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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 20.10.2016

Judgment delivered on : 25.10.2016.

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W.P.(C) 7100/2010

AVTAR GOODS CARRIERS

..... Petitioner

Through Mr.Sachin Chopra and Mr. Ankit
Malhotra, Advocates.

versus

MCD AND ORS

..... Respondents

Through Mr.Sudhir Nandrajog, Sr. Adv. with
Mr. Ajay Arora and Mr. Kapil Datta,
Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner M/s Avtar Good Carriers was a partnership firm carrying on its business of transportation. Gopal Singh had been allotted shop No.9 at New Qutab Road by the L & DO vide a lease deed dated 26.07.1962 for a period of 99 years. This firm was carrying on its transport business since the year 1975. The proposal was mooted in the year 1976. On 20.08.1986, a Scheme/Policy was framed by the respondent/Municipal Corporation of Delhi for allotments of plots in Sanjay Gandhi Transport

Nagar (hereinafter referred to as the 'SGTN') at G.T. Road, Badli. The object was to decongest the city by curtailing the movement of trucks and also by shifting workshops and godown in the outskirts of the city. The project however could not take off. It was only in October, 1993 that the DDA transferred about 161 acres of land for the purposes of setting up this transport nagar. However, its approval was received in October, 1983. The project was to be executed on a 'no profit and no loss basis'. Gopal Singh expired and thereafter his leasehold rights got substituted in the name of Ranjit Kaur (present petitioner) the daughter-in-law of Gopal Singh along with her other sons.

2 A survey was conducted in 1986. This survey had been conducted with the object to verify whether the applicant was still functioning as a transport business from Shop No.9, New Qutab Road which had originally been allotted to Gopal Singh. On 27.12.1986, the petitioner was allotted plot No. BG-310, SGTN. However on 30.11.2007, the Corporation informed the petitioner that plot No. BG-310 had been de-notified due to encroachment and the possession of the same could not be given. Once again a draw of lots was held and the petitioner was allotted BG-5, SGTN. On 12.06.2009, the petitioner gave an undertaking to stop the trade at the existing site and

moved to the allotted site at BG-5, SGTN. The petitioner had also made an application for construction in the property but her building plan was rejected by the Executive Engineer on 21.06.2009. However site inspection had revealed that from shop No.9, the transport business of Mahender Good Carriers was still been run. Show cause notice dated 18.06.2010 was issued to the petitioner. On 12.10.2010, the petitioner was directed to vacate the premises and handover its vacant possession to the respondents.

3 It is this order dated 12.10.2010 which is the subject matter of challenge before this Court.

4 Contention of the petitioner is that M/s Avtar Good Carriers which was the original firm was engaged in the business of transport since the year 1975. A huge capital was invested in establishing the said business. After the death of the original allottee Gopal Singh, the names of Ranjeet Kaur and her sons stood substituted. There is no quarrel on this proposition. Vehement contention of the learned counsel for the petitioner is that although BG-5 at SGTN had been admittedly allotted to the petitioner but the physical possession of the same has never been taken over by the petitioner. Thus the show cause notice issued to her is bad as in the absence of possession of BG-5 which had been allotted to the petitioner at SGTN, the

question of her vacating shop No. 9 at New Qutab Road did not arise as he could not possibly shift his established business to any place. Vehement submission is that the petitioner has paid for two plots i.e. firstly at the time when the lease deed was executed with the L & DO which was in the year 1962 when the petitioner had admittedly paid a sum of Rs.3,287/-. This was a 99 year old lease. This could not have been over-ridden by a Resolution of the Department. A Resolution would not have the same sanctity as that of a registered lease deed; the Resolution could not override this lease deed. Additional submission being that even for the plot at SGTN, a sum of Rs.4,36,953/- has been paid by the petitioner; this is a separate and distinct transaction. The contention of the respondent that the petitioner should vacate the instant site i.e. shop No. 9, New Qutab Road is not as per the Policy/Resolution of 1987; the Resolution dated 12.01.1987 had only presupposed that the transport business at New Qutab Road should be stopped by the party; the separate allotment on payment of the plot at SGTN had no connection with the petitioner having to give up her rights at New Qutab Road. Another argument canvassed by the learned counsel for the petitioner is that the Scheme is wholly discriminatory. The persons who have leasehold rights have been targeted but those who are having freehold

