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

Decided on: 07.05.2018

+ **LPA 521/2016, C.M. APPL.34364/2016**

SATISH KHURANA & ORS Appellants

Versus

NORTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

+ **LPA 620/2016, C.M. APPL.41238/2016 & 12061/2017**

VINOD KUMAR GUPTA Appellant

Versus

NORTH MUNICIPAL CORPORATION OF DELHI & ORS

..... Respondents

+ **LPA 1/2017, C.M. APPL.19/2017**

BESTLEY GOOD TRANSPORT CORPORATION..... Appellant

Versus

MCD (NORTH) & ANR

..... Respondents

Through : Sh. Ajjay Aroraa and Sh. Kapil Dutta,
Advocates, for North DMC, in Item Nos. 2 to 4.

Sh. Rajiv. K. Garg, Sh. Rajeev Kapoor and Sh.
Sarvpreet Singh Chawla, Advocate, for
Respondent No.2, in Item No.2.

Ms. Nandni Sahni with Sh. Mukul Gupta,
Advocates, for appellant, in Item No.3.

Sh. Kartikay Sharma, Advocate, for appellant, in
Item No.4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellants in these cases are aggrieved by the judgments rendered by the learned Single Judge in W.P.(C) 7494/2010 and W.P.(C) 7501/2010. In all these proceedings, the common grievance is that the learned Single Judge did not correctly appreciate the policy of the erstwhile Municipal Corporation of Delhi [hereafter “MCD”], formulated originally in 1976 and subsequently amended in 1986. According to the amended policy of 1986, particularly clause 7(f), occupiers carrying on business/trade of goods transport; booking and picking goods were given the option of applying for alternative plots in Sanjay Gandhi Transport Nagar [hereafter “SGT Nagar”] under a fresh scheme. Clause 7 of the amended policy reads as under:

“6. Scrutiny of the applications has also been taken in hand. A survey has been ordered for determining the site position. The work for integrated and management of the project has been entrusted to a senior officer of the level of Asstt. Commissioner Shri M. R. Bhardwaj, AC/R.P.Cell who has been designated as Manager, Sanjay Gandhi Transport Nagar. For this work, it is proposed to give him a special pay of Rs. 275/-pm w.e.f 13.05.1986 the date he took over as A.C./R.P.Cell on the same analogy as other officers of his rank in the Mpl. They're office as well as Secy. To Mayor, etc. are receiving.

7. The allotment will be made to those applicants who were registered in 1976, Subject to their eligibility being established as per following policy:-

(a) Those firms or individuals who applied for plots in 1976 and are now in the relevant trades will be eligible for allotment of godown/ workshop/plots of the area applied for allotment for shops will be for the uniform size of 17.5 sq.mits.

(b) If the original applicant firm/individual has undergone a corporate or individual succession (legal evidence for which is duly produced), the successor firm/individual will be given the allotment. After the allotments have been made,, any changes in proprietorship partnership constitution of the firm company etc. will be in accordance with the rules prevalent for DDA leases, including payment of unearned value increases etc.

(c) Applicant, qualified by criteria, (a) and (b) above will all be given one plot each in lieu of their premises./area of usage measuring up to 500 sq.metres. For every 500 sq. metres additional-area or fraction, thereofunder their usage, applicants will be entitled to an additional plot of applicable size. For the next one commercial price (which will be three times the reserved price) andfor the remaining additional plots market price (which will be five times the reserve price).

(d) If a group of applicant firms individual wish to take allotment together in one row or block, they may be allowed to do so, treating these groups as single units. However, the plot numbers and the block number will be decided through a draw of lots.

(e) The number of plot as well as block to the eligible applicants will be made by a drawn f lot.

(f) The allottee shall give undertaking that after allotment of plot they will discontinue their transport/allied business from the present site. Where ever the applicant/applicants are

in occupation Govt land/public premises the same will be restored by them to the land owning Deptt /Authority.

(g) The allottees shall have to conform, to the architectural controls for their buildings to be prescribed by the Chief Architect MCD and undertaking to this effect shall be filed by the applicants.

Approval of the Corporation is sought to the proposals (i) as contained in para 4,5 and 7(c) above regarding the prices to be charged, (ii) as contained in para 7 on the policy for allotment and (iii) as contained in para 6 regarding grant of special pay to the officer to hold the concurrent charge as Manager, Sanjay Gandhi Transport Nagar.

This may be placed before the Ad .hoc R.P.Committee / Standing Committee/Corporation for approval as an item of Urgent Business.”

