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

% Date of decision: 13.09.2019

+ W.P.(C) 11693/2017 and CM Appl. 47445/2017

MR. NOOR MOHD. Petitioner

Through Mr.Neeraj Bhandari and Mr.Rajesh
K. Sharma, Advs.

versus

EAST DELHI MUNICIPAL
CORPORATION AND ORS. Respondents

Through Mohd. Faisal, Adv. for EDMC.
Ms.Mini Pushkarna, Standing Counsel with Ms.
Swagata Bhuyan, Ms. Shiva Pandey and
Ms.Khushboo Nahar, Advs. for R-5/DUSIB

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed by the petitioner seeking a writ of mandamus directing respondent No. 1 to remove themselves from shop/plots No. 93 and 94 measuring 50 square yards situated at Loha Market, Welcome, Seelampur Phase-III (Adjacent to Dust House), Opp. M-Block, Seelampur, Delhi. Other connected reliefs are also sought.

2. The case of the petitioner is that in 1976, respondent No. 3/DDA when it was in control of Slum and JJ Department and rehabilitation came up with a rehabilitation scheme clubbed with family planning programme by virtue of which it was decided to allot land to those who were eligible as per the Scheme. The petitioner is said to have actively participated in the

sterilization programme. It is stated that the petitioner was allotted plot No. 93 in Loha Market by respondent No. 3. Similarly, a near relative of the petitioner was allotted shop No. 94 by allotment order. The petitioner claims that the demarcated plots were handed over to the petitioner and he came in possession of the same. A sum of Rs.500/- was deposited as allotment fee/charges on 03.09.1977. The allottee of plot No. 94 also did the same. It is claimed that while they were in the process of commencing and establishing their business, there was unnecessary interference, hindrance and harassment of the vested interests by the land grabbers and building mafia, claiming ownership. Apprehending law and order situation, the allottee of shop No. 94 requested the petitioner to take control of his shop and executed a GPA in favour of the petitioner on 02.07.2000. The petitioner did not commence his business since 1976 as he was entangled with claims/counter-claims till 2009. Steps were taken under Section 145 Cr.P.C. by the local police and the matter was closed after a detailed order dated 23.01.2009. The petitioner next claims that the possession of the said plots was handed over to the petitioner on 13.09.2009. Thereafter, it is claimed that to the utter shock and surprise of the petitioner, when he visited the said built up shops, he was informed that the same were being used by respondent No. 1 for 'Safai Karamchari Shelter'.

3. Respondent No. 5/DUSIB has filed a counter-affidavit. Respondent No. 5 has denied that any shop Nos. 93-94 were allotted to anybody. It is stated that under the Scheme in question 92 residential plots of 25 sq.yards were allotted to persons being from No. 1 to 92. There is no plot No. 93 or 94. The documents relied upon by the petitioner are stated to be bogus. No commercial plots under the Scheme were allotted.

4. Respondent No.1/EDMC has also filed a status report stating that there is no entry found in respect of the land in question, namely, plots No. 93 and 94. There is no record of handing over/taking over of the aforesaid plots in question.

5. I have heard submissions of the learned counsel for the parties.

6. Learned counsel for the petitioner has vehemently tried to argue that all necessary documents of allotment are on record. He also relies upon a communication dated 23.05.2012 where it was stated that the record file of plot Nos. 93-94 stands referred to the Deputy Commissioner (Shahdara North Zone) MCD on 22.03.2010 for appropriate action. Based on this communication, it is pleaded that the respondents have been deliberately evading to give correct and full facts regarding the allotment in favour of the petitioner.

7. I may note that the facts as placed on record do not inspire much confidence. The petitioner has placed on record a receipt allegedly issued by DDA (Jhuggi Jhonpri Removal Scheme) dated 03.09.1977 which acknowledges receipt of a sum of Rs.500/-. The plots/tenement number is given as Plot M-93 & M-94. Similarly, a copy of the alleged allotment order is placed on record which is dated 01.09.1976 which states that there is regularisation of shop/plot No. 93, Seelumpur.

