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

+ **W.P.(C) 8900/2018 & C.M. No.34230-31/2018**

PAWAN KOHLI

..... Petitioner

Through: Mr. Tarun Sharma, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD AND ANR

..... Respondents

Through: Mr. Parvinder Chauhan, Standing
Counsel with Mr. Nitin Jain,
Advocate for DUSIB.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“Issue appropriate Writ Under Article 226 R/W 227 OF The Constitution Of India for issuance of writ of certiorari, mandamus and any other appropriate writ against the respondents directing to set aside the impugned order dated 27.8.2014 passed by deputy director (properties) DUSIB and under the supervisory powers of the court call for the record of case no. 61/2016-ca titled as “Pawan Kohli Vs Delhi Urban Shelter Improvement Board decided by the Hon’ble LG and to set aside the orders dated 15/11/2017 and 23/05/2018 passed by Hon’ble court of LG”

2. As is apparent from the above, the petitioner impugns three separate orders: (i) an order dated 27.08.2014 passed by respondent no.2 (the Deputy Director (Properties), DUSIB), whereby the petitioner has been called upon to pay a sum of ₹37,43,842/- as damages for the period 01.04.1995 to 31.05.2014 (a period of 230 months); (ii) an order dated 15.11.2017 passed by the Lieutenant Governor of NCT of Delhi rejecting the petitioner's appeal against the order dated 27.08.2014; and (iii) an order dated 23.05.2018 passed by the Lieutenant Governor of NCT of Delhi rejecting the petitioner's petition seeking review of the order dated 15.11.2017.

3. The controversy, essentially, involves the levy of charges/fees (damage charges) in respect of a property described as property no. 239-XIX, Basti Sarai Rohilla, Delhi (hereafter 'the Property'). The petitioner claims that the Property does not belong to respondent no. 1 (hereafter 'DUSIB') as it falls in an area, which was denotified as a slum and, therefore, DUSIB has no right to levy any charges for use (or misuse) of the Property. The petitioner also contends that he had used the Property only for residential purposes and, therefore, there is no misuser.

4. The petitioner claims to have purchased and acquired the possession of the Property by virtue of a registered General Power of Attorney dated 27.01.2003. In the appeal filed by the petitioner under Section 45 of Delhi Urban Shelter Improvement Board Act, 2010 (hereafter 'the Act') before the Lieutenant Governor of NCT of Delhi (hereafter 'the Appellate Authority'), the petitioner claims that, at the material time, he was not aware that the Property belonged to the Slum and J.J. Department of MCD. Accordingly,

on 19.12.2006, the petitioner had applied to the Slum and J.J. Department for being recognized as an occupant of the Property and also expressed his willingness to pay damages for his occupation. The petitioner also submitted two affidavits dated 19.12.2006 *inter alia* affirming that that the Property would be used for residential purposes and further agreeing to pay charges with effect from 01.04.1995.

5. Subsequently, DUSIB found that the Property had been used for commercial purposes and the petitioner was carrying on the business of manufacturing rubber auto parts under the name and style of M/s Kay Aar Industries. DUSIB also found that the Property had been put to industrial use prior to 27.01.2003 (the date on which the petitioner came into possession of the Property).

6. In view of the above, DUSIB has passed the order (which is impugned herein) computing the damage charges as payable in terms of the resolution no. 396 dated 25.10.2004.

7. Aggrieved by the decision of DUSIB, the petitioner preferred an appeal under Section 45 of the DUSIB Act before the Appellate Authority. The said appeal (Case No. 61/2016 captioned Pawan Kohli v. Delhi Urban Shelter Improvement Board & Another) was rejected by the impugned order dated 15.11.2017. Before the Appellate Authority, the petitioner contended that the Property had been used for residential purposes and had not been put to industrial use. He also disputed his liability to pay damage charges for the period prior to 27.01.2003.

8. The operative part of the impugned order dated 15.11.2017 is set out

below:-

“I have considered the submissions made by both the sides and have also gone through the case file. Appellant has challenged the impugned order mainly on the grounds that the premises has been used for residential purpose only and had never been put to industrial use. He has also contested the payment of damage charges for the period when he was not in occupation of the property. On both the accounts, I am in agreement with the submissions of the Counsel for the respondent that the premises had been used for running a factory for manufacturing rubber parts, which was closed on the directions of the Hon'ble National Green Tribunal vide order dated 10.03.2014 in the matter of Original Application No. 189/2013 (THC) and 190/2013 (THC) titled Pawan Kohli Vs Gulshan Bhalla & others and Gulshan Bhallla & others Vs Pawan Kohli & others, respectively. Further, the appellant had purchased the property with all its rights and liabilities and therefore the respondent is correct in raising demand against the appellant even prior to 27.01.2003.