2. The appellants received Show Cause Notices some time in 2006 alleging that though they had applied and were allotted alternative plots in SGT Nagar, further to their furnishing undertakings under the policy, they continued to retain premises at Qutab Road. The policy of the MCD was to decongest the traffic in the National Capital Region for which all players who wished to carry out the trade could do so in SGT Nagar and for this purpose, it had prescribed that they would be allotted alternative plots. The appellants' grievance is essentially that they were lessees of the shops they own by virtue of several lease deeds with the President of India, for 99 years. It is contended *inter alia* that the affidavits given by the occupiers firstly did not bind them and consequently did not expressly state that the appellants would vacate the premises occupied by them in Qutab Road in view of the alternative allotments given to the said occupiers/lessees in SGT Nagar. It

was also urged that there is nothing in the affidavit undertakings to imply such consent to vacate and hand-over the leasehold rights to the MCD. Besides, the MCD's rights to carry-out an indirect forfeiture of leasehold rights in this manner is challenged on three grounds. Firstly, it is submitted that without resorting to the procedures known to law, such foreclosure of lease or vesting of property is impermissible. In this regard, reliance is placed on *Express Newspapers Pvt. Ltd. v. UOI* 1986 (1) SCC 133. He secondly urged that the MCD was not the lessor, nor was it in any manner authorised to manage the properties in question. Apparently, the latter argument was pressed into service and in the present appeal, the appellate Commissioner, the UOI/L&DO was impleaded as a party respondent. Further to this development a notification was issued on 26.03.2006 empowering the MCD to manage the leases given by the UOI.

3. Learned Single Judge, after perusing the circumstances, was of the view that though in the given facts, learned appellants were precluded from arguing that there are leasehold rights, these rights were in any event extinguished. It was held that after having allowed others to buy and obtain allotment of alternative spaces, the appellants could not complain of arbitrariness.

4. These findings are now challenged before the Court. It is pointed out that the learned Single Judge had erred in that the MCD had no jurisdiction to issue the policy of 1980 which had the effect of forfeiting the appellants' leases. It is also urged that even on a plain reading of the documents on record and the materials, the undertakings relied upon nowhere suggested or stated that the forfeiture or extinguishing of leasehold rights was agreed to; on the contrary, those in occupation had relations with some petitioners.

5. Learned counsel for the MCD submitted that the materials are against the petitioners who appear to have permitted the allottees to apply for an alternative plot. In these circumstances, they were estopped from questioning the legality of forfeiture of leasehold or extinguishment of leasehold rights.

6. During the course of hearing it was pointed out that the order dated 28.02.2012 recorded an unequivocal statement on behalf of the MCD which is as follows:

“The matters are ripe for arguments. However, in view of the fact that some other part-heard matters are listed today, the present matters cannot be taken up for hearing.

Counsel for the respondent/MCD submits that W.P.(C) Nos.7101/2010, 7103/2010, 7104/2010, 7494/2010, 7501/2010 and 7502/2010 are on a different footing from the other connected matters for the reason that as per the records of the respondent/MCD, there is no connection/nexus between the allottees of the shops at Sanjay Gandhi Transport Nagar and those holding over shops at Qutub Road.

The aforesaid aspect shall be examined at the time of addressing arguments.

List on 15th May, 2012 in the category of 'after notice miscellaneous matters', at 2.30 PM.”

7. Learned Single Judge, in our opinion, has not fully examined the matter from certain perspectives. The first is that all the appellants before this Court are lessees having been put into possession pursuant to valid leases for 99 years entered into with the Union of India (UOI). They are not mere “occupiers”. Whether the MCD, or for that matter, the UOI intended to divest those who were lessees in the manner done by Clause 7(f), therefore, needs to be examined not only from the point of view of whether they

actually and voluntarily surrendered their leasehold rights in the context of interpretation of Clause 7(f), but also in the context of the law that no one can be divested of his rights in the property except in accordance with law. Furthermore, *Express Newspapers (supra)* is an authority for the proposition that even in respect of its own land, the UOI has to initiate proceedings, to take over possession. The other aspect is, of course, the question of authority of the MCD to act as it did. The materials placed on record during the appeal proceedings suggest that it was only after 2006 that the MCD was empowered to manage the UOI's leases. What is the consequence of this is something which was previously not visualized when the impugned orders were made. The third aspect is the examination of the undertakings in each case. Whether each of the undertakings furnished by the concerned party or parties, specifically stipulated that the possession of the leasehold rights would be given and that the said leasehold rights will be extinguished on obtaining alternative plots either expressly or impliedly, or has to be examined on case-to-case basis.

8. In the light of the foregoing, the Court is of the opinion that the learned Single Judge should undertake the exercise afresh, of interpreting clause 7(f) in the context of whether it could be construed as divesting the lawful leasehold rights of someone who had purchased the property or otherwise and whether the undertakings/affidavits in fact did so. The impugned orders are accordingly set aside. The matter is remitted to the learned Single Judge who shall examine these aspects as well as other relevant circumstances and render his decision in accordance with law.

9. All rights and contentions are kept open. We notice that in LPA 620/2016, the appellant's shop was sealed pursuant to the impugned order

dated 06.09.2016; the *status quo ante* as existing on the date of the judgment shall be restored within two weeks. This interim order shall be subject to the final outcome of the petitions.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

MAY 07, 2018