8. As far as these documents are concerned, the concerned Department, namely, DUSIB/respondent No. 5 has completely denied the documents stating them to be bogus. Respondent No. 5 in para 7 and 8 of the counter-affidavit states as follows:-

“7. No commercial plot measuring 50 sq. yds. was allotted under the said Scheme. Therefore, on the face of it, the claim of the petitioner is bogus and liable to be rejected.

8. That in the entire Phase-III and Phase-IV of Seelampur, residential plots of 25 sq. yds. have been allotted having plot Nos from 1 to 92 in different blocks including Block L and M. Thus, in Blocks L and M of Phase-III and Phase-IV of Seelampur, 92 residential plots of 25 sq. yds. each have been allotted to persons under the aforesaid Family Scheme, as well as to persons who have been allotted residential plots as alternative allotments in lieu of demolition of their Jhuggi Cluster under Jhuggi Jhopri (JJR) Removal Scheme. Thus, in Phase-III and Phase-IV of Seelampur, in Blocks L and M, total number of 92 residential plots each have been allotted having numbers from 1 to 92. There is no plot having numbering beyond plot No. 92 which have been allotted to persons under the aforesaid Family Scheme in Blocks L and M of Seelampur JJ Colony, Phase-III and Phase-IV. One of the allotment letter for allotment of residential plot in Seelampur JJ Colony, under the Family Planning Scheme, is annexed hereto as ANNEXURE DU-1. Layout plan of Phase-III and Phase-IV of Seelampur JJ Colony showing allotment of 92 residential plots in Blocks L and M in Phase-III and Phase-IV of Seelampur JJ Colony, is annexed hereto as ANNEXURE DU-2.”

9. Hence, as per respondent No.5, the aforesaid documents are bogus.

10. A perusal of the receipt filed by the petitioner shows that it merely states as follows:-

“Sh. Sohail Hussain S/o Sadiq Hussain Address; K. Shop Plot No. M. 94, Near (Adjacent to dust House Opp M. Block Seelampur Phase-III, On behalf of the Delhi Development Authority the amount mentioned below which will be credited to his/her/their account”

11. Clearly, the purpose of this receipt is not given. Similarly, the alleged allotment order merely records as follows:-

“6. Nature of Assistance claimed”

“Regularization of Shop Plot No. 93 Seelampur-III”

12. A perusal of these documents do not prima facie show that any title was conveyed to the petitioner.

13. At this stage, learned counsel for the petitioner however submits that the allottees accepted by respondent No. 5 were also issued same set of documents which have been placed on record by the petitioner. Such plea is not supported by any material.

14. The other aspect which is noteworthy is that the petitioner himself admits that since 1977 he has not been in possession of the shop. It is claimed that pursuant to certain compromise in the proceedings under Section 145 Cr.P.C., he received possession in 2009. The petitioner merely states that in 2009 on a visit to the area, he found that the said plots were occupied by respondent No. 5 i.e. ‘Safai Karamchahi Shelter’. The petitioner claims title to the property but has been out of possession since 1977. Yet no steps have been taken by the petitioner to get back possession. The plea does not inspire confidence. In any case, these are all disputed questions of fact. It is not possible to record a finding based on these documents in the present writ proceedings about the title of the petitioner.

15. Reference may be had to the judgment of the Supreme Court in the case of *State of Rajasthan vs. Bhawani Singh & Ors, 1993 Supp. (1) SCC 306* where the Supreme Court held as follows:-

“7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner’s title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed

question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

16. It is for the petitioner to approach appropriate civil court as per law to claim his title.

17. Granting leave and liberty to the petitioner to approach appropriate civil court, the present petition is dismissed. However, any observation made herein will not prejudice the petitioner in case he commences any civil proceedings for enforcement of his alleged claim.

18. Pending applications, if any, also stand dismissed.

JAYANT NATH, J

SEPTEMBER 13, 2019

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