



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

Date of decision: 26th APRIL, 2022

IN THE MATTER OF:

+ **W.P.(C) 9393/2020**

SANDESH

..... Petitioner

Through Mr. Choudhary Ali Zia Kabir,
Mr. Haider Ali, Mr. Jimut Mohapatra,
Mr. Vinod Kumar, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through Mr. Ashim Vachher, Standing
Counsel with Mr. Paritosh Dhawan,
Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant Writ Petition is filed against the order dated 17.8.2020 passed by the Appellate Authority DDA, for Relocation of JJ Dwellers living in Kathputli Colony which upheld the order of the Eligibility Determination Committee (*hereinafter referred to as 'the EDC'*) declaring the Petitioner ineligible for allotment of an alternative dwelling unit in his name at the redeveloped Kathputli Colony. The prayer of the Petitioner is reproduced as hereunder:-

“a. Quash and set aside the impugned order dated 17.08.2020 in Appeal no. 11/2019 issued by the respondent, Delhi Development Authority;



b. Direct respondent, Delhi Development Authority to consider the Petitioner 'eligible' for rehabilitation and make an allotment of an alternative dwelling unit in his name at the redeveloped Kathputli Colony;

c. Direct respondent, Delhi Development Authority not to evict the petitioner from his accommodation in the transit, until the finality of this petition or allotment of a permanent alternative dwelling unit in his name at the redeveloped Kathputli Colony;

d. Direct the respondent, Delhi Development Authority to produce before the Hon Court a list of all the residents of erstwhile Kathputli Colony eligible for rehabilitation as per DDA rehabilitation policy dated 02.07.2014 and also the list of those residents held ineligible.

e. Direct respondent, Delhi Development Authority to pay Rs.100,000 to the Petitioner as compensation for the hardships endured and the legal expenses incurred, on account of being unlawfully declared ineligible; f. Pass any other order deemed fit and proper in the circumstances of the present case.”

2. The facts briefly stated are given as below –

- i. The Petitioner and his family are afflicted with Leprosy and have been residing at A-148 Kathputli Colony. It is stated that after his marriage in 2011, he shifted to H-86 an adjacent dwelling to A-148.
- ii. In line with the policy for rehabilitating the dwellers of J.J. Colocy, the Respondent directed Kathputli colony residents to move to a transit camp/ temporary shelter at Anand Parbat till the completion of redevelopment works.



- iii. It is stated that representations were made by the Petitioner and by the Lok Matha Kusht Ashram pursuant to an order of this Court dated 30.05.2014 in WP (C) 3837/2014, to the competent authority to conduct a survey to verify the Petitioner's demand for the allotment of a flat in terms of Order No. PS/PC/DDA/2013/H-1/Pt.11/48 dated 02.07.2014 issued by the Delhi Development Authority.
- iv. It is stated that the survey took place and the Petitioner's claim was placed before the Eligibility Determination Committee and was rejected vide letter dated 30.10.2017 for the reason that the hutment as claimed by him as his residence was not found on the site.
- v. It is stated that the Land Management Office of the Respondent vide letter dated 09.11.2017 issued an Eviction cum Removal Slip stating that the Petitioner was eligible for allotment of an alternative flat under the rehabilitation scheme and subject to the completion of the codal formalities and signing of the tripartite agreement.
- vi. Even though the case of the Petitioner had been rejected by the EDC, on 12.11.2017 a Tripartite Agreement was entered into between the Petitioner, Respondent/DDA and the agency which had been appointed to construct the flats.
- vii. It is stated that pursuant to an order dated 11.07.2018 of this Court in W.P.(C) 6728/2018, the Petitioner was allowed to assail the decision of the Eligibility Determination Committee in appeal before the Appellate Authority, DDA.



