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

+ **W.P.(C) 4211/2015 & CM No. 7615/2015**

DELHI URBAN SHELTER IMPROVEMENT
BOARD

..... Petitioner

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

versus

SHANKAR LAL

..... Respondent

Through: Mr Pankaj Bagga, Advocate for
respondent.
Ms Rajdipa Behura, SPP for CBI with
Ms Damini K. and Ms Philomon
Kavi, Advocates.
Mr Anuj Aggarwal, ASC, GNCTD
with Mr Ravi Sehgal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 07.08.2018

1. The petitioner (DUSIB) has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning the order dated 14.01.2015 (hereafter 'the impugned order') passed by the Lt. Governor of Delhi in case no. 189/2004.
2. By the impugned order, the Lt. Governor, Delhi allowed the respondent's appeal preferred under Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010 against the order dated 04.09.2014 passed by the Deputy Director (JJR), DUSIB cancelling the allotment of an alternative

plot bearing no. H-151-B, JJ Colony, Wazirpur, Delhi (hereafter 'the Plot'). The Appellate Authority (Lt. Governor, Delhi) also directed DUSIB to conduct disciplinary proceedings against the officials who had colluded with persons with vested interest to vitiate the process of rightful allotment to the respondent.

3. DUSIB alleges that the respondent is not a genuine allottee and had obtained the allotment of the Plot fraudulently. DUSIB claims that the respondent is in possession and residing at plots bearing No. J-III/70 and J-III/71, Wazirpur, J.J. Colony. One of the necessary conditions for allotment of a plot under the relevant policy is that the allottee or his family should not own or possess any other dwelling unit. This is to ensure that public resources are utilized for providing accommodation only to those in dire need of the same. Thus, the principal controversy that falls for consideration of this Court is whether the allotment of the Plot secured by the respondent was in violation of the said policy.

Factual Background

4. DUSIB is a Statutory Board constituted under Section 3(2) of the Delhi Urban Shelter Improvement Board Act, 2010, *inter alia*, engaged in functioning of the Slum & JJ Wing of the Municipal Corporation of Delhi.

5. The respondent was one of the illegal occupants of public land and a resident of *Juggi Jhopri* Cluster situated at Sindhora Kala, Chowki No.2, Near Shakti Nagar, Delhi. In order to rehabilitate the illegal occupants, the Government framed a policy for allotting alternative accommodation to such illegal occupants.

6. The allotment of alternative accommodation is only available to those persons who have no other alternative accommodation. In this view, each allottee was required to furnish an affidavit clearly affirming that neither he nor his wife nor any dependent relations own any house or residential plot of land in Delhi, New Delhi or Delhi Cantonment. The respondent also furnished an affidavit to the aforesaid effect on 03.01.2003. A perusal of the said affidavit indicates that he also affirmed that he was a resident of “J-III/70-71, Wazirpur, J.J. Colony, Delhi”.

7. On 08.01.2003, the respondent was allotted the Plot (Plot No. H-151-B, JJ Colony, Wazirpur, Delhi). The provisional allotment letter clearly indicated that the allottee and his/her family would use the same for “as self occupancy and residential purposes only”. Clause 2 of the said allotment letter is relevant and reads as under:-

“That neither allottee nor his/her spouse or any dependent member of his/her family possesses either in full or in part on lease or free hold basis any plot of land or house in the Union Territory of Delhi or no plot/Flat has been allotted to him/her or dependents either by Government or Semi-Government Autonomous Authority”

8. It was later found that the property – J-III/70 and J-III/71 – had been acquired by the petitioner/his wife and he was residing there. This clearly indicated that the petitioner had made an incorrect representation for securing the allotment of the Plot. This fact was admitted by the respondent in another proceedings, as is reflected in the order dated 09.05.2013 passed by ADJ (Central), Tis Hazari, Delhi in RCA No. 37/2005 captioned “*Shankar Lal v. Jaipal & Anr*” wherein it was recorded that the respondent

during his cross examination had admitted that the plots nos. J-III/70 and J-III/71 had been allotted in the name of his wife; he is in possession thereof; and is residing therein. The relevant extract of the said order dated 09.05.2013 is set out below:-

“10. Sh. Shanker Lal was examined as DW1.

He stated that suit property was initially allotted to Sh. Puran Chand Ex. DW1/1 and he took the possession and constructed it. Balance amount of Rs.5,000/- was deposited vide receipt Ex.DW1/2. During cross examination he stated that Jal Pal was residing at A/114/4, Nand Nagri. This plot was illegally allotted to Shanker Lal they made a complaint and allotment was cancelled. It was again allotted to in the name of Puran and the receipt is Ex.DW1/6. During cross examination he told that J-3, 70, 71 plot are in the name of his wife and he is in possession of and residing there. He admitted the suggestion that these plots were purchased by his wife and they are just residing there. These are plots are of his friend Sh. Ram Nath and Surender Kumar.”

9. DUSIB also refers to the decision of ADJ in RCA No. 27/1987 dated 10.09.1993, wherein the judgment passed against the respondent for possession of the plot nos. J-III/70 and J-III/71, Wazirpur, JJ Colony was set aside. The relevant extract of the said order is set out below:-

“2. Briefly the facts are that the two suits were filed by Babu Lal and Kishan Lal against the appellant for possession of plot numbers J-3/70 and J-3/71, Wazir Pur, J.J. Colony respectively on the ground that the plots J-3/70 and J-3/71 were allotted to the pltfs by DDA and the deft.no.1 (present appellant) unauthorisedly occupied the plots in question and he had built up tin shed over there unauthorisedly. The pltfs requested deft. no.1 to hand over

the possession of the plot to them and remove unauthorised structure made by him a day before filing of the suit but he refused to do so and hence the suit. It was submitted that the cause of action arose on 8-3-78 when the plots in dispute were allotted in favour of the plfts. and again on 22-12-78 when the deft, refused to hand over the plots to the plfts and request to remove the unauthorised structure. It was further pleaded that the value of the suit for the purpose of jurisdiction and court fee was Rs.200/- in each case. A prayer was made for passing decree of possession.

16. The trial court has not discussed at all as to how the plfs. were entitled to the possession. Mere allotment of the plot does not entitle the plfts. to the possession. If DDA had allotted the plot no. J-3/70 and J-3/71 Wazirpur to the plfs, it was the duty of the DDA to take possession of these plots from the earlier occupants and then hand over the possession to the plfts. The def. was in occupation of the plot before the allotment of the plfts. or in any case when the suit was filed and at no point of time the plfts. were given the possession of the plot by DDA. Nor it is the case of the plfts. that the possession of the plot was given to the plfts. by DDA and later on deft, unauthorizedly occupied it. Since the deft. no.1 had not taken the possession of the plot from the plfts. and, plfts. had not been given the possession of the plot by the DDA. The plfts. had no right to recover possession from deft. no.1. It is the DDA who can recover possession of the plot from deft. no.1 and then give it to the plfts. The suit for possession can be filed by a person who has a title to the property or who was in earlier possession of the property and has been wrongfully dispossessed. The plfts. have no title to the property. The owner of the property is DDA and DDA had allotted these plots to one Ram Nath and Surinder Nath and later on cancelled the allotment of Ram Nath and Surinder Nath and allotted the same to Babu Lal and Kishan Lal and later on cancelled the allotment of Babu Lal and Kishan Lal also. Thus the

ownership remains with DDA. Even if it is assumed that Babu Lal and Kishan Lal's cancellation was wrong and they were given allotment slip, the mere giving of allotment slip does not transfer the ownership. I, therefore, find no ground to pass a decree of possession in favour of the pltfs.

