

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.02.2019

+ **W.P.(C) 8195/2008**

GIAN CHAND TUTEJA

..... Petitioner

versus

UNION OF INDIA& ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr S.N. Kalra, Ms Divya Sharma, Mr Lalit Gupta, and the petitioner in person.

For the Respondents: Mr Dev P. Bhardwaj, CGSC, Ms. Anubha Bhardwaj and Mr Jatin Teotia

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The controversy involved in the present petition relates to an additional strip of land, admeasuring approximately 100sq.yd. (hereafter 'the Additional Land'), located adjacent to the property bearing No. 7, Ram Puri Colony, Kalkaji, New Delhi – 110019 (hereafter 'the Property'). The petitioner has occupied this additional strip of land and has filed the present petition, *inter alia*, praying that the same be regularized in his favour.

2. Further, the petitioner impugns a communication dated 07.11.2008 (hereafter 'the impugned communication') issued by respondent no. 2 (The Land and Development Officer – L&DO) wherein it was alleged that the petitioner had trespassed on the Additional Land. The petitioner was further informed that the Additional Land would be put up for auction between 16.12.2008 and 18.12.2008 and was invited to participate in the said auction.

Factual Background

3. In the year 1951, the Property (No. 7, Rampuri, Kalkaji, New Delhi – 110019) measuring 104 sq. yards (hereafter 'the said property') was allotted to Sh. Maha Ram, the predecessor in interest of the petitioner, at ₹10.5 per sq. yard. The lease deed in respect of the said property was executed in favour of Sh. Maha Ram on 16.08.1979. It is stated that the said property is a corner property and the additional strip of vacant land (Additional Land) adjacent to it was also occupied by Sh. Maha Ram, even though he had no right, title or interest in the same.

4. The petitioner states that several other corner plots also had adjacent strips of lands, similar to the Additional Land. The owners of all such corner properties made representations for allotment of the additional strips of land adjacent to their respective properties. Apparently, the said representations were accepted and the L&DO issued letters to various allottees of corner properties offering them allotment of the additional strips of land adjacent to the land leased to

them. A Memorandum dated 07.12.1970 to the aforesaid effect was also issued to the then tenant (Sh Bihari Lal) residing in the said property. In terms of the said memorandum, the L&DO offered the additional strip of land on the condition that it would be included as a part of the original property (the said property). It was stipulated that the allottee would not be permitted to construct a building independently, or, as an extension on the Additional Land, or, put the said land to use without getting approval of the local body. ShMaha Ram (being the original allottee) was also called upon to pay a sum of ₹6000/- as cost of the Additional Land, which was computed at ₹60/- per sq. yard. The said Memorandum indicated that a lease deed in a form duly approved by the Government of India would be executed in respect of the Additional Land. The said Memorandum also stipulated that the offer contained therein was valid for a period of fifteen days and it expressly provided that if the said offer was not accepted within the said period of fifteen days from the date of receipt of the letter, the same would be deemed to have been withdrawn.

5. It is stated that ShMaha Ram as well as other allottees of corner properties opposed the proposal of charging ₹60 per sq yard and made a representation for the same to be reduced.

6. On 31.08.1981, the predecessor in interest of the petitioner (Sh Maha Ram) received a letter from the Department of Rehabilitation, Government of India, communicating the decision to transfer the additional strip of land to the lessee/allottee of the Property at the rate of ₹500 per sq. yard on the terms and conditions as stated therein. These conditions included a condition requiring the allottee to deposit

the sum of ₹50,000/- towards the cost of the additional land within a period of six weeks. It was further clarified that if the said deposit was not made within the stipulated period, the offer would be deemed to have been withdrawn automatically.

7. The petitioner acquired the said property some time in 1988 and the original allottee issued a Power of Attorney in favour of the petitioner's wife. Subsequently, on 23.06.1988, she executed a sale deed in favour of the petitioner as the constituted attorney of ShMaha Ram.

8. It is stated that the predecessor in interest of the petitioner and other holders of corner tenements filed a Civil Suit for regularization of the additional strips of land on a payment of ₹6000/- and also sought an injunction in this regard. It is stated that this suit was subsequently withdrawn in the year 1989. The petitioner states that even during the pendency of the suit, ShMaha Ram as well as other similarly placed persons continued to make representations to the concerned authorities for regularizing the additional strips of land adjacent to their respective properties.

9. Thereafter, vide a letter dated 01.12.1998, the petitioner requested respondent nos. 1 and 2 to regularize the Additional Land in his favour. In the year 1992, the petitioner constructed a two-storey building upon the said property.

10. Apparently, in the year 1995, the petitioner was advised by the officials of respondent no. 1 and 2 to demolish the construction carried out on the Additional Land prior to seeking regularization of the same.

In furtherance of the same, the petitioner demolished the construction on the Additional Land.

11. The petitioner states that on 17.01.2006, he received a letter from the L&DO to inspect the said property before the Additional Land could be regularized in his favour. On 03.01.2007, the petitioner applied to convert the said property from leasehold to freehold, and he deposited the requisite charges for the same. On 18.06.2008, the petitioner alleges that a representative of respondent no. 3 (DDA) informed him that in order to regularize the Additional Land, the petitioner would have to put the same to public auction. This was contested by the petitioner and he submitted a representation dated 19.06.2008.

12. Thereafter, the petitioner received the impugned communication, whereby respondent no. 2 informed the petitioner that the Additional Land would be put up for public auction, and the petitioner could participate in such auction.

13. Aggrieved by the same, the petitioner has filed the present petition.

Discussion and Conclusion

14. It is the petitioner's case that he is entitled to regularization of the Additional Land in his favour. In addition, the petitioner claims that the conversion of the said property (land measuring 104 sq. yards – No. 7 Rampuri, Kalkaji, New Delhi) cannot be withheld on account of the controversy relating to the Additional Land. The petitioner has

also submitted that in several other cases, allottees of corner tenements had been allotted the additional strips of land adjacent to their respective properties. The petitioner claims that he is also entitled to be treated on parity with such allottees.

15. There is no dispute that the Additional Land belongs to the Government of India and the petitioner has illegally occupied the same. It is apparent from the facts that on two prior occasions, respondent nos. 1 and 2 had offered to allot the Additional Land to the petitioner's predecessor – once on 07.12.1970 and thereafter, on 31.08.1981. On both occasions, the petitioner's predecessor in interest had failed to accept the said offer within the stipulated time. Having failed to accept the offer and pay the requisite cost, the petitioner can claim no right over the Additional Land.

16. The only issue that requires examination is whether the petitioner is entitled to claim allotment of the Additional Land on the basis of the current policy. It was contended on behalf of the petitioner that the Delhi Development Authority (DDA) had issued a circular dated 07.01.2003, whereby it was recommended that any vacant piece of land which is adjacent to a plot of land allotted to any lessee may be allotted to the lessee at market rates. The petitioner contends that in view of the said Circular, the petitioner is entitled to acquire the Additional Land at market rates.

17. In addition to the above, it was also contended that respondents have allotted such additional strips of land to similarly placed allottees

and, therefore, the petitioner could not be discriminated against and was required to be treated at par with such allottees.

18. The aforesaid issue is squarely covered by the decision of this Court in *Dharam Raj v. Union of India & Ors.: W.P. (C) 3271 of 2008* decided on 25.02.2019. In view of the said decision, the petitioner's case that he is entitled to allotment of the Additional Land is unmerited, and is thus, rejected.

19. The petitioner's request for conversion of the said property from leasehold to freehold has not been accepted on the ground that the petitioner has encroached upon the Additional Land. The said decision cannot be faulted as it is in conformity with the respondent's policy not to allow conversion in cases where the lessees have encroached upon public land.

20. In view of the above, the petition is dismissed.

VIBHU BAKHRU, J

FEBRUARY 27, 2019
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