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

Date of Decision: 19.04.2018

+ **W.P.(C) 2148/2017**

PAPPU

..... Petitioner

Through: Adv.(appearance not given)
versus

CHIEF EXECUTIVE OFFICER, DELHI URBAN SHELTER
IMPROVEMENT BOARD

..... Respondent

Through: Mr.Parvinder Chauhan, Standing
counsel with Mr.Nitin Jain,
Adv./DUSIB.

+ **W.P.(C) 2192/2017 & CM APP No. 9525/2017**

DELHI URBAN SHELTER IMPROVEMENT BOARD..... Petitioner

Through: Mr.Parvinder Chauhan, Standing
counsel with Mr.Nitin Jain,
Adv./DUSIB.

versus

PAPPU

..... Respondent

Through: Adv.(appearance not given)

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER, J (ORAL)

1. These are the two writ petitions which take a contra position. Writ Petition No.2148/2017 has been filed by, one, Mr. Pappu seeking compliance of the order dated 27.01.2016, passed by the Lieutenant Governor of Delhi (in short "LG".) in Case No.13/2015, titled: *Sh. Pappu vs. DUSIB*. On the other hand, writ petition No.2192/2017 has been filed by the Delhi Urban Shelter Improvement Board (in Short "DUSIB") to assail the very same order of which compliance is sought i.e. the order dated 27.01.2016, passed by the

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By:AMULYA

W.P.(C) No.2148/2017 & 2192/2017

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LG.

2. Thus, to adjudicate upon the captioned writ petitions, the following brief facts and/or assertions are required to be noticed:

2.1 It is the case of the petitioner that he along with his late mother, one, Ms. Phoola and his father, resided in a hutment bearing No.402, situate at Gauri Shankar Mandir, Shalimar Bagh, Delhi (hereafter referred to as "subject hutment").

2.2 The petitioner avers that his mother passed away on 31.12.1996, while his father passed away on 24.03.2002. It appears that, immediately, after the death of his father i.e. on 17.04.2002, in the wake of a demolition drive, the subject hutment was demolished.

2.3 Concededly, the petitioner was issued a demolition slip dated 17.04.2002 and, a token No.108/402. The demolition slip and the token number was issued in favour of the petitioner by the Slum & JJ Department of the Municipal Corporation of Delhi (in short "MCD").

2.4 Admittedly, DUSIB is the authority which has taken over the work of the said department i.e. MCD.

2.5 The petitioner avers that being a daily wage worker, he did not have the necessary wherewithal and that he ran from pillar to post to have an alternate plot allotted to him *in lieu* of the demolished (subject) hutment. Undoubtedly, his quest lasted for nearly 10 years. The petitioner claims that he did not get any response as to why he was being deprived of an alternate plot till he received a communication dated 14.11.2012 from DUSIB.

3. Since, the entire case of DUSIB is pivoted on the stance taken in this communication, it would be relevant to extract the same hereinafter:

*DELHI URBAN SHELTER IMPROVEMENT BOARD
GOVT. OF NCT OF DELHI
(Rehabilitation Branch)*

*H- Block, Vikas Kutir,
I.P. Estate, New Delhi -110002*

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dated: 14.11.2012

No. D-1392/DD(Rehab)/DUSIB/2012

To,

Sh. Pappu,
2283, B-Block, Ph-II,
Holambi Kalan,
Delhi-110082

Sub: Reg. Allot. Of plot in lieu of demolished jhuggie.

Sir,

Please refer to your grievance petition on the above cited subject received from Advisor (Pub-Welfare), CMO, GNCTD. In this regard I am directed to inform you that as per joint Survey Report of J. J. Cluster, AE Block, Gauri Shankar Mandir, Shalimar Bagh, your name exists at S.No. SR - 168 but as per verification report of FSO - 19, regarding your Ration Card the same was found 'Cancelled'. On the basis of verification report of FSO, circle - 19, you were not found eligible for allotment of relocation plot. Therefore, your request for allotment of plot in lieu of your demolished jhuggi cannot be acceded to.

Yours Faithfully

Sd./-

Dy. Director (Rehab)

3.1 A perusal of the aforesaid communication would show that two aspects clearly emerge in the matter. The first aspect, which goes in favour of the petitioner, is that, the petitioner's name appeared in the Joint Survey Report concerning the subject area, at serial No.168. The second aspect which emerged, and has now been latched on to by DUSIB, to assail the order of the LG, is that, a verification was carried out by the concerned FSO regarding the petitioner's ration card and that upon verification, it was found to have been cancelled. The net result of this finding was that the petitioner was, ultimately, denied relief as his ration card had been cancelled.

4. Being aggrieved, the petitioner filed a writ petition in this Court under Article 226 of the Constitution. This writ petition was numbered as W.P(C) 2018/2014.

