

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

+ W.P.(C) 8559/2009

Reserved on: November 30, 2015
Date of decision: January 05, 2016

SADHU RAMPetitioner

Through: Mr. Alok Sharma, Advocate.

versus

MCD & ORS.Respondents

Through: Mr. Parvinder Chauhan, Advocate for R-1.
Mr. Arun Vohra with Ms. Aakriti Vohra, Advocates for R-3 & R-4.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

1. By way of present petition, the petitioner seeks setting aside of the order passed by respondent No.1 vide letter No.F.1/21/TC/LO/05/D222 dated 01.07.2008 whereby the application of the petitioner for grant of leasehold rights in respect of quarter bearing No.10830/3, Balmiki Colony, Karol Bagh, New Delhi was rejected. Further, the petitioner prays for cancelling the lease deed dated 01.09.2008 executed by respondent No.1 in favour of respondent No.2 in respect of the aforesaid property and direction to respondent No.1 to consider the application of the petitioner afresh in the light of declared policy of the Government of India.

2. Briefly recapitulating the facts as averred in the writ petition are that the petitioner had been in possession of a portion of the premises bearing No.10830/3, Balmiki Colony, Karol Bagh, New Delhi for the last about 40 years.

The premises in question was initially allotted to one late Shri Bhagwan Sahai and after his death, his legal heirs handed over the possession of a portion to the petitioner, while the possession of other portion was handed over to respondent No.2. It is further stated that according to the policy formulated by Government of India as applicable to the quarter in question, which are under the management and control of respondent No.1, the persons found in possession of the suit property as well as other similarly situated flat were to be granted patta/leasehold rights in respect of the suit property. Accordingly, the petitioner applied for grant of leasehold rights to the respondent vide application dated 29.09.1984. In the same year i.e., 1984 three separate applications were moved by the petitioner, respondent No.2 and one Smt. Sarto Devi, daughter-in-law of the original allottee for grant of leasehold rights, but the same were not granted leasehold rights by the respondent No.1 since none of them had exclusive and complete possession of the quarter in question.

3. The petitioner alleged that respondent No.2 made extensive unauthorized construction in the quarter in question, which was one of the major disqualification in the regularization of allotment. Since the unauthorized construction was endangering the safety of the petitioner's portion, he filed a suit for mandatory injunction before the Civil Judge, Delhi for removal of unauthorized construction by respondent No.2. It was reported by respondent MCD that respondent No.2 had raised unauthorized construction on a very large scale. Thereafter, notice dated 21.09.2004 was received by the petitioner as well as respondent No.2 from the Estate Officer under Section 4(2) 5A (2) and 5B (1) of Public Premises Act whereby they were called upon to show cause why order for demolition and removal of unauthorized construction as well as for their eviction from the property/quarter be not made.

4. In reply to the show cause notice, respondent No.2 alleged that the said quarter was sold by the legal heirs of late Shri Bhagwan Sahai and thereafter the Estate Officer(S) III, Slum & JJ Department, Municipal Corporation of Delhi

passed a common eviction order dated 28.06.2005 against the petitioner and respondent No.2 besides passing the orders for removal of encroachment. Against the said order, the petitioner filed appeal bearing PPA No.128/2005 and respondent No.2 Smt. Chandro Devi filed appeal bearing PPA No.129/2005 before the learned Addl. District Judge, Delhi. Both the said appeals filed by the petitioner and respondent No.2 were also dismissed. The order passed by learned Addl. District Judge, Delhi was challenged by respondent No.2 by filing a writ petition bearing W.P.(C) No.2056/2007 before this Court which was also dismissed on 16.03.2007. The respondent No.2 preferred LPA No.218/2007 against the said order dated 16.03.2007 which was also dismissed by the Hon'ble Division Bench of this Court. The petitioner also filed a writ petition against the order of the learned Addl. District Judge, Delhi bearing W.P.(C) No.3047/2007 which was also got dismissed.

