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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 29.08.2016

+ W.P.(C) 4263/2012, CM APPL Nos. 8841/2012, 826/2014,
16281/2015, 16282/2015 & 23989/2015

GURMEET SINGH AND ORS

..... Petitioners

Through Mr. Vimal Wadhawan and Mr. Vipin
Kumar, Advocates

versus

N.D.M.C. AND ANR

..... Respondents

Through Mr. Anuj Aggarwal, ASC with Ms.
Niti Jain, Advocate for GNCTD

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 There are seven petitioners before this Court. The case as set up is that the petitioners had purchased seven shops in property No. 7, Ganesh Market, Opposite B-Block, Ganda Nala, Moti Nagar, New Delhi from one Jaspal Singh. Petitioner No. 1 had purchased his shop (7-E) on 08.08.1990. Petitioners No. 2 & 3 had purchased their shops (7-F and 7-G) on

07.02.2000. Petitioner No. 4 had purchased his shop (7-A) on 28.04.2009. Petitioner No. 5 had purchased his shop (7-B) in 2008. Petitioner No. 7 had purchased his shop (7-D and 7-C) in 2003-2005. Further averments in the writ petition disclose that the original owner of these shops was Amin Chand who had executed a power of attorney dated 06.03.1987 for half his share in favour of Jaspal Singh and for other half of the property to Surender Singh. The aforementioned petitioners had purchased these shops from the share of Jaspal Singh who had constructed seven shops on the said premises and sold them to these seven petitioners. Additional submission is that the Circular/Policy of the Department dated 06.07.2011 based on Resolution No. 874 dated 16.03.2011 and Resolution No. 10 dated 27.05.2011 is bad. The petitioners have been forcibly evicted from the said shops vide orders dated 16.11.2011 and 11.07.2012 which is in terms of their Policy dated 06.07.2011 which is against their Resolutions dated 16.03.2011 and 27.05.2011; they being bad in law, the same should be set aside.

2 In the counter affidavit filed by the respondents, this position has been disputed. Submission is that the original allottee was Amin Chand who had only been granted a license and since he has violated the terms of the license, the petitioners who are illegal occupants having purchased these shops from

the power of attorney holder of Amin Chand and being in contravention of the terms of the license which had been granted to Amin Chand; they are entitled to no relief.

3 Arguments have been heard. Record has been perused.

4 The averments in the writ petition disclose certain undisputed facts. The undisputed fact is that all the seven petitioners had purchased seven shops from one Jaspal Singh. Jaspal Singh had allegedly become the owner of these shops (which he had constructed by virtue of an agreement to sell which he had entered into with Amin Chand who was the original license holder of this aforementioned land). This aforementioned land comprised of 100 square yards and had been granted to Amin Chand for the purpose of running a coal depot. Amin Chand had executed a general power of attorney and agreement to sell dated 06.03.1987 with Jaspal Singh and one Surender Singh. Jaspal Singh had constructed these seven shops which had then been sold to the present petitioners. All these facts stand admitted in paras 6 to 9 of the petition.

5 Thus what comes on record is that the original licensee was Amin Chand but thereafter the rights in this property have passed on to the present petitioners.

6 The stand of the Municipal Corporation in its counter affidavit is that the Policy dated 06.07.2011 framed by the answering respondent is a Policy of the Government which cannot be interfered with. The premises in question was allotted on tehbazari basis to Amin Chand. He was allotted this site for running a coal depot. Amin Chand had illegally sold the land in question to Jaspal Singh who in turn constructed seven shops and thereafter sold the same to the seven petitioners. Since the tehbazari rights granted to Amin Chand stand violated, a show cause notice was issued to Amin Chand on 11.11.2011 asking him as to why this site be not cancelled as there was a violation of the tehbazari rights. The subsequent order dated 16.11.2011 was passed. A further show cause notice dated 25.06.2012 was also issued to the petitioners stating that the original allottee had created a third party right which he could not do and since they were illegal occupants, they were liable to be evicted. They were granted opportunity of personal hearing but they did not appear. The contention of the respondents is that the land is a public land and tehbazari does not confer any right over the land in question. At best it is a permissive user and since the conditions of the license have been violated, the petitioners are liable to be evicted.

7 Learned counsel for the petitioners in support of his claim has relied upon a judgment of a Bench of this Court passed in W.P. (C) No.1005/2011 titled Kirori Mal and Others Vs. MCD. Submission is that in a similar context where the petitioners were in settled possession and they were asked to be evicted by the MCD, a Bench of this Court had noted that they can be removed only under the provisions of Public Premises Act and not otherwise and the proceedings before the Estate Officer had necessarily to be followed. Submission is that this judgment has been upheld in LPA No. 481/2011 decided on 25.07.2011.