In view of the above discussion, I find no ground to interfere with the impugned order.

Accordingly the appeal is dismissed.”

9. It is stated that after filing of the aforementioned appeal, the petitioner had also filed additional documents. The petitioner further states that his counsel could not appear before the Appellate Authority on 25.10.2017, when the appeal was taken up; however, additional documents and written submissions were filed on that date. However, the order dated 25.10.2017 passed by the Appellate Authority does not indicate that any such additional documents or submissions were filed.

10. The petitioner also filed a review petition seeking review of the said

order (dated 15.11.2017), *inter alia*, on the ground that the Appellate Authority had not considered the additional documents and synopsis of the arguments filed by the petitioner. In his written submissions (a copy of which was filed along with the review petition), the petitioner contended that DUSIB was neither the owner nor the managing agency of the Property.

11. The said review petition was also rejected by the order dated 23.05.2018 on the ground that the same was not maintainable.

Submissions

12. Mr Sharma, the learned counsel appearing for the petitioner submitted that DUSIB had no authority to levy any damage charges, as the Property did not belong to DUSIB. He submitted that by a notification dated 21.03.1987, the Administrator of Union Territory of Delhi had de-notified certain unauthorized colonies, which were earlier declared as slum areas. The said unauthorized colonies also included the area where the Property is located. He submitted that in view of the notification dated 21.03.1987, the area in question (where the Property is located) vested with the North Delhi Municipal Corporation. He also relied on the affidavit filed by North Delhi Municipal Corporation in proceedings instituted before the National Green Tribunal (being Original Application No. 189/2013 (THC) captioned *Pawan Kohli v. Gulshan Bhalla & Ors.* and Original Application No. 190/2013 (THC) captioned *Gulshan Bhalla v. Pawan Kohli & Ors.*). In the said affidavit, it was affirmed that the area in question had ceased to be a slum area and the Delhi Development Authority had, by its decision dated 09.07.2012, declared the use of the area in question as “Light

Manufacturing” in terms of the Provisions of the MPD-2001.

13. He further stated that the petitioner had obtained the factory licence from the North Delhi Municipal Corporation for running of a factory for manufacturing of rubber auto parts with day and night shift in the name of M/s Kay Aar Industries. The petitioner had also obtained the CTE (consent to establish) from Delhi Pollution Control Committee (DPCC). He submitted that in view of the above permissions, it is established that there was no misuser and DUSIB had no right to levy any charges. He earnestly contended that none of the aforesaid contentions had been considered by the Appellate Authority.

Discussions and Conclusions

14. It is apparent from the pleadings and the contentions advanced that the petitioner has adopted conflicting stands. It is not disputed that the petitioner had filed an affidavit dated 19.12.2006 with DUSIB clearly affirming that the Property was being used for residential purposes as he and his family had no accommodation in Delhi. In terms of the said affidavit, the petitioner had affirmed as under:

- “1. That the property No. 239/XIX located at Sarai Basti, Sarai Rohilla, Delhi-110035
2. That I am an Indian National.
3. That I am occupant of the above said property or its portion.
4. That I shall not use the said premises for any unauthorised purposes.
- 5 That I agree and shall pay the damage chg.w.e.f.

1.4.95.

6. That the property No. 239/XIX is my self occupied & measuring 175-19 sq. mtr.
7. That the property No. 239/XIX is being used as Residential.
8. That That I and my family have no accommodation in Delhi State.”

15. The petitioner also filed another affidavit, *inter alia*, affirming as under:-

“To pay damage charges/Licence Fee as approved by the Corporation Vide Resolution No. 396 dated 25.10.2004, in respect of occupation of the above mentioned property which I have read thoroughly and understood in letter and spirit.”

16. This was also the case set up by the petitioner in his appeal filed before the Appellate Authority (Lieutenant Governor).

