

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

+ **RSA No. 104/2017**

% **13th July, 2017**

ASHOK ANAND Appellant

Through: Mr. Shashi Shankar, Advocate.

versus

SLUM & JJ (NOW KNOWN AS DUSIB) Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff impugning the concurrent judgments of the courts below; of the trial court dated 21.12.2013 and the first appellate court dated 28.10.2016; by which the suit of the appellant/plaintiff has been dismissed. By the suit the appellant/plaintiff has claimed the relief that the respondent/defendant should allot not one alternative plot but should allot two alternative plots inasmuch as the mother of the appellant/plaintiff Smt. Kanta Devi had two barracks in her possession being C-6, C-7, Kasturba Niketan Complex, Lajpat Nagar, New Delhi. It is also pleaded that for construction of the alternative plots allotted

appellant/plaintiff had to be granted loan and till the loan is granted and the appellant/plaintiff makes a construction on the alternative plots, the appellant/plaintiff should not be evicted from the barracks C-6 and C-7, Kasturba Niketan Complex, Lajpat Nagar, New Delhi.

2. The facts of the case are that the appellant/plaintiff filed the subject suit pleading that his mother Smt. Kanta Devi had two quarters C-6 and C-7, and with respect to this area there was a policy of the government as a result of which persons in occupation were to get alternative plots. It is the case of the appellant/plaintiff that since the mother of the appellant/plaintiff had two barracks C-6 and C-7, the offer of the respondent/defendant to allot only one plot is illegal and two plots should be allotted. Reliance is placed upon para 8 of the policy of the respondent/defendant and which document though is marked A in the trial court, it is noted that this is an admitted document being the policy of the respondent/defendant with respect to re-allotment. It is also pleaded in the plaint that officials of the respondent/defendant assured the appellant/plaintiff that appellant/plaintiff will be given loan for construction of a house on the alternative plots and since loan has not been granted the appellant/plaintiff should not be evicted from the two barracks C-6 and

C-7 and with respect to which the respondent/defendant was going to take coercive action.

3. The respondent/defendant contested the suit and pleaded that as per the Clause 8 of the relevant policy, alternative allotment was for a plot for each family as a unit and not that the alternative allotment of plots were to be of the same number as the barracks which were being occupied by the occupant. It was also contended that there was no policy for giving of any loan as was contended by the appellant/defendant. The suit was therefore prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues:-

- “1. Whether plaintiff has no locus standi to file the suit as plaintiff/LRs are unauthorized occupants of Public Premises? OPD
2. Whether the suit property has already been demolished and the reliefs claimed in respect thereof have been become infructuous? OPD
3. Whether the plaintiff has not approached the court with clean hands and has not honoured her own undertaking/affidavit for alternative plot as per scheme? OPD
4. Whether plaintiff is entitled for the relief of permanent injunction as prayed? OPP
5. Whether plaintiff is entitled for the relief of Mandatory injunction as prayed? OPP
6. Relief.”

5. The admitted clause which requires interpretation is Clause 8 of the policy of the respondent/defendant and which reads as under:-

“That the second party through its Slum and JJ Department shall allot, in accordance with the approved project, a plot admeasuring about 33.58 sq.m on freehold basis for residential purposes to each family of the eligible inmates (comprising families of Punjabi and Bengali refugees and ex-servicemen) in exchange of and as consideration for vacating the premises whether a barrack or house or any other space under their respective possession in the Kasturba Niketan Complex and handing peaceful physical vacant possession thereof to the second party within 12 months from the date of the allotment and failure to do so will render the defaulter ineligible for allotment of a plot as aforesaid and where the allotment has already been made, the same shall become liable to be cancelled by the Second party in consultation with the first party.”

6. On behalf of the appellant/plaintiff it was contended that this policy has to be read in accordance with the cross-examination of the witness DW-1 of the respondent/defendant and this witness in his cross-examination dated 10.1.2013 and 20.5.2013 had admitted that every person was to be entitled to be allotted one plot against one barrack.

7. In my opinion, a so called ‘admission’ made by the official witness said to be the terms of a written policy cannot change the term as it stands of a written policy. To understand the written policy we have to look at the written policy itself and not any oral admission of the contents of the policy which is in complete conflict with the admitted policy. Clause 8 of the admitted policy has been reproduced above. Both the courts below have rightly held that in terms of this Clause 8 of this policy entitlement of allotment is to family as a unit and there is nothing in this clause that for the number

of barracks being occupied the same number of alternative plots will be allotted to the occupants. In my opinion, Clause 8 of the policy in no manner states, and it is nowhere found in this Clause 8, that the alternative plots to be allotted will be of the same number as the barracks in occupation. In fact, I would like to observe that Clause 8 in fact uses the expression that for whatever 'space' which is being occupied by a person, one alternative plot will be allotted, and therefore, it is clear that once the policy uses the expression "Family" as a unit and alternative plot to be allotted for a space which was occupied by a person, there is thus no policy that number of alternative plots to be allotted is as per the number of barracks occupied. I therefore reject the argument of the appellant/plaintiff that appellant/plaintiff was to be allotted two alternative plots.

8. Even the second argument urged on behalf of the appellant that loan had to be granted to the appellant is a misconceived argument because there is no policy which is filed and proved of the respondent/defendant that the allottee shall, under all circumstances be granted loan. The document Ex.PW1/G filed and proved by the appellant/plaintiff is a letter and that too not a letter which is addressed to the appellant/plaintiff. Even if we look at para 1(v) of this letter, which is relied upon, it is seen that the same provides that the

respondent/defendant will make arrangements for the allottee to take loan from the financial institutions but the allottee will be required to be a member of a society, and it is not shown to this Court that appellant/plaintiff has become member of a society. The clause also requires furnishing of requisite documents for the appellant/plaintiff to apply for the loan and it is not shown that the appellant/plaintiff has applied for the loan with the requisite documents. Therefore as of date there does not arise an issue of grant of the loan to the appellant/plaintiff because appellant/plaintiff is in the quagmire created by himself that he should get two alternative plots and not one plot, and therefore, the issue of loan really has not arisen. The courts below have also rightly held that there is no policy for grant of loan as no policy was filed, and if I take a benevolent interpretation of the letter Ex.PW1/G then in my opinion, the issue of grant of loan will only arise after the appellant/plaintiff has become a member of the society and has applied with the necessary documentation for grant of loan, and which aspects have not been proved and established before the trial court. Once the requisite ingredients of the alleged policy for grant of loan are not satisfied, and in fact, the stage of grant of loan has not come because there is no alternative allotment of the plot to the appellant/plaintiff, there does not arise an issue of appellant/plaintiff

not being evicted till alternative plots are allotted and loan given for construction on the same.

9. In fact, I would like at this stage to take a note of the fact that the appellant/plaintiff was asked to give a sum of Rs.18,000/- when one alternative plot was admittedly the allotted and appellant/plaintiff did not deposit this amount of Rs.18,000/- for the allotment of one alternative plot. Therefore in fact there is clear cut default on behalf of the appellant/plaintiff as held by the courts below, and accordingly, the courts below have rightly dismissed the suit on account of not only the policy not giving the entitlement to the appellant/plaintiff for two plots but also the appellant/plaintiff having failed to pay the amount of Rs.18,000/- which was required for allotment of one plot.

10. No substantial question of law arises. Dismissed.

JULY 13, 2017/ib

VALMIKI J. MEHTA, J