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

Date of decision: 27th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 9842/2023**

MS PHOOL BABY & ANR

..... Petitioners

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur
and Ms. Ramya Soni, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD

..... Respondent

Through: Mr. Parvinder Chauhan, Standing
Counsel for DUSIB with Ms. Aakriti
Garg, Advocate and Mr. Vijay
Maggo, LO & Mr. Pranav, LA,
DUSIB
Mr. Rishikesh Kumar, ASC for
GNCTD with Ms. Sheenu Priya, Mr.
Muhammad Zaid, Mr. Sudhir
Choudhary, Ms. Rohini Haldhar,
Advocates for GNCTD

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

CM APPL. 37845/2023 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 9842/2023 & CM APPL. 37844/2023

1. The Petitioners have filed the instant writ petition seeking for the following reliefs:-



"(a) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ, Order, direction thereby quashing the illegal and untenable decision of the Respondent of cancelling the allotment vide Impugned Order bearing No. AD(EZB)/DUSIB/2017/D-20 dated 15.05.2017 and directing the Petitioners to hand over the possession;

(b) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ, Order, direction thereby quashing the illegal and untenable decision passed by the Dy. Director of the Respondent under Sections 41 and 42 of DUSIB Act, 2010 vide Impugned Order bearing No. Dir(JJR)/DUSIB/2020/D-09 dated 13.02.2020;

(c) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ, Order, direction thereby quashing the illegal and untenable decision passed by the Learned Appellate Authority in Appeal No.16 and Appeal No.17 under section 45 of the DUSIB Act, 2010 vide Impugned Order dated 02.06.2021;

(d) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ, Order, direction to the Respondent herein to de-seal the subject property;

(e) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ, Order, direction to the Respondent herein to grant freehold rights to the Petitioners subject to the payment of requisite fee, as prescribed by the Respondent in its Freehold Policy 2013;

(f) Issue appropriate Writ(s) of Certiorari or any other appropriate Writ or an ad-interim ex-parte Order for the reliefs sought in the prayer clause (a) to (e);"

2. The Petitioners have approached this Court challenging cancellation of the allotment of Plots No. Z-II, 184 and Z-II, 185, Welcome, Seelampur,



Phase-III, Delhi-110053 (*hereinafter referred to as the 'