

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

Date of decision: 14th FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 67/2023 & CM APPLs. 4412/2023 & 4414/2023**

JAYA SAINI

..... Appellant

Through: Mr. L. K. Singh, Mr. J. K. Jaiswal,
Advocates

versus

LT. GOVERNOR, GNCT OF DELHI & ANR

..... Respondents

Through: Ms. Sweety Singh, Advocate for
Respondent Nos. 1 & 4
Mr. Parvinder Chauhan, Advocate for
Respondent/ DUSIB

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. Aggrieved by the Judgement dated 06.12.2022 passed by the learned Single Judge in W.P.(C) 15669/2022 dismissing the writ petition, the Appellant has approached this Court by filing the instant LPA.

2. Shorn of details the facts leading to the present LPA are as under:-

- i. It is stated that Jhuggi Jhopri Resettlement (JJR) Colonies were developed in Delhi and in these colonies, land was allotted to persons who were dislocated on account of removal/demolition/eviction proceedings from Jhuggi Jhopri Clusters and land was allotted under the JJR Scheme for residential and commercial plots.

- ii. Under the said Scheme, residential plots measuring 25 sq. yds. and commercial plots measuring 12.5 sq. yds. were issued on a licence basis. Under the terms and conditions of the Scheme, the construction on the plots was to be done in accordance with the plan approved by the Delhi Development Authority (DDA) and the allottee could not change the use of the plot. It is stated that the allottee could not transfer or sublet the plot and in case of transfer or sublease of the plot/flat, the allotment would automatically stand cancelled and the DDA was to evict the transferee and take possession of the property without payment of any compensation.
- iii. On 14.07.1987, guidelines for mutation/transfer of properties allotted by the Slum & JJR Wing, DDA were issued for the purpose of mutation to the original allottee and also for the legal heirs of a person who had earlier been allotted the plot.
- iv. The shop in question, i.e., Shop No.4/24, Dakshin Puri Extn., DDA Market, New Delhi was allotted to one Ramesh S/o N K Pillai in the year 1976. As per the terms and conditions, the sale/purchase of the shop was not permissible. On a survey being conducted by Delhi Urban Shelter Improvement Board (DUSIB), it was found that the allottee had sold the shop in question and massive unauthorized construction, i.e., Ground +3 floors had been constructed and there was encroachment on government land.
- v. The property in question was in occupation of one Subhash Saini, husband of the Appellant herein. It is stated that a school

in the name of Green Heaven Public School was also being run from the premises.

- vi. Proceedings were initiated under Sections 41 and 42 of the Delhi Urban Shelter Improvement Board Act, 2010 (hereinafter referred to as '*the DUSIB Act*') and Order dated 01.02.2021 was passed by the Deputy Director (JJR), DUSIB, directing the Appellant to vacate the premises in question and handover the peaceful physical possession to the Executive Engineer, C-6, DUSIB.
- vii. The said order was challenged by way of an appeal and the Director (JJR), DUSIB *vide* Order dated 06.08.2021 upheld the Order dated 01.02.2021 passed by the Deputy Director. The Appellate Authority upheld the findings that the condition of allotment did not permit sale/purchase or change of hands in any manner and the persons who were allotted the shops were only the licencees and they were neither the owners nor did they have any right to transfer the shops.
- viii. The said order was challenged before the Lt. Governor by filing an appeal under Section 45 of the DUSIB Act and the Lt. Governor *vide* Order dated 13.07.2022 upheld the order passed by Director (JJR), DUSIB.
- ix. Before the Lt. Governor, it was contended that the DDA had brought out a policy for conversion of lease hold rights to free hold rights and the Appellant herein must be permitted to convert the property from lease hold to free hold. It was stated that the shop in question was allotted in the year 1976 under the

EWS Category in Block-4, Dakshin Puri Extn. Delhi. It was stated that on 11.06.1984, the Ministry of Work and Housing, Govt. of India had recommended to the Union Territory of Delhi for grant of perpetual lease hold rights in respect of residential tenements constructed in Delhi under slum clearance scheme. It was stated that since the Appellant is similarly situated inasmuch as the property in question is situated in a slum area, though it is a shop, he would also be entitled to the same benefit and the government cannot discriminate against the shop owner by not converting his lease hold rights to free hold. It was also contended that on 14.07.1987, the DDA had issued guidelines for mutation/transfer of properties allotted by the then Slum & JJ Wing of the DDA, which should apply to both residential properties and shops. It was further stated that on 28.06.1999, Ministry of Urban Development, Govt. Of India issued a letter regarding conversion of lease hold land into freehold and the DUSIB could not restrict it only to residential properties discriminating against person who were allotted shops as a rehabilitation programme for those who had been evicted from their premises.

