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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 17.03.2017

+ W.P.(C) 3876/2011, CM No. 8063/2011, CM No. 155899/2013 and
CM No. 18806/2014

ANALOG SYSTEMS AND ORS

..... Petitioners

Through Mr. Lalit Gupta and Mr. Harsh
Singhal, Advocates

versus

GNCT OF DELHI AND ORS

..... Respondents

Through Mr. Ajjay Aroraa, Mr. Kapil Dutta
and Mr. Diksha Lal, Advocates for
MCD

Ms. Shruthi Parasa, Advocate for Mr.
Gautam Narayan, ASC, GNCTD for
R-4 and R-5

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

INDERMEET KAUR, J. (Oral)

1 The petitioner M/s. Analog Systems and Ors has preferred this writ petition through its two partners namely, Sanjeev Kumar Mehta and Rajeev Kumar Mehta. In the year 1983 they have been allotted a plot by the Government of NCT of Delhi (respondent no.1) bearing

no. S-81 measuring 300 sq. yards in the Functional Industrial Estate for Electronics (FIEE), Ohkla Industrial Area, Phase-II, New Delhi. Entire payment in respect thereof had been made. Possession could not be handed over due to existing encroachment on the said land by the jhuggi jhopdi dwellers. Various representations and reminders given by the petitioner for removal of this jhuggi jhopdi dwellers went unanswered. On 08.01.1997 a draw of lots for allotment of alternative plots was conducted. An alternate plot bearing no. S-101 measuring 260 sq. yards was offered to the petitioner in lieu of the earlier plot of 300 sq. yards. This plot was not acceptable to the petitioner because it was much smaller in size from the earlier 300 sq. yards which had been allotted to him. He was constrained to file WP (C) No. 545 of 1997 and alternative plot i.e. plot no. S-87 measuring 300 sq. yards was offered to the petitioner. This petition was heard on 16.01.2006 on which date a statement was made by respondent no. 1 that all encroachments would be removed from plot no. S-87 within a period of two weeks. Plot no. S-87 was accordingly allotted to the petitioner on 24.04.2006; it was agreed that the lease deed would be stamped

and duly executed and possession of plot no. S-87 would be handed over to the petitioner.

2 The perpetual lease deed was executed interse the petitioner and respondent no. 1 on 23.05.2006. Contention of the petitioner is that this plot of land was also not encroachment free and 20 sq. yards of land continued to be encroached by jhuggi jhopdi dwellers. Submission being that only 280 sq. yards of land could be taken possession of and not the entire 300 sq. yards of land. He has drawn attention of this Court to the plan which had been annexed along with his possession letter (page 95 of the paper book); emphasis is laid upon the word “encroachment” as appearing on the second line of the said document.

3 This position is disputed by respondent no.1. Submission of respondent no. 1 is that an encroachment free area of 300 sq. yards of land (S-87) had been handed over to the petitioner. The possession letter dated 30.03.2008 shows that petitioners no. 2 and 3 had signed this possession letter wherein possession of plot no. S-87 measuring 300 sq. yards had been handed over to them. This document is silent about any encroachment which is the vehement cry of the petitioner.

4 Document of 30.05.2008 has been perused. Contention of the petitioner is that he had admittedly signed this document dated 30.05.2008 but this was on the advice of the Estate Manager as he had been informed that possession of the 280 sq. yards of land which was actually available (out of 300 sq. yards) should be taken possession of and the balance area which had an encroachment would be made encroachment free. At the cost of repetition there is no such document/ evidence to support this submission of the petitioner.

5 Be that as it may, the further averments in the petition disclose that the petitioner had thereafter applied for sanction of his building plans qua this 280 sq. yards of land which was available with him. These plans had been submitted to the Department but were rejected by them. The stand of the Municipal Corporation / respondent no.2 is that the physical measurement at the site did not match the area as approved in the lay out plan and as such the building plan could not be sanctioned. This objection was duly communicated to the petitioner at the time when his building plans stood rejected on 27.09.2010. Several representations were made by the petitioner to the Department but to no avail.

