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

+ W.P.(C) 180/2011

KANHIYA LAL AND ANR Petitioners
Through: Mr. Shaad Anwar, Adv.

Versus

DELHI URBAN SHELTER IMPROVEMENT BOARD ..Respondent
Through: Mr. Nishant Prateek, Adv. for Mr.
Parvinder Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.01.2016

CMs No.16805/2015 & 16806/2015 (of LRs of P-1 u/O 22 R-3 CPC for substitution & for condonation of 714 days delay in applying therefor)

1. Though no replies to these applications have been filed but the counsel for the respondent Delhi Urban Shelter Improvement Board (DUSIB) opposes on the ground of delay and contends that no good reason has been disclosed.
2. Considering that the petitioner No.1 who has died was one of the petitioners and even otherwise in the facts and circumstances, it is deemed appropriate to condone the delay and to allow substitution.
3. Accordingly, the delay in applying for substitution is condoned and the legal heirs of the petitioner No.1 as per the application are brought on record and substituted in place of petitioner No.1.
4. The applications are disposed of.

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5. An endorsement of the substitution of the legal heirs of the petitioner No.1 be made on the memorandum of parties by the Court Master under his signatures in today's date.

6. The petition seeks mandamus to the respondent to (i) convert the commercial shop NO.02 CSC Market, Swayam Sidha Housing Society, Madipur, New Delhi from leasehold to freehold; and, (ii) grant permission for extension of Floor Area Ratio (FAR) with respect to the said shop upto ground and two and a half as per MPD-2021.

7. It is the case in the petition:

(i) that the petitioners had purchased the aforesaid shop in an auction and a perpetual lease with respect thereto in favour of the petitioners was executed;

(ii) that the petitioners after receiving possession of the "commercial plot" got constructed ground and first floor and commenced their business therein;

(iii) that though the petitioners sought extension of the FAR upto one and a half floor but no response was received;

(iv) that there are fifteen shops in all in the said CSC Market, Swayam Sidha Housing Society, Madipur and though application was made to the respondent DUSIB for conversion of the leasehold rights into freehold but the petitioners were informed that there is no scheme therefor;

(v) that there is no prohibition in the perpetual Lease Deed or to such conversion from leasehold rights into freehold.

8. The respondent DUSIB in its counter affidavit has pleaded:
- (a) that the extension of FAR is not possible as revision of CSC scheme is not mandatory;
 - (b) that a revised scheme layout plan would require fresh approval of concerned local bodies and for the additional FAR, the purchaser of shop would be required to pay for additional charges on the basis of average auction rate;
 - (c) that a purchaser of an earlier auction has no reason to force upon the respondent DUSIB to carry out a revision of the whole scheme;
 - (d) that the entire CSC Market, Madipur contains 15 plots;
 - (e) that enhancement of FAR cannot be allowed on individual basis and without any scheme;
 - (f) that if all the shop owners of a commercial plot represent collectively then the same shall be considered and if the respondent DUSIB agrees, the layout plan will have to be revised by the concerned Municipality and only after such revision would additional FAR be available.
9. A mandamus under Article 226 of the Constitution of India can be sought only upon the petitioner disclosing a right to the relief claimed or an obligation of the respondent DUSIB to do as it is sought to be directed to do.
10. I have thus enquired from the counsel for the petitioner as to under which document/law, the petitioners claim a right in their favour to freehold conversion and to additional FAR or under what document/law is the respondent DUSIB obliged to do so.

11. All that the counsel for the petitioner can contend is that Delhi Development Authority (DDA) has provided a scheme for freehold conversion.

12. However the petitioners claim to hold the shop not under DDA but under the respondent DUSIB which is the successor of Slum & JJ Department of the Govt. of NCT of Delhi (GNCTD) and respondent DUSIB is concerned with slum area which are outside the domain of DDA. The petitioners thus cannot invoke the schemes applicable in the areas/colonies/lands governed by DDA to slum areas.

13. Qua the FAR, the counsel for the petitioner himself states that the decision is pending consideration before the Layout Committee and which again shows that there is no right in favour of the petitioners to claim extension of the FAR.

14. It is a settled principle of law that under Article 226 of the Constitution no direction for framing a policy or to change a policy with respect to matters which fall in the domain of the executive can be given. Reference in this regard may be made to *Narmada Bachao Andolan Vs. Union of India* (2000) 10 SCC 664 para 259.

15. There is thus no basis for the reliefs claimed in the petition.

16. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 08, 2016

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