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

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*Judgment reserved on : 16.3.2017*

*Judgment delivered on : 20.3.2017*

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W.P.(C) 8722/2015

UMRA DEVI

..... Petitioner

Through Ms. Neha Garg and Mr. Nitin Garg,  
Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms. Mini Pushkarna, Standing  
Counsel for NDMC

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W.P.(C) 8725/2015

INDERJEET SINGH

..... Petitioner

Through Ms. Neha Garg and Mr. Nitin Garg,  
Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms. Mini Pushkarna, Standing  
Counsel for NDMC

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W.P.(C) 8872/2015

DAYA WANTI

..... Petitioner

Through Ms. Neha Garg and Mr. Nitin Garg,  
Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms. Mini Pushkarna, Standing  
Counsel for NDMC

+ W.P.(C) 8898/2015

KRISHNA & ORS. .... Petitioners

Through Ms. Neha Garg and Mr. Nitin Garg,  
Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms. Mini Pushkarna, Standing  
Counsel for NDMC

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

1 The petitioners before this Court are aggrieved by Resolution No.156 (dated 17.9.2014) passed by the respondent-North Delhi Municipal Corporation (NDMC). It is stated that the same is unreasonable, arbitrary and illegal; it is liable to be struck down.

2 Record discloses that the petitioners before this Court are owners of their respective shops in Azad Market, Delhi. The same had been leased out to them by the Land and Development Officer

Government of India. The perpetual lease deeds in favour of the petitioners were executed by the L & DO sometime in the year 2007.

3 Respondent had developed a project for widening of the Kishan Ganj Road under a project programme which had been approved by the Ministry of Surface Transport. For the said purpose the shops of the petitioners were demolished along with the others sometime in December, 2009. The Government decided that owner/occupier of such shops would be relocated and they would be given alternate accommodation at the Sanjay Gandhi Transport Nagar. The petitioners on 11.11.2009 received letters in the names of their tenants as also in their own names stating that the respondent Corporation had decided them by giving them alternate accommodation.

4 The respondent Corporation in this Resolution No.240 (dated 14.10.2009) decided to make a joint allotment; 50% in the name of the owners and 50% in the name of the tenant/occupier. This was in terms of their Relocation/rehabilitation Scheme.

5 The petitioners were aggrieved by this aforementioned resolution; contention was that by allotting 50% of the land (which was admittedly owned by them) the right of the petitioners up to 50% was

washed away. This act being illegal the petitioners were constrained to challenge this resolution by filing WP(C) Nos.5268/2010, 5319/2010, 5322/2010 and 5327/2010. All the petitioners before this Court were the petitioners in those petitions. That petition was disposed of on 21.3.2012. Resolution No.240 dated 14.10.2009 was set aside. The grievance of the petitioners was answered in their favour. The findings returned inter alia by the learned Single Judge read as under:

*“9. The inherent fallacy of the aforesaid decision taken by the respondent/MCD is twofold. Firstly, respondent No.1/MCD erred in arriving at a conclusion that tenancies had been created by the petitioners/lessees without seeking prior permission from respondent No.1/MCD. It is pertinent to note that originally, the shops in question had been leased out by the Land and Development Officer, Government of India to lessees like the petitioners herein by executing lease deeds for a period of 99 years. A perusal of the covenants incorporated in the said lease deed reveals that one of the embargoes placed on a lessee was as below:-*

*“(b) The Lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of*

*the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor. (c) The Lessee can transfer the land after obtaining the permission of the Lessor aforesaid and the Lessor will not share any unearned increment in the value of the land (being the difference in the premium paid by him to the Lessor and the market value of the land then prevailing) for permitting such transfer. The Lessor will, however, be entitled to claim and recover the unearned increment in the value of land in the event of any subsequent transfer of the land by a transferee the amount so to be recovered being 50% of the unearned increment in the value of the land.”*

*10. A perusal of the aforesaid covenants reveals that only if a lessee proposed to assign/transfer the demised premises or any part thereof, was a written approval required from the lessor. However, no such stipulation had been imposed in the lease deed if a lessee proposed to let out the demised premises to a tenant. In other words, a tenant cannot be treated as an assignee/transferee under the lease deed as understood by the respondent No.1/MCD. 11. The second flaw in the decision making process of the respondent No.1/MCD was to equate the possessory rights of a tenant with the ownership right of a lessee which is incomprehensible and unjustified, apart from being contrary to the settled law that a tenant shall always remain a tenant. Furthermore, the decision to rehabilitate the lessees and the occupants of the shops by allotting a single plot and apportioning the*