17. It is settled law that that suit for possession can be filed only by a person who has a better title over the property. The Hon 'ble Supreme Court in *M. Kalapa Shetti v. M. V. Laxmi Narain Rao*, AIR 1979 SC 2299 held that a person can on the strength of his possession resist interference from the persons who have no better title than himself to the suit property unless the pltfs. had proved a better title over the plot in question they could not seek a decree of ejectment against the deft. no.1. It is admitted case of the pltfs. that the allotment was later on cancelled and they have filed suit against DDA against the cancellation of allotment. I therefore, hereby accept the appeals. The judgment and decree passed by the trial court are set aside. The suits of the pltfs. are hereby dismissed. Both the appeals are decided accordingly.”

10. On 22.07.2014, after a vigilance inquiry made pursuant to the complaint filed against the respondent, the allotment of the Plot to the respondent was cancelled/withdrawn. Thereafter, on 04.09.2014, the respondent was informed about the cancellation of the allotment of the Plot.

11. On 04.09.2014, the respondent preferred an appeal before the Lt. Governor of Delhi against the order dated 04.09.2014 cancelling the allotment of the Plot in favour of the respondent.

12. The appeal preferred by the respondent was allowed by the impugned order. A plain reading of the impugned order indicates that the Appellate Authority (Lieutenant Governor, Delhi) has failed to consider the allegation

made against the DUSIB and the material produced by DUSIB in support of the order cancelling the allotment of the Plot. The Lieutenant Governor proceeded singularly on the basis that DUSIB had filed an affidavit in another proceeding affirming that the allotment made in favour of the respondent was *bona fide*. Plainly, this cannot be held against DUSIB. The allegation that the respondent had secured the allotment by making a false statement and that he was in fact in possession of the properties bearing No. J-III/70 and J-III/71, Wazirpur, JJ Colony cannot be seriously disputed and there is no reason to disbelieve the same.

13. It is also relevant to note that the present petition was taken up for hearing on 29.03.2016 and this Court had taken note of the order dated 09.05.2013 passed by Additional District Judge, (Central) Tis Hazari Courts, which reflected the testimony of the respondent as set out herein before. This Court also took note of the judgment of the Additional District Judge passed in RCA No. 27/1987 and 28/1987 rendered on 10.09.1993, the relevant extracts of which have been set out herein before. After referring to the aforesaid orders, this Court directed the Central Bureau of Investigation (CBI) to conduct a preliminary inquiry to determine how many properties in J.J. Colony have been cornered by the respondent and his family members.

14. The relevant extract of the order dated 29.03.2016 is set out below:-

“Admittedly, the respondent continues to be in possession of J-III/70 and J-III/71 of Wazirpur JJ Colony, but he still has the audacity to claim possession of H-151 B, JJ Colony, Wazirpur Colony.

In the prima facie opinion of this Court, this is nothing but cornering of valuable government plots by a strategic litigant, who adopts convenient stands in different legal proceedings. It seems to this Court that it is the persons like the respondent who have brought a bad name to a good welfare policy of the State.

Before this Court takes any further action, it directs Central Bureau of Investigation ('CBI') to conduct a preliminary inquiry to determine as to how many properties in JJ Colony have been cornered by the respondent and his family members. The details of all properties either in possession of respondent or his family members and/or which he or his family members have beneficial ownership by way of GPA or Agreement to Sell and/or Sale Deed of the same, shall be disclosed to this Court. This Court may mention that it has ordered an inquiry by CBI as the respondent had made allegations of political victimisation by a former Municipal Councillor before the Lieutenant Governor.

Let a preliminary report be filed by the CBI within a period of four weeks.

List for further consideration on 13th May, 2016.

Till further orders, the impugned order will not be given effect to and the property shall continue to remain sealed.

Registry is also directed to summon the entire file of RCA No. 37/2005 along with suit file as well as files of RCA No. 27/87 and 28/87 before the next date of hearing from the concerned trial Courts. Order dasti.

A copy of this order shall also be communicated to the Director, CBI and their standing counsel along with the paper book by the learned counsel for DUSIB.