8 The facts of the case of Kirori Mal (supra) have been perused. In that case there was a decree enuring in favour of the said petitioners which was a decree which was 15 years old. This was noted in the order of the Single Bench which had in this context said that since the petitioners already had a decree in their favour and the respondent-MCD had been restrained from dispossessing them in terms of that decree dated 23.01.1995 (15 years old), they being in settled possession, they could not be evicted unless the Department resorted to the provisions of Public Premises Act. This aspect was considered by the Division Bench and the Division Bench had reiterated the position that since a decree had been passed in favour of the petitioners

in the year 1995 to which the MCD was also a party and the suit having been filed in the year 1978 and not having been challenged, the respondent Corporation could not evict the petitioner then as so stated by the Single Judge i.e. by taking recourse of the Public Premises Act. The facts of that case were clearly different and would not be applicable to the facts of the instant case.

9 What has come on record in the instant case is that the seven petitioners had purchased the aforementioned shops in 1990 to 2007 from the illegal and unauthorized holder Jaspal Singh who also had no legal right in the tehbazari rights of Amin Chand and who was admittedly the original allottee.

10 A Bench of this Court while dealing with a similar factual matrix as also the Circular of the Government dated 06.07.2011, Resolution No. 874 dated 16.03.2011 and Resolution No. 10 dated 27.05.2011 in W.P. 3455/2012 titled Smt. Shanti Devi Vs. Government of NCT of Delhi and Others had noted herein as under:-

“Insofar as the first contention is concerned, i.e. that the impugned policy lacks bona fide, there is no material to substantiate this contention.

.....

In view of the above, the contention that the impugned policy was framed only to sustain a statement made before a Division Bench of this court, cannot be accepted.”

11 The Policy was upheld. The Court went ahead to state that a license when granted by the Corporation is only for a permissive user and does not confer any right in respect of the said property.

12 In this case also, admittedly the original allottee Amin Chand had been granted a license which stood cancelled by the show cause notice dated 11.11.2011; since he had violated the terms of the license, that license had been cancelled. This judgment passed by the Single Judge was upheld by the Division Bench in LPA No.542/2015 titled Rajiv Narula Vs. Governments of NCT of Delhi and Others [including the case of Shanti Devi Vs. Governments of NCT of Delhi Thr Its Chief Secretary and others (LPA No.595/2015)] wherein before the Division Bench a re-argument on the policy dated 06.07.2011 was heard and decided in favour of the Corporation. The said order reads herein as under:-

“11 The challenge of the appellants to the policy dated July 06, 2011 cannot be sustained on the reasons urged. The appellants claim that the policy needs to be struck down for the reason the Division Bench of this Court in LPA No.240/2006 did not direct MCD to frame the policy rather recorded the statement of the counsel. Vide the amendment dated July 06, 2011 the expression “Hon’ble High Court of Delhi passed an order in LPA No.240/2006 titled MCD Vs Sadhna Grover vide which MCD was directed

to frame a policy with regard to the Coal Depots. Pursuant to the above said orders of the Hon'ble High Court of Delhi..." appearing in para-1 of the Circular No.AO/CL&EC/2011/87 dated 06.07.2011" has been deleted in the policy and thus the challenge on this ground does not survive.

12. Nothing has been placed on record to show that the policy as framed is arbitrary, illegal or that the MCDs have no authority to lay down the policy. No doubt coal as a utility has lost its value in day-to-day life of man. Except being used in hotels, restaurants etc. the coal is not being used as a commodity in the household on day-to-day basis and the storage spaces for LPA Nos.542/2015 & connected matters Page 36 of 40 the coal depots as required earlier are not required in the present scenario. The use of coal is further prohibited by the various orders passed under the Air (Prevention and Control of Pollution) Act, 1981. Thus we find no reason to strike down the policy dated July 06, 2011 of the respondent MCDs as arbitrary and illegal."

13 The second aspect regarding the re-possession of the property (as is argued in the present case) was also discussed and while extracting a portion of the order passed by the Single Bench in that matter, the Division Bench being in agreement with that order had extracted it as under:-

““1. The petitioners in these petitions are claiming rights to occupy premises which had been allotted as coal depots to their respective predecessors. Some of the petitioners are third parties who have allegedly acquired occupancy rights pertaining to the respective premises occupied by them, from the original allottees of those premises. Some of the petitioners are claiming to be the heirs of the original allottees....”

14 Needless to state that this Policy would apply only to tehbazari holders who are entitled to tehbazari rights; the petitioners who are the alleged successors in interest of the original allottee Amin Chand have no tehbazari rights.

15 This writ petition is without any merit. Dismissed.

AUGUST 29, 2016
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INDERMEET KAUR, J