*same between them in the ratio of 50% each, is also misconceived. This would result in saddling a tenant with a landlord and vice-versa, in perpetuity by treating them on the same footing. If the respondent No.1/MCD was keen to compensate/rehabilitate both, the lessees and the tenants, it ought to have laid down a policy in such a manner that relief of monetary compensation/compensation by way of allotment of plots could have been granted independently to both the parties, i.e., the lessees and the tenants, without insisting that they be clubbed for grant of the said relief.*

*12. Counsels for the respondent No.2/tenants have drawn the attention of this Court to the decision taken by respondent No.1/MCD in its meeting held on 01.02.2005 regarding alternative allotment for the displaced persons of the DMRC project at Tilak Marg and Prem Nagar, Delhi, to submit that such persons, who had been displaced on account of demolition of the properties falling on land acquired by the government for being placed at the disposal of DMRC at Tilak Marg and Prem Nagar, were compensated in both, monetary terms as also by way of allotment of alternative shops. A perusal of the documents handed over by the counsels for the respondent No.2/tenants in support of the aforesaid submission does not clarify as to whether alternative allotments were made in favour of both, the owners and occupants or only one of them. However, it is an undisputed position that the allotments that had been made were not joint, as done by respondent No.1/MCD in the present case.*

*13. In view of the aforesaid discussion, the inevitable conclusion is that the Resolution No.240 dated 14.10.2009 passed by respondent No.1/MCD, insofar as it relates to rehabilitation of tenants operating their business from the shops of the petitioners/lessees for the past 20-40 years, is unsustainable in law and therefore liable to be struck down. As a result, that part of the aforesaid Resolution, wherein respondent No.1/MCD had decided that in cases where leased shops of the MCD had been rented out for a period of more than 10 years, without seeking permission of the Corporation, alternative plots measuring 10" x 15" would be allotted jointly in the names of the lessees and the tenants having 50% share each on leasehold basis, is set aside and quashed and it is directed that the aforesaid issue No.2, as framed in the impugned Resolution No.240 of the MCD shall be reconsidered by the respondent No.1/MCD while taking into consideration the guidelines laid down by the government agencies in similar cases of rehabilitation and by examining the provisions of the Land Acquisition Act and the judicial pronouncements on this aspect. Thereafter, a fresh decision shall be taken by the respondent No.1/MCD within a period of eight weeks from today, under written intimation to the petitioners as also to the respondent No.2/tenants.*

*The petitions are disposed of while leaving the parties to bear their own costs."*

6 After the disposal of these writ petitions, Resolution No.156 (dated 17.9.2014) was passed. The earlier Resolution No.240 (dated

14.10.2009) was set aside. The joint allotment of plots in the name of the owners/lessees and tenants was also accordingly set aside. By way of this Resolution separate individual plots were allotted to the owner/lessees and the tenants respectively. The initial area of the plot (which was subject matter of demolition) remained the same; the alternate plot was to be bifurcated; 50% was to be given to the owner/lessee and the balance 50% was to be given to the tenant.

7 This was the gist of the Resolution which is now the subject matter of challenge before this Court.

8 Learned counsel for the petitioners submits that although the earlier Resolution (No.240) was set aside; yet Resolution no.156 is no different from Resolution no.240; the result is the same. Contention is that the owner has admittedly been deprived of his rightful share of the property; where he was admittedly the owner of one complete piece of land the same now stands bifurcated, 50% has now gone to the share of the tenant; the learned Single Judge had rightly appreciated the contentions of the parties while disposing of WP(C) Nos.5268/2010 and others on 21.3.2012; the same fallacy has again been committed by the Department.

9 Counter affidavit and the submissions of the learned counsel for the respondent have been perused. Learned counsel for the respondent submits that the learned Single Judge had disposed of the petition on 21.3.2012 giving liberty to the Corporation to reconsider the matter after taking into consideration the guidelines of the Government in similar cases and by examining the provisions of the Land Acquisition Act, 1894 (LAC) as also the judicial pronouncements on this aspect. Submission being that a fresh decision has been taken in the light of these provisions and judicial pronouncements. Learned counsel for the respondent points out that the rehabilitation policy which had been framed by the Department was for rehabilitation of “affected persons”. This category of persons would be para materia those persons who would be “persons interested” in terms of Section 3 of the provisions of the LAC. The stand in their counter affidavit is to the effect that the larger interest of public affected by displacement due to the aforementioned demolition programme had been kept in mind; the right of these tenants were recognized as “persons affected” for the purpose of rehabilitation; these tenants falling in the category of “affected persons” have been