17. Clearly, the statements made by the petitioner are belied by the petitioner’s pleadings in other proceedings as well as the documents relied upon in these proceedings. The petitioner had filed a suit (Suit No. 28/2013) in the Civil Court, Tis Hazari Delhi which was transferred to National Green Tribunal (NGT) and numbered as Original Application No. 189/2013. It is relevant to note that in the said suit, the petitioner had prayed for a decree of permanent injunction restraining the defendant from interfering with the smooth function and operation of his manufacturing unit. Prior to that, one Mr Gulshan Bhalla had also filed an action – Suit No. 778/2011 captioned *Gulshan Bhalla vs Pawan Kohli & Ors.* – praying for a decree of permanent injunction to shut the unit run by the petitioner. This action was premised on

the ground that the unit was causing pollution beyond the permissible limits.

18. The said suits were transferred to NGT. The nature of the two suits is clearly evident from the order dated 10.03.2014 passed by the NGT; the relevant extract of which reads as under:-

“The plaintiff in suit no. 28/2013, Mr Pawan Kohli has been carrying on his business of manufacturing rubber auto parts which is declared as orange category, in the name and style of M/s KAY AAR Industries as proprietary concern, at 19/239, Sarai Basti, Shahzada Bagh Industrial area, Delhi from the year 2006. In the said suit, he has prayed for a decree of permanent injunction against the 1st defendant who is the plaintiff in suit no. 778/2011, from interfering with the smooth function and operation of his above said unit, contending inter-alia, that he has obtained valid license from Municipal Corporation of Delhi and valid consent order from the Delhi Pollution Control Committee (DPCC) upto 2017. According to him, as seen in the pleadings, his manufacturing unit is situated in the non-residential area and it was only after considering that, the Municipal Corporation of Delhi (MCD) has given permission. He would also contend that the plaintiff in the suit No. 778/2011 who is the neighbour, is making objections for running of his unit on the ground that the unit is causing pollution both noise as well as air pollution.

On the other hand, the first defendant in the above suit i.e. suit No. 28/2013 namely Mr. Gulshan Bhalla had earlier filed the suit No. 778/2011 praying for a decree of permanent injunction to shut the unit run by the plaintiff in suit No. 28/2013. In the said suit, he has contended as stated above that the industry is causing pollution and it is situated in the residential area and, therefore, even if any permission is granted by any authority that permission has to be ignored since it causes pollution, danger to public security and environmental hazards.”

19. After considering the above captioned applications, the NGT had directed closure of the said unit and had further directed the concerned authorities to ensure that the petitioner does not carry on his business activity from the Property. It was further directed that if the petitioner does so the DPCC would take appropriate steps to seal the premises and remove all installations.

20. Thus, even though the petitioner had affirmed that he would use the Property for residential purposes, he had failed to adhere to his undertaking. The averments made in the appeal filed before the Appellate Authority are also incorrect inasmuch as the petitioner has averred that the Property was used for residential purposes. This is also evident from the fact that the petitioner had obtained a factory license to carry on manufacturing in two shifts (day and night). Further, he also relies upon the same to contend that there was no misuser.

21. The learned counsel for the petitioner had contended that although the petitioner had obtained the necessary permissions, he was not carrying on any commercial activity from the Property. It is not possible for this Court to accept the aforesaid contention. The fact that the petitioner had sought an injunction restraining his neighbours from interfering with the smooth function and operation of the unit clearly indicates that the petitioner was running a manufacturing unit at the Property. As noticed above, the petitioner had also obtained the factory licence from North Delhi Municipal Corporation. It is, thus, clear that the petitioner had filed an appeal by setting up a case, which is palpably false.

22. The contention that the Property does not belong to DUSIB is also unpersuasive. The said contention runs contrary to the averments made by the petitioner in appeal filed before the Appellate Authority, wherein the petitioner had admitted that at the time of acquiring the Property he was not aware that the Property belonged to Slum and J.J. Department. Further, the fact that the area had been de-notified as a slum area also does not necessarily mean that the land does not belong to DUSIB. More importantly, the petitioner had furnished an affidavit agreeing to pay the applicable damage charges and, thus, had clearly acknowledged DUSIB as the owner.

23. Before concluding, it is relevant to mention that the impugned order dated 15.11.2017 passed by Appellate Authority referred to the affidavits filed by the petitioner, whereby he had agreed to pay the damage charges with effect from 01.04.1995 and also the order passed by the NGT. However, the petitioner had concealed the said documents and did not file the same along with the petition. These documents were subsequently produced by him on the directions of the Court.

24. In view of the above, this Court is of the view that the petitioner should be mulcted with costs.

25. The present petition is, accordingly, dismissed with costs quantified at ₹10,000/-. The cost shall be deposited with the Delhi High Court Legal Services Committee within a period of one week from today.

VIBHU BAKHRU, J

AUGUST 28, 2018/pkv