properties have been saved; this was also not a part of the Resolution. Submission being that Clause 7 (f) of the aforementioned Policy which has been heavily relied upon by the petitioner does not come to their aid as reference under Clause 7 (f) is applicable to Government land/public premises and thus if at all the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 would apply, the act of the respondents asking the petitioner to vacate the plot in a situation when the alternate plot at SGTN has also not been handed over to them is clearly a misunderstanding and fallacious reading of the Resolution dated 12.01.1987. The act of the respondent being bad, the impugned notice is liable to be set aside.

5 Counter affidavit and the stand of the respondent have been perused. The submission of the respondent which is borne out not only from the counter affidavit but also from his line of argument is that the Policy/Resolution dated 12.01.1987 had been formulated to decongest the city and by shifting of the transport business at New Qutab Road to SGTN; alternate plots were being allotted to those persons but in lieu of these alternate plots, they had to give their existing rights at New Qutab Road. Additional submission being that the physical possession of the alternate site at BG-5, SGTN has already been given to the petitioner which was on

31.07.2009 and this document of possession has been duly signed by the petitioner. The petitioner had in fact also moved an application seeking construction of her building at the site and had the possession not been given to her, the question of construction at site would not have arisen. Attention has been drawn to Annexure P-13 dated 04.07.2010 which is a document rejecting the building plans of the petitioner. Submission of the learned senior counsel for the respondent is that this petition has been filed on 20.10.2010 and the petitioner has concealed this material fact. She has concealed the fact that she has already received possession of the alternate plot at BG-5, SGTN on 31.07.2009; she has also concealed the fact that she had moved an application seeking a sanction of her building plan at the aforementioned site which had been rejected on 04.07.2010. It is pointed out that these documents have been filed by the petitioner herself and this is a clear case where the petitioner has not approached the Court with clean hands. No discretion should be afforded to such a person who has concealed material facts. To support this submission, learned senior counsel for the respondent has placed reliance upon a judgment of the Apex Court reported as AIR 2010 SC 3823 Ritesh Tewari & Anr Vs. State of U.P. & Others; submission being that a Court of equity when exercising its equitable jurisdiction must act so

as to prevent perpetration of a legal fraud and promote good faith and equity; a petition which is not clear on facts and factual submissions are incorrect is liable to be dismissed. Learned senior counsel for the respondent has also pointed out that the entire pleadings of the present petition which includes not only the averments in the petition but also the rejoinder filed by the petitioner, there is no averments that the petitioner was entitled to retain both the plots i.e. shop No. 9, New Qutab Road and the alternate plot at SGTN; submission being that this argument has been canvassed only during the course of hearing before this Court and had first emanated at the time when the order dated 31.11.2014 was passed by this Court i.e. almost after four years of filing of the petition as none of the earlier orders have reflected this argument. This argument being beyond pleadings cannot be looked into.

6 Arguments have been heard. Record has been perused.

7 This Court notes that the aforementioned Policy which was Resolution No.1137 of January, 1987 dated 12.01.1987 had been passed with the object to take forward the earlier proposal of 1976 which was to decongest the city and curtail the movement of trucks and workshops by shifting the transport nagar from the city to outskirts i.e. SGTN. This development work was taken on 'no profit and no loss' basis. The cost of the land was

approximately Rs.500 per meter which includes not only the land allotment price but also the development cost. A survey had been ordered to determine as to who was in occupation and whether the said occupant was carrying on the business at the original site before his application for an alternate plot could be entertained. Clause 7 of the Policy clearly makes a reference to the eligibility criteria. Clauses 7 (c) and (f) are relevant. They read as under:-

“(c) Applicants, qualified by criteria (a) and (b) above will all be given one plot each in lieu of their premises/area of usage measuring upto 500 sq. metres. For every 500 sq. metres additional area or fraction thereof under their usage, applicants will be entitled to an additional plot of applicable size. For the next one commercial price (which will be three times the reserve price) and for the remaining additional plots market price (which will be five times the reserve price).”