4.1. The writ petition was disposed of by the Court at the very threshold vide judgment dated 22.08.2014. The learned Single Judge took cognizance of the objection taken on behalf of DUSIB, which was that, qua the communication dated 14.11.2012, a remedy by way of an appeal was available under Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010 to the petitioner. The learned Single Judge, thus, after taking into account the objection raised on behalf of DUSIB, relegated the petitioner to an alternate remedy, while granting him liberty to file an appeal with the LG.

4.2 As a matter of fact, the learned Single Judge observed that the writ petition would be treated as an appeal and that the LG would dispose of the same with due expedition, though, not later than 3 months from the date of the judgment, uninfluenced by any delay which may have occurred in the interregnum.

5. This order was not challenged by DUSIB.

6. As a consequence of the direction contained in the judgment of this Court, the LG, took up the appeal for hearing and passed the order dated 27.01.2016, which, as indicated at the outset, is being assailed by DUSIB.

6.1 I may also indicate that DUSIB, as a matter of fact, did file its reply before the LG in opposition to the appeal. The reason that I mention this aspect of the matter is that before this Court, DUSIB has attempted to enlarge the scope of the issue which arose before the LG for consideration.

6.2 The LG in the operative part of his order has observed as follows:-

"Counsel stated that the said reasoning given by the respondent department that the ration card had been cancelled is irrational and arbitrary. He stated that the ration card of the appellant had been cancelled on the ground that the appellant had shifted outside the said area after the demolition of his jhuggi. Counsel stated that the right of the appellant had accrued on the date of the demolition itself and his name also finds mention in the survey list of the respondent department. He stated that the appellant belongs to the extremely poor strata of society and the alternative plot would be the only place of shelter for him. It was therefore, prayed that the impugned order may be set aside and the appellant may be allotted a plot in lieu of his demolished slum property

On behalf of the respondent/DUSIB, Counsel stated that the appellant is not eligible for allotment of an alternative, plot because a jhuggi dweller must possess a valid ration card issued prior to 31 December 1998 to be eligible for allotment. He stated that the ration card of the appellant had been cancelled as: verified by the concerned Food & Supply officer and therefore the appellant was found to be ineligible for alternative allotment of the plot as per policy.

I have considered the submissions made by both the sides and have also gone through the case file. I find that the appellant has contented in the appeal that he is a holder of a ration card since 1994 at 108/402 AE, Gauri Shankar Mandir, Shalimar Bagh, New Delhi but the same was cancelled as he had shifted from that place after demolition of his jhuggi in 2002. The

DUSIB has rejected the appellant's case for allotment of an alternative plot only on the ground that the appellant is not in possession of a valid ration card as the same had been cancelled as per report of the FSO (Cirlce 19), although the respondent department had admitted in the impugned order that the name of the appellant exists at S. No. 168 as per the joint survey report of JJ Cluster, AE Block, Gauri Shankar Mandir, Shalimar Bagh, New Delhi.

In view of the above discussion and taking a lenient view, I set-aside impugned order and direct the CEO, DUSIB to take steps for allotment of an alternative plot in lieu of the demolished jhuggi of the appellant....."

(emphasis is mine)

7. Despite the fact that the petitioner had succeeded in obtaining an order in his favour for allotment of an alternate plot, no plot was allotted to him. Resultantly, the petitioner wrote to the Chief Executive Officer of DUSIB on 26.07.2016. Via this letter, the petitioner sought compliance of the order of the LG, dated 27.01.2016. Since, there was no movement in the matter even after the LG's order dated 27.1.2016, the petitioner approached this Court by way of writ petition No.2148/2017. As alluded above, DUSIB, being aggrieved by the order of the LG has, therefore, preferred the other writ petition i.e. WP(C) No.2192/2017.

8. Mr. Chauhan, who appears for DUSIB, has assailed the order of the LG on the following grounds:

(i) Firstly, the order of the LG is contrary to DUSIB's policy. Counsel for the respondent submits that the order transgresses the eligibility criteria fixed by DUSIB for allotment of alternative plots. In particular, it is submitted that there were two eligibility conditions that

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the petitioner was required to fulfill. One, that he should have in his possession a valid ration card. Second, that the petitioner's name should have been included in the voters list.

(ii) Secondly, it is contended, the fact, that the petitioner for a period of 10 years, took no steps to seek redressal, was fatal to his cause.

8.1 In support of his submissions learned counsel relied upon the following judgments:-

- (i) Judgment dated 08.01.2016, W.P.(C) No. 85/2016, titled: *Brahma Prakash vs. University of Delhi*
- (ii) Judgment dated 01.09.2015, W.P (C) 7889/2011, titled: *Dayachand vs. Union of India & Ors.*
- (iii) Judgment dated 23.11.2015, W.P (C) No.10796/2015, titled: *Makhni Kaur @ Makhni Bai vs. The Delhi Urban Shelter Improvement Board (DUSIB).*

9. Insofar as the petitioner is concerned, unfortunately, his counsel appears to have deserted him. The petitioner, however, is present in the Court. The petitioner, in support of his case, relies upon the order of the LG.