- x. The DUSIB filed its reply in the matter stating that with respect to the shops in question which were allotted in the year 1976, there were conditions attached to the allotment and the allotment was made purely on a licence basis and the allottees did not have any right to part with the possession of the allotted shop(s) in favour of any third person/party, nor did the allottee(s) have

any right to carry out structural additions or alterations in the premises without prior written permission from the DUSIB. It was further contended that the allotment was made for commercial use and not for residential purpose. The DUSIB had annexed the standard terms and conditions along with reply demonstrating that such conditions had indeed been imposed on the allottees. It was further contended that the shop(s) in question have been allotted to the original allottee as a rehabilitation measure and the original allottee had sold the shop in question contrary to the condition of allotment and further the persons who had illegally purchased the property had raised unauthorized constructions upto 4-5 floors and had also encroached into public land. The DUSIB contended that guidelines dated 14.07.1987 issued by the DDA for mutation are also not applicable in the present case(s) as the same are applicable in case of allottee and not to illegal purchaser and the Appellant herein is not the allottee but is only an illegal purchaser. It was further stated that the scheme is applicable only to residential properties and not to shop(s). The DUSIB stated that there is no provision for extending the scheme for regularisation of shops or permission for conversion of shop(s) from leasehold to freehold in the Jhuggi Jhopri colonies.

- xi. On the basis of the said contentions, the appeal was dismissed by the Lt. Governor holding that the shops were allotted under the Scheme to eligible persons in EWS category and the sale/purchase of the same was not allowed in any manner. It was

observed that the allotment of shop was on licence basis and the licensee was not allowed to sell/transfer the same. The Appellant had purchased the shop from a person who was neither the owner of the shop nor had any right to transfer the same. The policy of free hold which was referred to by the Appellant is applicable only to residential plots and there is no policy in the DUSIB Act by which the subsequent purchasers could be granted any relief. It was also found that the Appellant had amalgamated his shop and had also encroached on public land and has carried out unauthorized construction.

- xii. The Appellant had approached the learned Single Judge by filing a writ petition challenging the Order dated 13.07.2022 passed by the Lt. Governor, Delhi dismissing an appeal under Section 45 of the DUSIB Act which had in turn upheld the Order dated 06.08.2021 passed by the Director (JJR), DUSIB, who had dismissed the challenge to an Order dated 01.02.2021 passed by the Deputy Director (JJB), DUSIB.
- xiii. Aggrieved by the said dismissal, the Appellant had filed the writ petition before the learned Single Judge praying for the following reliefs:-

“(a) Issue a Writ of mandamus or any other appropriate writ, order or direction declaring as illegal the policy decision of the respondents to grant the benefits of conversion from licence to freehold to the allottees and subsequent purchasers on power of attorney with respect to the residential plots in JJR Resettlement Colonies and denying the benefits of such scheme to the allottees and subsequent purchasers on power of attorney with

respect to the commercial plots in JJR Resettlement Colonies;

(b) Issue a writ of certiorari or any other appropriate writ/order/direction quashing and setting aside the impugned order dated 13.07.2022 passed by respondent No. 1 affirming the order dated 06.08.2021 of respondent No.2 and eviction order dated 01.02.2021 of respondent No.3 with respect to the shop plot No.4/24, DDA Market, Dakshin Puri Extension, New Delhi-110062;

(c) Issue a writ of mandamus or any other appropriate writ/order/ direction directing the respondents to extend the benefit of the scheme of conversion from licence to freehold also of commercial plots in JJR Resettlement Colonies on the same terms and conditions as applicable to the residential plots in JJR Resettlement Colonies.”

- xiv. The learned Single Judge, placing reliance on another Judgment dated 07.10.2022 in W.P.(C) 4254/2022, wherein identical prayers had been made, dismissed the said writ petition. The learned Single Judge further held that the challenge to the policy issued by DUSIB restricting grant of free hold only to residential colonies on account of discrimination is belated. The learned Single Judge did not accept the challenge to the change of the policy which had been made at a belated stage and further held that the resettlement of people who had been allotted plots, both residential and commercial is a question of policy which cannot be interfered with by the Court unless it is an arbitrary or perverse exercise of power.

xv. The learned Single Judge has observed that the Appellant was a subsequent purchaser and knew that the original allottee of the plot had no right to sell or transfer the same without any permission, and, therefore, the petition was dismissed.

xvi. The said order is under challenge in the present LPA.

3. Heard learned Counsel for the parties and perused the material on record.

4. Learned Counsel for the Appellant draws attention of this Court to the Mutation Guidelines dated 14.07.1987 for mutation/transfer of properties allotted by the Slums & JJR Wing, DDA. He states that the DDA while framing these guidelines, did not make any distinction between commercial properties and residential properties and the said guidelines issued by the DDA could not be altered by the DUSIB, restricting the benefit of grant of free hold/ownership rights only to the allottees of residential plots.

