

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

Date of decision: 17th MARCH, 2023

IN THE MATTER OF:

+ **LPA 83/2023 & CM APPLs. 5222-5224/2023**

SUBHASH SOLANKI

..... Appellant

Through: Mr. Jai Kumar Jaiswal, Advocate..

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ORS.

..... Respondents

Through: Mr. Parvinder Chauhan, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present appeal has been filed by the Appellant being aggrieved by the Judgment dated 07.10.2022, passed by the learned Single Judge in W.P.(C) 14254/2022. The said Writ Petition was filed against the Orders passed by the Respondents herein for eviction of the Appellant in respect of shop No.38, DDA Market, Dakshin Puri Extension, New Delhi- 110062 (*hereinafter referred to as 'shop in question'*). These proceedings were constituted under the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'DUSIB Act, 2010'*).

2. It is stated that the Appellant was merely 14 years of age when the shop in question was allotted to his father in the year 1976. It is stated that when the father of the Appellant had passed away in 2009, the Appellant was not aware of the terms and conditions of the allotment, and therefore, he

could not apply for mutation of the shop in question in this name as legal heir of his father. It is stated that Delhi Urban Shelter Improvement Board came into existence on 01.07.2010 after the father of the Appellant had passed away.

3. It is stated that after the demise of the father, the Appellant continued to carry on his business on the shop in question and that no formal allotment letter had ever been issued to the father of the Appellant, and that only a possession slip had been handed over to the father of the Appellant.

4. It is stated that the proceedings of eviction were initiated against the Appellant and an eviction Order dated 01.02.2021 was passed by the Deputy Director (JJR) under Section 42 of the DUSIB Act, 2010 by holding that the Appellant is in unauthorized occupation of the shop in question. The said Order of eviction dated 01.02.2021 was challenged in appeal before Director (JJR) and same was also dismissed by Order dated 06.08.2021. A further appeal was also preferred before the Hon'ble Lieutenant Governor under Section 45 of the DUSIB Act, 2010 which was affirmed by the Hon'ble Lieutenant Governor *vide* Order dated 13.07.2022.

5. The Appellant, thereafter, approached this Court by filing W.P.(C) 14254/2022 which was dismissed by the learned Single Judge *vide* Judgment dated 07.10.2022 (impugned herein).

6. Heard learned Counsel appearing for the Parties and perused the material on record.

7. It is submitted by the learned Counsel appearing for the Appellant that no formal allotment letter has been issued in favour of the Appellant's father in respect of the shop in question and only a possession slip has been handed over to the father of the Appellant. It is submitted that owing to the

Appellant was unaware of the terms and conditions of the allotment, he could not apply for mutation of the shop in question.

8. It is further submitted by the learned Counsel appearing for the Appellant that there is no dispute that the father of the Appellant was in possession of the shop in question, and therefore, there was no impediment for the DUSIB in mutating the shop in question in favour of the Appellant.

9. It is submitted by the learned Counsel appearing for the Appellant that the Policy of the DUSIB ought to be that in case there is no dispute as to who is the legal heirs of the initial allottee, the idea must be to grant mutation in favour of the legal heirs so that they would be able to eke out their livelihood from the shop or property which had been allotted to the initial allottee under a Rehabilitation Policy. It is, therefore, submitted that the Orders passed by the authorities under the DUSIB Act goes contrary to the very purpose of rehabilitation.

10. *Per contra*, Mr. Parvinder Chauhan, learned Counsel appearing for the DUSIB, contended that not only it was found that the original allottee had proceeded to induct / transfer the Appellant into the shop in question but also massive unauthorised constructions have been raised on the shop in question. It is further pointed out by the learned Counsel for the DUSIB that shop No. 38 which is presently occupied by the Appellant was also found to have been amalgamated with shop No.37 which is clear violation of the terms of allotment and the policy under which the shop was allotted to the initial allottee.

11. It is further contended by the learned Counsel for DUSIB that the Appellant had never approached the authorities for the formal allotment of the shop in question after the demise of his father.

12. Material on record shows that the proceedings were initiated under Section 41/42 of the DUSIB Act, 2010 against the Appellant for eviction from the shop in question. As per records, the shop in question was allotted on licensee fee basis and as per terms and conditions, the sale/purchase of the shop was not permissible. The Order dated 01.02.2021 records that on 15.01.2019 a survey was conducted on the shop in question by the official surveyor of Delhi Urban Shelter Improvement Board. The allottee was not found at the shop in question and it was also reported that massive unauthorized constructions was carried out at the shop in question and the allottee had transferred the possession to unauthorized person. The Order dated 01.02.2021 further records that a notice dated 26.03.2019 under section 41 of DUSIB Act was issued to the unauthorized occupant to explain why an order for eviction should not be passed against him.