10. According to me, the submission advanced by Mr. Chauhan cannot be accepted for various reasons. The first objection that Mr. Chauhan took was that the petitioner's ration card had been cancelled. The second objection, which, he took, was that the petitioner's name was not included in the voters list. Insofar as the first objection is concerned, the same is not tenable.

10.1 But before I deal with the first objection, let's get out of the way, the second objection in the first instance. Insofar as this objection is concerned, according to me, this Court cannot consider the same as it neither found mention in the communication dated 14.11.2012 nor in

the reply filed before the LG. Therefore, this aspect cannot now be taken, to my mind, as a ground for denying the petitioner the relief for grant of alternative plot.

10.2 DUSIB, to my mind, cannot enlarge the scope of the challenge by introducing this ground for the first time in the instant proceedings.

10.3 Insofar as the first objection is concerned, in my view, the LG has rightly appreciated the circumstances at hand. The fact that the subject hutment was demolished is established if one has regard to the contents of the Joint Survey Report.

10.4 It is not disputed before me that in the Joint Survey Report, prepared at the time when the demolition took place, the petitioner's name finds mention at serial No.168. Therefore, on the cut-off date, the petitioner's hutment was, physically, available at the subject site.

10.5 The fact that the ration card was cancelled is not of much significance, in this case, as the factum of cancellation would also demonstrate that the petitioner, in the first instance, possessed the ration card.

10.6 Mr. Chauhan, in that behalf submitted that, since, the petitioner contended before the LG that the ration card was cancelled because he had moved out of subject area, would show, that on the cut-off date, the petitioner was not residing in the subject area.

10.7 According to me, this is a mere speculation as the reason why the ration card was cancelled is not known, while the factum of cancellation of the ration card cannot be denied. The report of the Food Supply Officer (FSO) has not been seen, admittedly, by DUSIB's officers. This report was also not placed before the LG. It is quite possible that the ration card obtained by the petitioner, when, he was in

the subject area was cancelled because of lack of use. Either way the ration card, which was a material document, should have been placed before the LG or at least before this Court.

11. This brings me to the aspect pertaining to delay.

11.1 In this context, it is required to be noted that DUSIB, neither before this Court when the petitioner had approached it by way of a writ petition in the earlier round nor before the LG, took any objection with regard to latches. As a matter of fact, DUSIB opposed the writ petition only on one ground, which was, availability of an alternative remedy to the petitioner. The Court, while, relegating the petitioner to a remedy by way of an appeal, specifically, observed that the LG should decide the appeal uninfluenced by the fact that the remedial action was delayed. DUSIB did not assail this order of the Court. Therefore, today, in my view, DUSIB should not be allowed to contend that because there are latches, the petitioner should be denied relief. This plea, according to me, at this juncture, is both untenable and unfair.

12. The judgments which Mr. Chauhan has cited turn on the peculiar facts and circumstances obtaining in those cases. Insofar as *Brahm Prakash's* case is concerned, it deals with a case where the petitioner in that matter had approached the court to gain admission to an LLM course for the year prior to one in which he had been granted admission. The petitioner, in that case, was wrongly denied admission to the 2014 LLM batch. While the petitioner was attempting to glean information via the RTI route qua the denial of admission, he sat for the 2015 entrance exam. Having qualified, the petitioner joined the 2015 batch. The petitioner, as indicated above, sought admission thereafter in the 2014 batch. The court denied relief to the petitioner in that matter

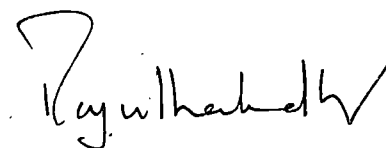
for the reason that he did not institute the action within reasonable time. To my mind, the judgment, in this matter, cannot be equated to the facts obtaining in the instant case.

12.1 Insofar as *Dayachand's* case is concerned, the Court denied relief not only on the ground of delay but also on the ground that the original documents were not tendered/produced. Therefore, there were multiple material facts which led to the conclusion, in that case, that the relief prayed for could not be granted to the petitioner. Delay alone, did not form the bedrock of the conclusion reached in that case.

12.2 The last case on which reliance was placed by Mr. Chauhan was the judgment in *Makhni Kaur*. In this case, the learned Single Judge relied upon the view that he had taken in *Dayachand's* case. This was a case where the petitioner was intimated about the allotment in 1988. The petitioner sat quiet qua her rights for nearly 17 years and therefore, the Court declined to grant any relief in the matter.

12.3 In the instant case, the petitioner has been struggling to get allotment in his favour and, therefore, this case, in my view, is not a *pari materia* with the facts obtaining in *Makhni Kaur's* case.

13. Accordingly, for the forgoing reasons WP(C) 2192/2017 filed by DUSIB is dismissed, while WP(C) No. 2148/2017 is allowed. DUSIB is directed to comply with the order of the LG dated 21.07.2016. Compliance will be made by DUSIB within four weeks of the receipt of a copy of the judgment.



RAJIV SHAKDHER, J

APRIL 19, 2018
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