- viii. The Impugned Order dated 17.08.2020 was passed by the appellate authority DDA upholding the Eligibility Determination Committee's decision of disqualifying the Petitioner from claiming allotment of a flat under the DDA's policy for non-fulfillment of criteria/requirement as per the guidelines of the DDA.
3. Heard Mr. Choudhary Ali Zia Kabir, Ld. Counsel for the Petitioner and Mr. Ashim Vachher, Ld. Counsel for the Respondent and perused the material on record.
4. Mr. Choudhary Ali Zia Kabir, appearing on behalf of the Petitioner, at the outset submitted that the Appellate Authority's decision was erroneous as it ignored the Tripartite Agreement the Respondent had executed in favour of the Petitioner before shifting the Petitioner to the transit camp at Anand Parbat which entitled the Petitioner a flat in the redeveloped colony and that the Eligibility Determination Committee's decision was of no consequence given the subsequent development of the Respondent issuing Tripartite Agreement in Petitioner's favor promising him allotment of a new unit. He submitted that the DDA had not communicated the decision of the eligibility committee to the Petitioner and submitted that DDA should have acted more prudently after the deeming the Petitioner ineligible and therefore they cannot take advantage of their fault of mistakenly declaring the Petitioner eligible for allotment of the redeveloped flat. He submits that a proper representation was made to the Principal Commissioner (Housing and L&D) along with the relevant documentation after which re-survey was conducted a number of times and the Petitioner was found to be living there.
5. Per Contra, Mr. Ashim Vachher, learned counsel for the DDA submits that the order of the Appellate Authority is a well- reasoned order



which does not require interference by this Court. He submitted that that during the survey of the colony it was found that the Petitioner's parents were living in one-bedroom dwelling, A-148 and the adjoining dwelling, H-16 which he claimed he was living in with his wife since 2011, did not exist at the site, and only a single storeyed structure comprising of one bedroom, kitchen namely A-148 existed on site. Further, as per the policy he had not submitted a second Identity proof to the EDC to substantiate his claims. He relied on the Appellate Authority's order to submit that the Administrative Committee of the DDA did not possess the jurisdiction to enter into a tripartite agreement and relocation-cum-allotment letter apropos the rejection by the Eligibility Determination Committee. He submitted that as the order of the Administrative Committee was passed without jurisdiction, it could not be countenanced and was rightly set aside by the Appellate Authority. It was further argued that the Petitioner had deliberately misrepresented facts to gain an additional unit in his name apart from the unit that was going to be allotted to his parents. He placed reliance on the decision of a division bench of this Court in Udal v. Delhi Urban Shelter Improvement Board [WP(C) No. 5378/2017] to contend that the Respondent was within its rights to make the applicants furnish secondary documentation for considering their eligibility for allotment of a dwelling unit and such requirement was valid.

6. Order No. PS/PC/DDA/2013/h-1/Pt.11/48 dated 02.07.2014 was issued by the Respondent DDA in furtherance of the DUSIB's Guidelines for Implementation of the Scheme for relocation/rehabilitation and allotment of housing units to the Jhuggi Jhopri Dwellers under JNNURM 2013(Order No. F.18(7)/UD/DUSIB/2013/Vol I/2350) dated 25.02.2013 as a roadmap for determining and re-shifting eligible individuals from Anand Parbat



Transit Camp to the rebuilt Kathputli Colony. The order stipulated that the JJ dwellers/families who were living on the upper floors or staying separately from their family in other Jhuggies would be eligible for allotment of a unit provided they satisfied the other eligibility criteria as stipulated in DUSIB's Order dated 25.2.2013. It is essential to reproduce the conditions which determines eligibility as hereunder-

"...(iv) The name of the JJ dweller should figure in the joint survey conducted by Slum & JJ Deptt./DUSIB with the representative of Land Owning Agency. Based on the joint survey and verification of documents eligibility list will be prepared by the eligibility determination committee to be constituted by CEO, DUSIB;

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(xiii) The allottee shall abide by the terms and conditions of the allotment/lease deed of flat and shall pay the ground rent as to be determined by the Delhi Urban Shelter Improvement Board;

(xiv) The Delhi Urban Shelter Improvement Board has the right to cancel allotment of the flat and to take over the possession of such flat in case the stipulated terms and conditions are violated by the allottee. In such event, such allottee cannot claim any compensation whatsoever and such allottee shall handover the peaceful possession of the flat to the Lessor/DUSIB.

