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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 80/2012, CM No. 181/2012

CHANDRA SHEKHAR

..... Petitioner

Through: Mr. L.C. Rajput, Adv.

versus

MCD AND ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, SC for
NDMC with Ms. Bushra Waseem,
Adv.
Mr. Parvinder Chauhan, Adv. for
DUSIB

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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02.04.2019

1. The present petition has been filed by the petitioner with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to:

(a) quash / set aside the order No.D-216/Dy. Dir (JJR) II dated 16.12.2011 passed by the respondent No.2 (Annexure P-12) whereby the request of the petitioner to grant lease hold rights have been rejected and he has been threatened to be evicted from the allotted plot;

(b) direct the respondents to execute the Lease Deed / requisite ownership documents in favour of the petitioner in respect of the plot measuring 70 sq. mtr. Near plot No.B-150-

151, abandoned Lavatory Block, J.J. Colony, Wazipur, Delhi-110052 measuring 70 Sq. Mtr. Enabling the petitioner to use his allotted plot and to carry out business / construction activities, to utilise his plot;

(c) issue directions to the respondents restraining them from evicting and / or creating any hindrance, obstruction in the way of the petitioner carrying out the construction / business activities over the plot; and to pay compensation of Rs.15,00,000/- to the petitioner towards the financial losses suffered by the petitioner on account of delay / lapse / inaction on the part of the respondents;

(d) issue any other further directions / writs / orders in favour of the petitioner and against the respondents which may be deemed just and proper.

(e) Award cost of the petitioner in favour of the petitioner and against the respondents.”

2. This is a fourth round litigation initiated by the petitioner, the first one being W.P.(C) 7441/2001 wherein the petitioner has challenged the action of the erstwhile MCD evicting him from a land which fell between Plot Nos.B-150-151 in the Lavatory Block, J.J. Colony, Wazirpur, Delhi. The writ petition was disposed of on December 07, 2001 permitting the petitioner to make a representation to the erstwhile MCD with regard to the allotment / regularisation of the petitioner's occupation of the land in question.

Thereafter, the petitioner was issued a letter on August 14, 2002 allotting him the said plot admeasuring 70 sq. mtr. subject to payment of Rs.10,80,857/- as cost of the land and ground rent @ 12% per annum from the date of handing over of possession. He was also asked to pay Rs.2,27,557/- towards the outstanding dues.

3. He filed writ petition being W.P. (C) 5074/2003 for direction to the MCD to permit him to pay the amount in instalments. On September 21, 2004, the said writ petition was disposed of with the direction that upon the petitioner paying the entire amount along with interest at the rate of 12% per annum within a period of 30 days, the property allotted to the petitioner, would be regularised in his favour and possession would be handed over upon completion of other formalities, within a period of 60 days from that date.

4. It appears that the petitioner could not be able to deposit the said amount. When the possession of the said plot was still not handed over, he filed a writ petition being W.P. (C) 9192/2006. It was the case of the MCD in the said writ petition that there is no policy of the Department to allot land on the Lavatory Block to any unauthorised occupant. A reference was also made to a review petition filed against the judgment dated September 21,

2004 in W.P. (C) 5074/2003. The writ petition being 9192/2006 was disposed of on July 26, 2007 in terms of the following directions:

“8. The Court considers the explanation offered by the petitioner for not making payments within the time stipulated by this Court, to be reasonable. The MCD has also not denied that the petitioner has made complete payment. There is, therefore, no impediment in the MCD putting the petitioner in possession of the land measuring 70 sq. meters situated between the Plots No.150-151, Lavatory Block, JJ Colony Wazirpur, Delhi and executing the necessary documentation in that regard, subject of course to the petitioner completing the formalities. It is accordingly directed that the MCD will not complete the formalities and put the petitioner in possession of the aforementioned land within eight weeks from today. The MCD will also verify that payments made by the petitioner have indeed been received by them. This order is in the peculiar facts of the present case and consequent to the earlier order dated 21.09.2004 passed by this Court in favour of the petitioner.”

5. Pursuant thereto, it is a conceded position that the possession of the land admeasuring 70 sq. mtr. located between Lavatory Block, J.J. Colony, Wazirpur, Delhi was handed over to the petitioner. The respondents have passed an order dated December 16, 2011 whereby the respondents have stated that there is no policy to grant leasehold / freehold rights to the licensee / unauthorised occupants of the JJR Colony, Wazirpur, Delhi as well as unauthorised occupants. They have finally held that the petitioner has no right over the land in question. Hence, the petitioner is not entitled to

any relief.

6. The only submission is made by Mr. L.C. Rajput, learned counsel for the petitioner is that in terms of the order of this Court dated July 26, 2007, the respondents are required to execute the necessary documentation with regard to the possession of land admeasuring 70 sq. mtr. situated between Plot Nos.B-150-151 in the Lavatory Block, J.J. Colony, Wazirpur, Delhi in favour of the petitioner subject to the petitioner completing all the formalities. The respondents have failed to execute any document except issuing / taking over / handing over document (page 76 of the writ petition). According to him, this does not satisfy the direction as given by this Court on July 26, 2007.

7. Mr. Parvinder Chauhan, learned counsel appearing for the DUSIB would submit that the document at page 76 whereby the physical possession of the land admeasuring 70 sq. mtr. (as referred above) has been handed over to the petitioner would suffice the requirement. In other words, it is his submission that the possession of the property with regard to the land in question has been regularised in terms of the said document.

8. I am not in agreement with the said submission made by Mr. Chauhan as in terms of para 3 of the judgment dated May 24, 2007, wherein, a

reference has been made to an order dated September 21, 2004 passed by this Court in W.P. (C) 5074/2003 to the extent that on petitioner paying the entire amount along with 12% interest per annum within a period of 30 days the land allotted to the petitioner would be regularised in his favour and possession would be handed over after the completing all the formalities.

9. The said order has attained the finality on the dismissal of the review petition. It is in this background, the Court had directed the respondents to hand over the possession to the petitioner and further directed for execution of the necessary documentation vide its order dated July 26, 2007.

10. Regrettably, what the respondents have done is that the respondents have held the petitioner as a trespasser and that he is not entitled to any relief. This, they say so, as there is no policy with the Government for granting leasehold rights / freehold rights even to the *bonafide* occupants of JJR colonies and in this case, the petitioner being a trespasser, he could not be better placed. Suffice it to state, such a plea is not available to the respondents now. In fact, the same plea with regard to the policy was taken by the MCD in W.P. (C) 5074/2003 which was rejected on September 21, 2004. The direction of this Court in order dated July 26, 2007 is clear that the respondents were directed to execute necessary documentation. Insofar

as the plea of Mr. Chauhan on the taking over / handing over document is concerned, the same signifies the possession having been handed over to the petitioner and nothing more. The respondents are required to do something more, so that, the property is regularized in favour of the petitioner. The same is clear from the order dated September 21, 2004 in W.P.(C) 5074/2003, as noted by the Co-ordinate Bench in para 3 of its order dated July 27, 2007.

11. Accordingly, the impugned order dated December 16, 2011 is liable to be set aside. It is ordered accordingly. The respondents are directed to comply with the order dated July 26, 2007 and execute the necessary documentation as being executed with regard to authorised allottees in terms of the said judgment. The same shall be done within a period of three months.

12. The writ petition stands disposed of.

CM No. 181/2012

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 02, 2019/aky