13. However, no reply was filed and also no representation was made by the unauthorized occupant. The unauthorized occupant was given an opportunity of personal hearing before the Director (JJR) on 30.09.2019, however, the same could not be held and adjourned to 31.10.2019 and then to 28.12.2020. On 28.12.2020, the authorized occupant attended the hearing and it is recorded that the unauthorized occupant stated that he had purchased the shop in question from the original allottee. After considering the detailed reply and documents placed on record by the unauthorized occupant, the Director (JJR) passed an Order of eviction dated 01.02.2021. The said eviction Order dated 01.02.2021 was carried in an appeal before the Director (JJR) under the DUSIB Act which was dismissed by the Director (JJR) *vide* Order dated 06.08.2021. A perusal of the Order dated 06.08.2021 shows that the Appellant herein is occupant of Shop No.38 Block-4, Dakshinpuri Extn., New Delhi and his wife Meena Solanki is

occupant of Shop No.37 Block-4, Dakshinpuri Extn., New Delhi. The findings recorded in respect of Shop No.38 and Shop No.37 in the Order dated 06.08.2021 read as under:

“3. Shop No. 38, Block-04, Dakshin Puri Extn., New Delhi

As per records, this shop stands allotted on licencee fee basis to one Sh. Ram Lal S/o Sh. Giasi Ram in the year 1976. As per terms and conditions, the sale/purchase of the shop is not permissible. A survey was conducted by the survey unit of DUSIB, wherein it came to the notice that the allottee has sold out the same and the shop has not only been amalgamated with Shop No. 37, but it has also massive unauthorized construction upto 5 floor and also encroachment of the departmental land. The shop is under illegal occupation of present occupant/appellant Sh. Subhash Solanki.

4. Shop No. 37 Block-04, Dakshin Puri Extn., New Delhi

As per records, this shop stands allotted on licencee fee basis to one Sh. Shankar S/o Sh. Mohan Chand in the year 1976. As per terms and conditions, the sale/purchase of the shop is not permissible. A survey was conducted by the survey unit of DUSIB, wherein it came to the notice that the allottee has sold out the same and the shop has not only been amalgamated with Shop No.38, but it has also massive unauthorized construction upto 5th floor and also encroachment of the departmental land. The shop is under illegal occupation of present occupant/appellant Sh. Subhash Solanki.”

14. On the basis of the findings that the shop had been transferred by the original allottee, massive unauthorized constructions were carried out at the

shop in question upto 5th floor and also there was encroachment on the departmental land, the Director (JJR) affirmed the findings of the Deputy Director (JJR) *vide* Order dated 06.08.2021. The said Order dated 06.08.2021 was further carried in an appeal before Hon'ble Lieutenant Governor under Section 45 of the DUSIB Act, 2010. The appeal of the Appellant was numbered as Case No.39/2021 and the appeal of the Appellant's wife, who was occupying Shop No.38 which was amalgamated with Shop No.37, was numbered as Case No.40/2021. As far as Case No.40/2021 is concerned, it was found that the wife of the Appellant was not the original allottee and that several conditions of the allotment like unauthorized constructions and encroachment etc. were found to be violated and the appeal was dismissed. As far as the case of the Appellant is concerned, the Hon'ble Lieutenant Governor *vide* Order dated 13.07.2022 has observed as under:

"I have considered the submissions made by both the sides and have also gone through the case file. I observe that except in case no.39/2021, it is admitted fact that the appellant(s) are not the original allottee(s) but only subsequent purchaser/occupier of the shop(s) in question. The allottee(s) have not placed on record any document pertaining to allotment of property/shop in question in their favour. Regarding case No. 39/2021, I observed that though the appellant stated to be the legal heir of the original allottee but has not filed his claim as provided in the terms and conditions of the allotment of the shop in question. The Director (JJR), DUSIB after considering all aspects of the matter, has passed a fair order. I, therefore, find no reason to interfere with it. The appeal is dismissed accordingly."

15. The learned Single Judge has refused to interfere with the concurrent findings of the authorities. A perusal of material on record shows that the Appellant is occupying Shop No.38, Block-4, Dakshinpuri Extn., New Delhi. The Appellant has not filed any claim as provided under the terms and conditions of the allotment of the shop in question. The findings against the Appellant are that there have been massive unauthorized constructions upto the 5th floor on the shop in question, two shops i.e., Shop No.37 and 38 have been amalgamated together and that several conditions of the allotment like unauthorized constructions and encroachment etc. have been violated. The conditions of allotment have succinctly been recorded which read as under:

“a) the allotment was made purely on licence basis;

b) the allottee(s) do not have any right to part with the possession of the allotted shop(s) in favour of any third person/party;

c) the allottee(s) do not have any right to carry out structural additions or alterations in the premises without prior written permission from the DUSIB;

d) the allotment was made for commercial use and not for residential purpose;

e) As a matter of public policy, the allottee(s) are prohibited from selling, transferring, alienating or in any manner parting with the possession of the shop(s).”

16. As recorded in the Order dated 06.08.2021 passed by the Director (JJR) that Shop Nos.37 and 38, Block-4, Dakshinpuri Extn., New Delhi have been amalgamated and there have been massive unauthorized constructions

upto the 5th floor on the shop in question apart from encroachment and in view of the fact that three authorities and the learned Single Judge have concurrently held against the Appellant on the aforesaid factual aspects, this Court is not inclined to entertain the instant appeal.

17. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 17, 2023

S. Zakir