5. Prior to 2010, various parcels of land belonging to the Delhi Government, Central Government and Municipal Corporation of Delhi were under encroachment and there was no policy in existence for the purpose of rehabilitation of said encroachers. In pursuance of the Judgment of this Court in Sudama Singh v. Govt. Of Delhi, **2010 SCC OnLine Del 612**, the Legislative Assembly of the National Capital Territory of Delhi brought out the Delhi Urban Shelter Improvement Board Act, 2010, and in terms of the DUSIB Act, policies were framed for rehabilitation of the Jhuggi Jhopri dwellers. The DUSIB was to be the nodal agency for relocation and rehabilitation in respect of the dwellers who had encroached upon government lands.

6. The contention of the Appellant that DUSIB could not alter the policy or the guidelines framed by the DDA for the purpose of mutation/transfer of property allotted by the Slum & JJR Wing of the DDA, is, therefore, completely fallacious. After the DUSIB Act came into force, the question of framing a policy for relocation of Jhuggi Jhopri dwellers and the conditions of such allotment was completely within the purview of the DUSIB and the decision of DUSIB to restrict the scheme for grant of free hold/ownership rights for occupants of Jhuggi Jhopri Resettlement Colonies only to residential areas cannot be called in question by the Appellant herein. The Respondent No.1 herein exercising its powers under the DUSIB Act brought out a scheme for grant of freehold/ownership rights to the Jhuggi Jhopri Resettlement Colonies and the salient features of the scheme read as under:-

“I. This scheme is applicable to the 45 JJ Resettlement colonies as listed in the Appendix-I.

II. Scheme is applicable to residential plots only.

III. The cases of amalgamation of two or more plots shall not be considered in the policy and each unit shall be considered as a separate unit.

IV. The freehold of the actual piece of land allotted shall be covered under the policy and it will not cover unauthorised construction and misuse, if any. Unauthorised construction shall be dealt by the local body /appropriate agency or authority as per extant laws. In respect of commercial use of the JJ plots, the provisions of MPO-2021 shall apply and action will be taken accordingly.

V. In case where the plots have been occupied by more than one person apart from allottee/ purchaser, free

hold rights shall be conferred in the name of the allottee/purchase.

VI. All the dues/ fee/ premium / cost of land as decided by the DUSIB shall be fully paid by the applicant before the execution of the conveyance deed.

VII. In case, at any later stage, if it is found that the conveyance deed / freehold rights have been obtained by the applicant by using false/fake/bogus documents or by fraudulent means, the DUSIB shall have the right to take action as per law and terms and conditions of the conveyance deed. Allotment of plot shall be cancelled and DUSIB shall enter into the property and take possession of the same along with the superstructure und its fixtures.

VIII. These freehold rights are intended to cover only the allotted plots and hence will not cover encroachment, which any allottee/occupier might have made.

IX. The scheme will be implemented subject to compliance with various & court orders/directions/ judgements.

X. No one should be allowed to have more than one plot in her/his name or in the name of dependents/family members.”

(emphasis supplied)

7. The DUSIB has, therefore, come out with a specific policy that the scheme is applicable only to residential plots. At this juncture, this Court is not going into the question as to whether the scheme framed by DUSIB in restricting the scheme only to residential plots is violative of Article 14 of the Constitution of India or not for the reason that the allottee has violated

the condition of allotment and the allotment is liable to be cancelled on that ground alone.

8. The Appellant had purchased the property from the allottee who had no right to sublet the same, and, therefore, is in complete unauthorized occupation of the shop from the very first instance. Being an unauthorized purchaser of the property, the Appellant was liable to be evicted as having violated the terms of the licence. The Appellant in any case cannot maintain a claim for conversion of the property from lease hold to free hold. The entire claim of the Appellant is, therefore, without any basis. Further, this is not even a semblance of a legal right in the Appellant to claim conversion. After purchase of the property, the Appellant has raised unauthorized constructions and has also encroached upon the government land. The DUSIB was, therefore, completely justified to cancel the allotment.

9. Granting the benefit as sought by the Appellant would amount to giving a premium to the Appellant who is an unauthorized occupant of the property. Apart from the fact that the Appellant could not purchase the property in question, the Appellant has made unauthorized construction on the said property and has further encroached upon government land. Therefore, no fault can be found with the orders passed by the competent authorities under the DUSIB Act cancelling the allotment.

10. The right, if any, for claiming conversion of lease hold to free hold could be exercised only by the original allottee and grievance, if any, could have been raised only by the original allottee and not by the individual who had purchased the plot in violation of the terms of licence on which the shop had been allotted to the original allottee.

11. In view of the fact that the Appellant is only the subsequent purchaser having no semblance of rights to convert the property from lease hold to free hold and in view of the fact that there is unauthorized construction on the property in question as well as encroachment of land, which are all in clear violation of the policy, this Court does not find any reason to interfere with the judgment passed by the learned Single Judge.

12. The LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 14, 2023

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