considered. Submission being that 121 shops had been demolished from Azad Market. There were only 9 shops which were in occupation of tenants. The petitioners before this Court are four in number. They are Somnath Arora, Mool Chand, Sugna and Om Prakash Chopra. The present Resolution had been passed keeping in view humanitarian considerations as these tenants were occupying these shops since the last several years i.e. since 1957, 1971, 1973 and 1980; they are the ones who are actually affected. They would come within the definition of “affected persons” as defined in the National Rehabilitation and Resettlement Policy, 2009 issued under the aegis of the Ministry of Rural Development. It is further pointed out that the Apex Court had an occasion to deal with the concept of “persons interested” as appearing in Section 3 of the Land Acquisition Act to include all persons claiming an interest in compensation to be made on account of the acquisition of the land. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, had also been considered in matters of compensation. The Apex Court in fact in such matters has gone on to apportion compensation in the ratio of 75% in favour of the tenant and

25% in favour of the actual owner. The definition of “persons interested” is para material to aforementioned definition of “affected persons”. All these parameters had been considered before this Resolution No.156 (dated 17.9.2014) had been drafted.

10 Arguments have been heard. Record has been perused.

11 This Court notes that the learned Single Judge on 21.3.2012 had culled out two fold reasons for not agreeing to the policy detailed in Resolution No.240 dated 14.10.2009. The settled law admittedly being that a tenant will always retain the status of a tenant; his status from tenant cannot be converted into that of an owner; the earlier Resolution had been quashed keeping this legal parameter in mind. The present Resolution No.156 is again founded on the same basis. To convert the status of a tenant into that of a landlord is not only against all statutes dealing with a landlord-tenant relationship but even against all the principles of equity, fairplay and natural justice. A “transfer” of property as envisaged under the Transfer of Property Act has been given a complete go-by. All legal legislations have been ignored. By way of this Resolution a man who was owning one complete piece of land had suddenly been reduced in his ownership to

a status of 50%. What he had done was to lease out his piece of land to a tenant; he has not transferred his ownership rights in the property. By the present Resolution, the Corporation has taken away all these rights of the petitioners. The petitioners who were the owners of their respective pieces of land have suddenly been reduced to a half ownership status. This was for no fault on their part. This Resolution, if allowed to be implemented, would cause a grave prejudice; it would be a serious detriment to the rights of such petitioners.

12 The policy of the Department to rehabilitate not only the owners but also the tenant may have some good intentions but those intentions have to be in the interest of all; a decision which works in favour of one and to the detriment of another cannot be upheld as a fair decision. This is exactly what has happened in the instant case.

13 The submission of the respondent that the principle of a fair compensation in matters of monetary compensation adjudicated under the LAC entitles the respondent to make such an apportionment in land as well is misconceived and misunderstood. Such an apportionment cannot be conceived in matters of division of immovable property. The provisions of the LAC are different. The

Apex Court while dealing with apportionments of compensation under the said Act was dealing with monetary compensation; those proceedings had arisen strictly out of proceedings under the LAC. Admittedly, no proceedings under the LAC have taken place in the instant case. There are not cases where the respondent had acquired the lands of the petitioner. It is only pursuant to a road widening project that the shops of the petitioners had necessarily to be demolished to carry out and implement that project. In that process a Rehabilitation Policy had been planned by the government. This Policy has curtailed the rights of the petitioners. This Resolution definitely works to their disadvantage. The right of the petitioners to relegate themselves to eviction proceedings against their tenants has also been taken away. There is no right left with them to seek their eviction. The tenant has been put at par with the owner.

14 Admittedly, out of 121 shops which stand demolished, there are only 9 persons who are in the capacity of tenants. If the department is really keen to rehabilitate/give alternate accommodation to such tenants (nine in number of whom four are before this court) they have their option to do so by giving them allotment of land de hors

disturbing the rights of the petitioners. At the cost of repetition giving an advantage to one to the disadvantage of another is not a fair policy. The act of the respondent in dividing the plot of the petitioner and giving 50% of the same to the tenants and thereby changing the status of the petitioner from a full owner to a half owner is a decision which cannot be sustained. The Department had in fact arrived at the same decision by passing resolution no.240 on 14.10.2009. This had been quashed by the Learned Single Judge on 21.03.2012. The Department has again relegated the petitioners to the same status. By way of the first resolution a joint ownership had been granted to the petitioners and to their tenants. Vide the second resolution (now impugned) the right of the petitioners still remains reduced to 50% ; instead of a joint allotment it has now become an individual allotment of 50% to the petitioners and 50% to the tenants. The end result is the same. At the cost of repetition this is against all statutory provisions. Such an act cannot be sustained in law. The act of the department being illegal; this resolution is quashed.

15 Petitions allowed.

**INDERMEET KAUR, J**

**MARCH 20, 2017/A**