5. It is further stated that respondent No.2 started colluding with the officials of respondent No.1 and on 18.10.2007 portion of the property in possession of the petitioner was sealed but no action was taken against respondent No.2. The petitioner, thereafter, filed a writ petition bearing W.P.(C) No.02/2008 against the respondent which was disposed of by this Court vide order dated 04th January, 2008 directing the respondent to consider and decide the application dated 29.09.1984 filed by the petitioner for regularization of the leasehold rights in his favour within a period of six weeks.

6. The petitioner received a letter dated 01.07.2008 informing him that he had submitted photocopies of the documents in respect of his possession only, but no documents such as allotment letter, any sale/purchase letter or any payment receipt/ challans were filed by petitioner to establish his claim regarding his right, title or interest in the said property and rejected the claim of the petitioner in respect of grant of leasehold rights.

7. The petitioner again filed a writ petition bearing W.P.(C) No.7454/2008 and challenged the rejection of the petitioner's application for grant of leasehold rights. Since no specific prayer for challenging the order dated 01.07.2008 was made by the petitioner, the petition was dismissed as withdrawn with liberty to file petition challenging the rejection dated 01.07.2008. However, during the hearing of the above petition the respondent No.1 revealed that after rejecting the claim of the petitioner, a lease deed dated 11.09.2008 was executed in favour of respondent No.2. Being aggrieved by this, the petitioner preferred the present writ petition.

8. The respondent No.1 in reply to the petition has stated that the property was initially allotted to Shri Bhagwan Sahai in the year 1942 on licence fee basis. It is further stated that when a policy was formulated by the Government of India on 11.06.1984 to grant leasehold rights of such properties, three persons, namely Smt. Chandro Devi, Smt. Sarto Devi and Shri Sadhu Ram had applied in the year 1984 separately for granting leasehold rights of the said premises, but the applications of Smt. Sarto Devi and Shri Sadhu Ram were not considered at that time due to non-submission of sufficient documents and only the application of Smt. Chandro Devi was considered. As per the terms of Policy dated 11.06.1984 Smt. Chandro Devi had produced necessary documents and was found in possession of the said premises. She was also asked to submit the original documents of purchase of quarter but she did not turn up. As she had also raised unauthorized construction, the case of grant of leasehold rights was not decided in her favour at that time. The case was referred to the Estate Officer who passed orders for demolition of unauthorized construction as well as for eviction of both Smt. Chandro Devi and Shri Sadhu Ram. It is further stated that in the petition filed by Shri Sadhu Ram before this Court, this Court vide its order 01.08.2007 directed him to vacate the portion of the said house within eight weeks. On non-vacating the said portion, he was evicted forcibly by the Department. However, in the writ petition filed by Smt. Chandro Devi, this Court passed an

order dated 18.12.2007 directing the department to pass an appropriate order in terms of the Government of India's policy dated 11.6.1984 with regard to the claim of the petitioner (Chandro Devi) within four weeks. It is further stated that in compliance of the order, the department examined the case of Smt. Chandro Devi again and as per the policy her claim was processed for grant of leasehold rights of the said house in her favour.

9. Respondent No.2 also filed a short affidavit stating that the property in question was got registered by respondent No.1 vide a conveyance deed dated 08.02.2008 in her favour and pursuant to the said registered Conveyance Deed, she gifted the said property in equal shares to her two sons namely Shri Man Singh and Shri Fateh Singh, respondent Nos.3 and 4 herein vide two separate Gift Deeds dated 27.04.2009.

10. I have heard learned counsel for the parties and carefully perused the material on record.

11. Mr. Alok Sharma, learned counsel for the petitioner contended that the petitioner is in possession of the quarter for the last 40 years. It is further submitted that as per the Policy of the Government of India, which is applicable to the quarter in question, if a person is found to be in possession of the property, leasehold rights in respect of the said property be granted to him. Learned counsel further contended that emphasis on sale purchase documents by the respondent No.1 is without any reason, illegal and with the sole objective of defeating the claim of the petitioner.

