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

Date of decision: 08th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 7304/2023 & CM APPL. 28396/2023**

CHETAN

..... Petitioner

Through: Mr. Sanjeev Salhan and Mr. Naresh
Kumar Nagwanshi, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD

..... Respondent

Through: Ms. Aakriti Garg for Mr. Parvinder
Chauhan, Advocate for DUSIB.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner seeks to challenge the Order dated 26.10.2022 passed by the Hon'ble Lieutenant Governor of Delhi dismissing the appeal filed under Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010 (*hereinafter referred to as 'DUSIB Act'*) by the Petitioner herein and confirmed the Order dated 23.07.2022 passed by the Director (JJR), DUSIB and Order dated 13.12.2018 passed by the Deputy Director (JJR), DUSIB informing the Petitioner that the competent authority has cancelled the allotment of plots bearing Nos.P2/663 & P2/634, JJ Colony, Sultan Puri, Delhi-110086.
2. It is stated that the plots bearing Nos.P2/663 and P2/634, JJ Colony, Sultan Puri, Delhi-110086 were allotted to one Sh. Gurnam Chand S/o Ram



Singh and Sh. Naresh Gupta S/o Sita Ram respectively. It is stated that Sh. Gurnam Chand S/o Ram Singh and Sh. Naresh Gupta S/o Sita Ram sold the plots to one Sh Dinesh S/o Mohar Singh within two months of the allotment by way of GPA, Agreement to Sell, Affidavit receipt etc,. It is stated that further Sh. Dinesh S/o Mohar Singh sold the Plot No.P2/663 to Sh Ram Kaushal who is the father of the Petitioner herein and Plot No.P2/634 sold to Smt. Mali Devi who is the mother of the Petitioner herein by way of GPA, Agreement to Sell, Affidavit receipt etc. It is stated that the Petitioner herein inherited the aforesaid plots after the death of his father and mother respectively.

3. It is stated that in 2017, a survey on the plots was conducted by the Respondent and a Show Cause Notice was issued to the Petitioner on 01.03.2018 stating that the plots have been amalgamated which is in violation of the terms and conditions of the allotment of license.

4. It is stated that, thereafter, a Final Show Cause Notice was issued to the Petitioner directing the Petitioner to submit a reply to the Show Cause Notice dated 01.03.2018, failing which ex-parte order will be passed without further notice to the Petitioner. Since no reply was received from the Petitioner, an ex-parte Order dated 13.12.2018 was passed by the DUSIB cancelling the allotment of plots and consequently, an Eviction Order dated 09.01.2019 was also issued against the Petitioner by the Executive Engineer (C-3), DUSIB.

5. Material on record indicates that after the Eviction Order dated 09.01.2019, which had been corrected by a Corrigendum dated 23.01.2019, was challenged before the Lt. Governor and the challenge was rejected by an Order dated 08.09.2021 by the Lt. Governor on the ground that the appeal



had been preferred by a purchaser. The Lt. Governor held that terms and conditions under which the properties were given, prohibited transfer of the plots in question. The Petitioner had filed another application contending that the appeal before the Lt. Governor was not against both orders and further the cancellation order had been passed without affording a hearing to the Petitioner. A second Eviction Order dated 25.05.2022 was also passed by the Executive Engineer (C-3), DUSIB. The Petitioner, thereafter, filed an appeal against the second Eviction Order dated 25.05.2022 before the Director (JJR) stating that he is a bonafide owner of the plots and entitled to the benefit of the scheme of freehold policy which had been brought out for the benefit of the bonafide purchasers of the property.

6. Material on record further indicates that a hearing was afforded to the Petitioner and during the hearing, the Petitioner stated that against the Order dated 13.12.2018, no appeal had been filed since he had not been provided with a copy of the Order dated 13.12.2018. The Appellate Authority noted that the Hon'ble Lieutenant Governor had already rejected an appeal *vide* Order dated 08.09.2021 filed against the Order dated 09.01.2019 passed by the Executive Engineer (C-3), DUSIB. The Appellate Authority found that in the earlier round, the Hon'ble Lt. Governor upheld the eviction order on the ground that the Petitioner was a purchaser of the plots and the terms on which the plots were allotted were prohibiting the original allottee from selling, transferring or alienation of the plots. The Appellate Authority dismissed the appeal *vide* Order dated 23.07.2022. The relevant portion of the said Order dated 23.07.2022 reads as under:

“8. Whereas on perusal of the documents submitted by the Dy. Director (JJR), which are in the nature of reply to RTI dated 23.12.21 made it aptly clear that Sh.



Chetan had requested for the orders vide RTI application filed on 30.11.21, which had been replied on 23.12.21. It is further observed that, the cancellation orders issued by the Dy. Director (JJR), dt. 13.12.18 were infact confirmation of cancelation of the Plots in question issued with the approval of CEO, DUSIB and the same stood corrected vide corrigendum dated 23.01.19. Whereas on perusal of the orders of Hon'ble Lt. Governor Delhi in the matter of Sh. Chetan Bhagat Vs DUSIB, Case no. 131/2019 dated 08.09.21, the appeal against the order of Ex. Engineer, 0-3, dated 09.01.19 filed before the Hon'ble Court was rejected on the grounds of possession of the plots in questions had been passed inconsequent to the cancellation order, the appellant was not an original allottee but only a purchaser and the conditions of license were prohibiting the allottee from selling transferring alienating or any manner parting with the possession was violated. Considering all the facts I am of the opinion that:

- 1. The hearing sought by the appellant is beyond the jurisdiction of power of conferred upon the undersigned as it involves the impugnement of the orders of CEO, DUSIB.*
- 2. Since, the orders of Ex. Engineer, had been challenged in appeal before the Hon'ble Lt. Governor of Delhi which were issued concomitant to the issue of cancelation order dated 13.12.18 and corrigendum dated 23.01.19, it therefore implied that, these were also covered under the appeal and were in challengeable at this level.*
- 3. Persistent submission of the applicant Sh. Chetan about non-receipt of the orders of Dy. Director either at the time of issue or in reply to RTI was given a considerate view keeping in view low literacy level of the applicant and the*



submissions made by him, all the copies of relevant orders and complaint were provided to him with the advice to approach the competent Authority for seeking the redressal as the undersigned Authority had no jurisdiction over his application.”

7. It is stated that the Petitioner, thereafter, preferred an appeal under Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010 before the Hon’ble Lieutenant Governor of Delhi against the Orders dated 13.12.2018 and 25.05.2022 which was dismissed by the Hon’ble Lieutenant Governor *vide* Order dated 26.10.2022.

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

9. Undisputedly, the plots bearing Nos.P2/663 and P2/634, JJ Colony, Sultan Puri, Delhi-110086 in question were allotted to one Sh Gurnam Chand S/o Ram Singh and Sh Naresh Gupta S/o Sita Ram respectively. Thereafter, Sh. Gurnam Chand S/o Ram Singh and Sh. Naresh Gupta S/o Sita Ram sold the plots to one Sh Dinesh S/o Mohar Singh within two months of the allotment and further Sh. Dinesh S/o Mohar Singh sold the Plot No.P2/663 to Sh Ram Kaushal who is the father of the Petitioner and Plot No.P2/634 sold to Smt. Mali Devi who is the mother of the Petitioner by way of GPA, Agreement to Sell, Affidavit receipt etc. The terms and conditions of licence reads as under:

“1. The licensee shall be liable to pay to the Municipal Corporation of Delhi such licence-fee and conservancy charges for the period of his/her occupation as may eventually be determined by the Government of India. The licence-fee shall be paid in advance by the 7th of each month for which it is due and shall be paid in the office of Municipal



Corporation of Delhi.

2. In the event of failure of the licensee to pay the licence-fee by the stipulated date, the Corporation may at its option revoke the licence and in the event of such licence being revoked, the Corporation shall be entitled to enter upon the premises and resume its possession alongwith super-structure, if any.

3. The licence can be terminated at any time by the Corporation by giving two weeks notice and after the expiry of the stipulated period of notice, the Corporation shall be entitled to re-enter the plot and resume its possession alongwith super-structure, if any.

4. The licensee shall also be liable to pay for the period of his/her unauthorised occupation period to the grant of this licence, such damages as may be determined by the authority in which the control of the land, squatted upon by him, vests. In the event of the failure of the licensee to pay the damages, the same consequences shall follow for non-payment of licence-fee.

5. Without prejudice to other modes of recovery, the licence-fee or the damages can be recovered by the Corporation or the authority concerned vested with the control of land formerly squatted upon by the licensee, as arrears of land revenue.

6. The licensee shall not be entitled to undertake any permanent construction on the plot during the period of his/her occupation, nor shall he/she transfer the possession thereof to any other person by any mode of conveyance whatsoever. In the event of such permanent construction being undertaken or possession being transferred, the Corporation may at its option revoke the licence and



resume possession of the plot by dispossessing the licensee or the transferee.

7. The licensee shall keep the Municipal Corporation of Delhi informed of the changes, if any, in his/her address, but the service of notices issued by the latter at his/her last address will be deemed as sufficient service and shall not be challenged on the ground that they have not been served on the licensee personally.”

(emphasis supplied)

10. The plots in question had been sold by the Original allottees within two months of the allotment which is in violation of the terms and conditions of the licence and further sold to the father and mother of the Petitioner. Therefore, the purchaser from whom the Petitioner claims the plot by succession were liable to be evicted from the plots as the sale of the plots was not valid and was liable to be cancelled as per the terms and conditions of the licence.

11. The Petitioner contends that a scheme for conversion to freehold/ownership rights was brought out in 2013 by the Delhi Urban Shelter Improvement Board (DUSIB), GNCTD. It is stated that this scheme was brought out for such of those persons who were bonafide transferees of the plot. The salient features of the scheme reads as under:

“2. SALIENT FEATURES OF THE SCHEME:

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 MPD-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 and 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/judgments.



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

12. It is the contention of the Petitioner that he had a right to get his property converted to freehold rights, and therefore, the Orders of eviction ought not to have been passed against the Petitioner. The said argument of the Petitioner cannot be accepted by the Court. The present case is not the one where the Petitioner seeks to challenge an Order refusing for grant of benefit of the scheme to the Petitioner but the present case arises from an Order of eviction because of the violation of the original conditions on which the plots were allotted. Further, a perusal of the abovementioned scheme shows that nobody can be allowed to have more than one plot in her/his name and the present case is a case where two plots were amalgamated and, therefore, the Petitioner in any way is not entitled to the benefit of the scheme.

13. In view of above, this Court does not find any reason to interfere with impugned Order under Article 226 of the Constitution of India.

14. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 8, 2023

S. Zakir