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a. The name of the JJ dweller should be in the list of electors maintained by the Office of the Chief Electoral Officer as per the instructions of the election Commission of India on or before the proposed cut off date i.e. 04.06.2009 and also in the year of survey;



b. In addition to the above, the JJ dweller shall submit any one of the following documents, issued on or before 04.06.2009 to substantiate the proof of residence:

- i. Passport.*
- ii. Ration Card with Photograph*
- iii. Driving Licence.*
- iv. Identity Card/Smat Card with photograph issued by the State/Central Government and/or its autonomous bodies/agencies like PSU/Local Bodies.*
- v. Passbooks issued by public sector bank/Post office with photographs*
- vi. SC/ST/OBC Certificate issued by the Competent Authority with photograph.*
- vii. Pension document with photograph, such as ex-servicemen's Pension Book, Pension payment order, Ex-servicemen's widow/dependents certificate, old age pension order or widow pension order.*
- viii. Freedom fighter's identify card with photograph*
- ix. Certificate of physically handicapped with photograph issued by the Competent Authority.*
- x. Health Insurance Scheme Smart Cards with photograph (Ministry of Labour's Scheme)*
- xi. Identity Card with photograph issued in the name of the descendants of the slum/JJ dweller from a Government School.*
- xii. The JJ cluster dweller shall have to file an affidavit duly sworn before the Notary Public about the authenticity and veracity of the documents submitted by him/her."*

7. As per the stipulated requirements under the policy, the Petitioner had not produced documents in support of his assertion that he was residing at H-16 Kathputli Colony and during the survey by the Respondent it was



observed that no dwelling H-16 existed adjacent to A-148 and was therefore Petitioner was deemed ineligible by the EDC. The However, despite being deemed ineligible he was issued an allotment letter and Tripartite Agreement got executed by the Administrative Committee.

665	2184	SANDESH	NARSAIYYA	A-148/H-86	SMM2319489	2011	NO SECOND DOCUMENT	NO DATE	VERIFIED	JHUGGI DOES NOT EXIST
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8. The Appellate Authority, after going through the material on record held that the Voter ID card to the Petitioner, his identity card issued by National Institute of Open Schooling for the year 201-11, and the Voter ID card of his wife shows the address as A-148/H-46. The Appellate Authority found that the Petitioner herein was not found having any independent ration card but was having a joint ration card with his parents. The father of the Petitioner - P Narsaiya has already been held to be eligible and entitled for allotment of a flat. The Appellate Authority has also found that the Petitioner had concocted a wrong and false story that he was living separately an independently in the inter-connected room, thereby, alleging that the structure regarding which he is claiming allotment was also bearing Jhuggi No. A-148/H-86. The Appellate Authority found that both the Jhuggi of Petitioner as well as his father was alleged to be having same number so that he can use the documents, which he had already procured on the address of Jhuggi of his father. The Appellate Authority was of the opinion that the Petitioner and his family members had colluded with each other to get maximum allotments from DDA by getting survey conducted by making misrepresentations to the concerned DDA authority on the basis of forged and fabricated documents.



9. During the survey by the Respondent, the dwelling unit was inspected it was seen that the said structure was one single unit with a single floor and an adjacent interconnected room where he was residing since 2011, as explained by the Petitioner, did not exist.

10. It cannot be said that both - the Petitioner and his father, who are dwellers in the same accommodation would be entitled to two flats. Even in this Court, no material has been placed showing that the Petitioner is residing at H-16, Kathputli Colony, which according to the survey, does not exist. The Tripartite Agreement entered into between the Petitioner, the DDA and the agency which was selected for constructing the flats, has been executed after the committee has rejected the case of the Petitioner, cannot have validity in terms of law and does not create any right in favour of the Petitioner for allotment of a separate flat. The Petitioner had approached the authorities with unclean hands only with a view to secure one additional flat apart from the flat which has been allotted to his father. Further, the Petitioner has chosen not to challenge the order of the Appellate Authority and has directly come to this Court claiming that he is entitled to one more flat. The Petitioner ought to have first challenged the order of the Appellate Authority. The writ petition is, therefore, bereft of any merits.

11. Accordingly, the writ petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

APRIL 26, 2022

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