15. Pursuant to the aforesaid directions, the CBI has conducted a preliminary inquiry and submitted a report. The said report indicates that the

respondent is also in possession of several other properties. Before the CBI, the respondent has claimed that Plot J-III/70, J.J. Colony, Wazirpur, Delhi was purchased by his son. This is contrary to the reply filed by the respondent in response to the show cause notice issued by DUSIB. In the said reply, the respondent had claimed that the said property had been acquired by his wife but was returned. The preliminary inquiries made by CBI also confirm that the respondent has been in occupation of Plot No. J-III/70 and Plot No. J-III/71 in J.J. Colony, Wazirpur, Delhi. The CBI has also referred to several other properties in J.J. Colony. The relevant extract of the report of CBI is set out below:-

“c. Shop no. 13, Sanjay Market Additional, JJ colony, Wazirpur, Delhi

The original allotment file pertaining to this shop is not traceable. The site register of DUSIB mentions that it was allotted to Sh. Ashok Kumar but does not mention date of allotment. Sh. Ashok Kumar could not be located during the enquiry. Presently, Sh. Riaz Ahmed and three other tenants are paying a total rent of Rs. 23,000/- pm to Sh. Shankar Lai in cash and no receipts are being issued by him. Sh. Shrikant S/o Shri Shankar Lai has submitted copies of affidavit, agreement to sale and purchase receipt of money etc. dated 03.10.1988 reflecting that this property was purchased by Smt. Maya Devi W/o Sh. Shankar Lai from Sh. Ashok Kumar for a consideration of Rs. 20000/-.

d. Plot no. H-150B, JJ colony, Wazirpur, Delhi

This plot was allotted to Smt. Inder Kanta Sharma on 08.01.2003. She was considered as one of the left over cases for allotment of resettlement plot by the Slum & JJ department but allotment of plot to her was not recommended by the appointed committee as she never

appeared before them. Nevertheless, this plot was allotted to Smt. Inder Kanta Sharma on the basis of MOD resolution no. 455 dated g. E-74, JJ Colony, Wazirpur, Delhi. The original file pertaining to this property is not traceable this plot was allotted to Sh. Chitu Ram S/o Sh. Budh Ram on 07.05.1965. Presently, it is occupied by Sh.-Sunder Lai S/o JhammURam. Sh. Shankar Lai has submitted that this plot was allotted to his mother Smt. Chhito W/o Bodha Ram. Sh. Sunder Lai, present occupant, has submitted that this plot was purchased by his father Sh. Jhammu Ram from Smt. Sita Devi W/o Sh. Boda Ram in the year 1982 for consideration Rs. 22,000/-.

h. J-III/387, JJ Colony, Wazirpur, Delhi

This plot was allotted to Sh. Puran S/o Sh. Daulat Ram on 02.02.1977 and cancelled on 08.03.1978. It was re-allotted to Sh. Jaipal S/o Sh. Babu Lai on 08.03.1978 but was again cancelled on 03.02.1987. Presently, this plot is vacant having some old construction. A civil suit was filed by Sh. Jaipal for possession of this property which has finally been decided on 29.08.2013 by the Hon'ble High Court of Delhi (RSA 119/2013) with the observation that the said plot has been repossessed by DUSIB.

i. Plot No. A-33, Gali No. 8, 80 yard Colony, Jeevan Park, Delhi

This 80 sq yds plot was purchased by Smt Maya Devi! W/o Shri Shankar Lai on 10.11.2005 from Shri Jagdish for a consideration of Rs 80,000/- She subsequently sold this plot on 06.06.2011 for a consideration of Rs 2,00,000/- to Smt Kamlesh wife of JaijKumar r/o D-117, Yadav Nagar, Sameypur, Delhi-42.”

16. In view of the above, the impugned order cannot be sustained. The same is set aside. CBI is further directed to complete its inquiries and take

such steps as may be necessary. A copy of the final report would also be submitted to DUSIB. DUSIB shall consider the final report and take further steps in regard to the other properties, if warranted.

17. The petition is disposed of with the aforesaid directions. The pending application also stands disposed of.

AUGUST 07, 2018

pkv

VIBHU BAKHRU, J