6 The petitioner accordingly filed this writ petition on 27.05.2011. Attention has been drawn to the various orders passed by this Court. In the course of the arguments learned counsel for the petitioners submits that since it would be a long exercise for the jhuggi dwellers to be removed from the 20 sq. yards of land (part of his plot) he would not be pressing for this 20 sq. yards of land; he would give up this portion of land and lay no claim on it. His prayer is now confined to prayer (b) of the petition which is to the following effect.

“b) Declare the act of the Respondent MCD in rejecting the building plan in respect of the said plot primarily on the ground that actual area available at the site is not 300 square yards and the building plan cannot be sanctioned for an area less than the area allotted to the petitioners by the Government Department as illegal.”

7 Submission is that the Department should be directed to process his plan qua his 280 sq. yards of land which is available to him; submission being that it is for no fault of his that the jhuggies have come up on this 20 sq. yards of land which admittedly also belongs to him; since he has given all rights and claims on this 20 sq. yards of

land, the Department be directed to process his building plans for 280 sq. yards of land.

8 The stand of the Corporation/respondent no.2 is noted supra. Their difficulty is that since the physical measurement at the site does not match the approved lay out plan and an amendment would be required in the lay out plan before they can sanction the plan of the petitioner. Additional submission being that this will also set down as a bad precedent.

9 This Court notes that on 22.03.2013 the predecessor Bench of this Court had noted these contentions and counter contentions of the parties. The submission of the petitioner that he is willing to include 20 sq. yards of land in an open area as per the revised plan which he proposes to file was to be considered and the Department was to take instructions on that count. This position continued and is continuing up to date. Four years have elapsed. Instructions are yet not forthcoming from the Department. In the first instance, even respondent no.2 had sought time to obtain instructions. This Court is not inclined to adjourn the matter any further.

10 This Court notes that plot no. S-87 is a plot of land which has been duly allotted to the petitioner. It measured 300 sq. yards. Physical possession of this plot of land had been taken over by him on 30.05.2008. He had signed the document. Although there is no written document recording his objection that 20 sq. yards of land was still encroached, yet the admitted position is that 20 sq. yards of land is encroached upon by the jhuggi dwellers. Photographs filed along with the petition substantiate this. This position is also not disputed. Respondent no.2 also admits that this portion of this land (20 sq. yards) is encroached upon by the jhuggi dwellers. It is also an admitted position that the exercise of the removal of the jhuggi dwellers from this 20 sq. yards of land with a further exercise for their rehabilitation may take a long time. It is in this background that the petitioner gives up his claim for 20 sq. yards of land for which he has admittedly paid the consideration. He is however confining his ownership only to 280 sq. yards of land in plot no. S-87.

11 The possession letter dated 30.05.2008 is accompanied by a drawing map. This drawing map (page 95 of the paper book) reflects encroachments. The map is dated 23.05.2006. It is not the case of any

statutory body that this encroachment / imposition of jhuggi dwellers is because of any fault of the petitioner. Thus, this Court returns a finding that for no fault of the petitioner, he cannot be prejudiced. His sanction plan for building on a plot of land of 280 sq. yards is accordingly directed to be considered by the Department. In the peculiar facts and circumstances of the case, it may not be necessary to amend the lay out plan which again is an exercise which would probably take several years. The petitioner is litigating before this Court since the year 2011. He is fighting for a right which is due to him. He wants to build on his plot of land which is admittedly owned by him. Equity and fair play demand that respondent no.2 / Corporation be directed to process the plan of the petitioner on this 280 sq. yards of land (S-87).

12 As way back as on 22.03.2013 the earlier Bench of this Court had noted that he would file a revised plan. At that point of time the petitioner had made a submission that he would include 20 sq. yards of land (encroached upon) in the open area. Today he gives up his claim on this 20 sq. yards of land. Accordingly, the Department will now (on a revised plan to be submitted by the petitioner (qua 280 sq.

yards of land), process the plan of the petitioner and sanction it in accordance with law. The petitioner is directed to file his proposed revised plan within a period of 2 weeks from today. This exercise shall be completed by respondent no.2 / Corporation within a period of 8 weeks from the date of receipt of this proposed revised plan from the petitioner.

13 Petition disposed of in the above terms.

INDERMEET KAUR, J

MARCH 17th, 2017

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