(f) The allottee shall give undertaking that after allotment of plot they will discontinue their transport/allied business from the present site. Wherever the applicant/applicants are in occupation Govt. land/public premises, the same will be restored by them to the land owning Deptt./Authority”

8 A reading of the aforementioned Clauses makes it abundantly clear that the persons who qualifies as an eligible applicant would be given a plot in lieu of their premises which was originally allotted to them. Thereafter, the allottee was to give an undertaking that he would discontinue the

transport/allied business from the original site. Whether the applicant was in occupation of Government land/public premises, the same will be restored by them to the land owning agency.

9 It is relevant to point out that the Government lands/public premises were later on substituted by an amended Resolution and the words ‘Government lands/public premises’ were to be read as public land. This was in terms of the decision of the Ad-hoc R.P. No.15 dated 24.11.1986. Subsequent thereto, the petitioner had also furnished her affidavit dated 12.01.2009. This affidavit has been signed by the petitioner and para 3 of the said affidavit reads herein as under:-

“That we shall stop our trade at the said premises and will move to allotted site at the earliest after delivery of possession of the plot No. GB-5, area 220 square meter. File No.220/40 in Sanjay Gandhi Transport Nagar, Delhi-110042.”

10 This deposition states that the trade at the original premises i.e. shop No. 9, New Qutab Road will be stopped and the deponent would move to the allotted site at the earliest which was BG-5, SGTN.

11 The submission of the petitioner that this was not an exchange programs and the petitioner was entitled to retain both the plots is not borne

out. The Policy/Resolution dated 12.01.1987, at the cost of repetition, had been formulated to decongest the city and to shift the existing transport business from the city to SGTN. In the entire body of the petition, there is not a single whisper by the petitioner that the Policy never meant that both the sites could not be retained. Her whole writ petition is premised on her submission that she has not been given possession of the allotted site at SGTN. This submission is also incorrect. The affidavit/possession letter of the petitioner dated 31.07.2009 (perused from the original record) clearly shows that the possession of the aforementioned site has been handed over and received by the petitioner. This is more abundantly clear from the subsequent document dated 04.07.2010 wherein the application of the petitioner seeking construction at site and sanction of her building plan stood rejected on 04.07.2010 by the Executive Engineer. This document is Annexure P-13. Both these documents are admitted. They are a part of the record.

12 The aforementioned two documents also persuades this Court to hold that the petitioner has not come to the Court with clean hands. He has concealed material facts. Her case is bordered on her submission that the alternate plot at BG-5, SGTN has not been handed over to her. This is belied by her

signatures on the possession letter dated 31.07.2009. This is further belied by the document dated 04.07.2010 wherein her construction plan had been rejected; meaning thereby that the possession of the plot had been handed over to the petitioner and that is why and how she had applied for construction at the site. This request had, however, been turned down. This petition has been filed on 20.10.2010; none of these facts have been disclosed in the petition. The petitioner has not come to the Court with clean hands. Clauses 7 (c) & (f) of the aforementioned Policy read along with the affidavit of the petitioner persuades this Court to hold that the petitioner had been granted the alternate site at SGTN only in lieu of an alternate to her earlier site at New Qutab Road from where they were carrying out their transport business. The Policy did not in any manner envisage that the petitioner was entitled to retain both the plots. In fact, at the cost of repetition, this Court notes that this argument had surfaced for the first time only after 2014; not only did it not emanate in the pleadings but it also did not surface in the entire arguments/order-sheets which had taken place prior to 13.11.2014. The predecessor Bench of this Court had in fact on 03.03.2011 noted his prima-facie opinion that the challenge to the Resolution ought to have been made before availing of the allotment in SGTN and the

petitioner could not avail the benefit of and continue to enjoy both the properties.

13 There is no merit in this writ petition. Dismissed.

INDERMEET KAUR, J

OCTOBER 25, 2016

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