy and title, rejected his application for allotment of the premises. It was stated that:

**“SLUM & JJ DEPARTMENT
MUNICIPAL CORPORATION OF DELHI**

*Lease & Liquidation Branch
C-Block, Vikas Kutir,
I.P. Estate, New Delhi-110 002*

No:F.1/21/TC/LO/05/D-222

Dated -1/07/08

To,

*Shri Sadhu Ram
S/o. Sh. Ram Pat,
Qtr. No.10-A/10829, Balmiki Colony,
Karol Bagh, New Delhi.*

Sub: Your application for grant of lease hold/free-hold rights in respect of quarter/property bearing No.10-A/10830, Balmiki Colony, New Delhi.

XXXXXX

XXXXXX

XXXXXX

As per the policy decision dated 11.06.1984 of Govt. of India/Ministry of Works & Housing the lease hold rights in respect of the Slum tenements can be granted either to the authorised allottee or the unauthorised occupant except tress passer.

XXXXXX

XXXXXX

XXXXXX”

4. The appellant felt aggrieved and approached this Court by filing W.P.(C) 8559/2009. It was contended *inter alia* that the appellant was discriminated unfairly in that Ms. Chandro Devi’s application (the other allottee) was accepted and that she was allotted the premises whereas he, was unjustifiably denied the same benefit. It was stated that the contention of the Slum Wing that he was an unauthorised occupant was utterly unfounded. The appellant relied upon the 1984 policy to say that those found in possession were entitled to allotment. These contentions were rejected by the learned Single Judge.

5. Learned counsel urges that the appellant’s possession is not disputed and he has been in continuous possession of the suit premises for a long time and fulfils all criteria spelt out in the 1984 policy for being eligible for the allotment he seeks. It is submitted that

the previous order binds the respondents for considering his application objectively. Instead the respondent blindly rejected it and applied the criteria in a prejudicial manner, while the other occupant was granted the benefit and he was denied the same.

6. The 1984 policy relied upon by the appellant reads as follows:

**“GOVERNMENT OF INDIA
MINISTRY OF WORKS AND HOUSING
(NIRMAN AUR AWAS MANTRALAYA)
NEW DELHI**

11th June, 1984

To,

*The Lt. Governor,
Union Territory of Delhi
Delhi.*

Sub: Grant of Perpetual lease-hold rights in respect of tenements constructed in Delhi under Slum Clearance Scheme.

XXXXXX

XXXXXX

XXXXXX

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

- (i) The cost of liquidation of the tenement would be fixed as 20 times the annual economic license fee.*
- (ii) The lease hold rights will be granted either to the authorised allottee or to the “Unauthorised occupant” except trespasser.*
- (iii) An “authorised allottee” is one who possesses a Valid letter of allotment or his legal heir/successor and at present living in the tenement.*

Notwithstanding anything contained in any Act, the word “unauthorized occupant” shall be interpreted for purposes of this order as one who is presently occupying the slum tenement duly allotted by the competent authority to some entitled person and the unauthorized occupant has taken the premises on rent from the original allottee or a subsequent purchaser or his heir successor as the case may be, or has purchased the premises.

A “trespassers” is one who is neither an allotted nor an unauthorized occupant as defined above.”

7. In this case, the rejection of his request is premised upon the appellant’s inability to show that he was an authorised allottee or that he was not an “unauthorised occupant” within the meaning of the 1984 policy. The rejection letter noticed that the appellant was in possession of an extremely small part of the property and was unable to produce a document to substantiate his claim either to the title, or to being a lawful tenant inducted at any point of time. Furthermore, the order of the Appellate Authority which rejected his contention in this regard pertinently records as follows:

“4.1 Respondent has further stated that said quarter was a single room tenement, which was allotted to Sh. Bhagwan Sahay. Unauthorised construction has been carried out in the property; At present there are seven rooms existing on the ground floor, out of which two rooms are in possession of Sh. Sadhu Ram and the remaining rooms are in possession of Smt. Chandro Devi. There are three rooms and one half on first floor; there is one room and one balcony, at second floor. The appellants carried out unauthorised construction measuring 117.99 sq. mt. without permission/sanction for construction of additional accommodation from the Competent authority. There is also an encroachment of public land to the extent of 47.26 sq. mtrs. adjoining the said quarter. The appellants were called

upon to vacate the said quarter/remove unauthorized construction/encroachment upon public land. But they failed to do so.

4.2 In view of above, proceedings for eviction/demolition of unauthorized construction and removal of encroachment under PP Act were initiated against the appellants; Notices u/s 4(i) and 4(2)(b)(ii) and u/s 5A(2) and 5B(1) PP Act, were issued to the appellants. In response to the said notices, both the appellants had filed replies before the Estate Officer. The appellants had even led evidence. The Estate Officer after duly considering the submissions made and evidence led by both the appellants as well as by the respondent has rightly passed the impugned order of eviction, demolition of unauthorized construction, and removal of encroachments. ”

8. These findings were not disputed by the appellant or for that matter by Ms. Chandro Devi. In these circumstances, the Court is of the opinion that the impugned judgment of the learned Single Judge upholding the rejection cannot be faulted, because the onus of establishing some semblance of legality of his occupation was upon the appellant, which he failed to discharge. The decision of the learned Single Judge cannot be, therefore, held to be unreasonable or erroneous. The appeal fails and is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 21, 2016/ajk