12. Learned counsel for respondent No.1 urged that the petitioner did not produce any document before the department. He also pointed out that the petitioner has not produced any document along with the present petition.

13. A perusal of the record shows that the petitioner did not furnish or produce any documents regarding sale/purchase or any payment receipts to

establish his right, title and interest in the property in question. The respondent No.1 duly considered the application of the petitioner for grant of leasehold/freehold right and after consideration of the same the competent authority rejected the application of the petitioner, which was communicated to the petitioner vide letter dated 01.07.2008. The relevant paragraphs of the same are reproduced hereunder:-

“...In compliance of the Order dated 4.01.2008 passed by Hon’ble Ms. Justice Gita Mittal J. in Writ Petition (Civil) No.2/2008 filed by Shri Sadhu Ram, vide which the Hon’ble High Court has been pleased to dispose of the Writ Petition with the direction to the Department to consider the application dated 29.09.1984 in accordance with law and under prescribed policy, Shri Sadhu Ram was issued a letter dated 8.2.2008 whereby he was asked to submit documents in original regarding his occupancy and title in respect of the portion of the above said Quarter within seven days of the receipt of the letter.

In reply to the above letter Sh. Sadhu Ram vide letter dated 21-02-2008 submitted photocopies of the documents in respect of his possession only, which was otherwise admitted by the department, but no document such as allotment letter, any sale purchase documents or any payment receipts/challans were filed by Shri Sadhu Ram to establish his claim regarding his right, title or interest in the above property.

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 authorized allottee or the unauthorized occupant except tress passer.

Since Shri Sadhu Ram was in possession of very small portion of the above said property and despite of repeated opportunities has failed to produce any document in respect of his title to substantiate his claim in the property in accordance with the policy as such he is neither an allottee nor an unauthorized occupant as defined in the policy.

Keeping in view the above facts and circumstances and after carefully examining the case the competent authority in Slum & JJ Department, MCD vide his orders dated 08.05.2008 has rejected the

application of Shri Sadhu Ram regarding his claim in respect of the above stated property....”

14. This Court does not find any force in the arguments of the petitioner that the respondent’s emphasis on sale purchase documents is without any reason and illegal and against the policy of the Government of India. A perusal of the policy dated 11.06.1984 clearly stipulates that in supersession of all the earlier orders, perpetual leasehold rights in respect of all the slum tenements in Delhi should be granted to the allottees/ occupants on the following terms and conditions:-

“i.

ii. The leasehold rights will be granted either to the authorized allottee or to the “Unauthorized occupant” except trespasser.

An “authorized 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 legal successor as the case may be, or has purchased the premises...”

15. The respondent No.1 decided to reject the application of the petitioner only after the overall consideration and I find nothing wrong in the said action of the respondent.

16. A perusal of the affidavit filed by respondent No.1 shows that a fresh survey was conducted and it was revealed that the total area of the property is 70.173 sq. mtrs. and the area measuring 62.893 sq. mtrs. has been shown in occupation of Smt. Chandro Devi and rest of the allotted portion had been sealed by the Department after evicting the petitioner and the said sealed portion is in possession of the Department, which later on, after approval of the competent

authority was desealed by the Department on 2.7.2008 and handed over to Smt. Chandro Devi.

17. The petitioner had gone into several rounds of litigation regarding the property in question at different level of judicial forums. I have perused the orders placed on record. In none of those proceedings, the petitioner produced or filed any document showing his right, title or interest in the said property. The petitioner has also not placed any document along with the present petition. In the absence of any document on record proving the claim of the petitioner, I find that there is no illegality in the impugned order dated 01st July, 2008 passed by respondent No.1.

18. In view of the aforesaid discussion, I am of the view that no interference by this Court under Article 226 of the Constitution of India is called for in the present petition. Accordingly, the petition is dismissed. No order as to costs.

(VED PRAKASH VAISH)
JUDGE

JANUARY 05, 2016
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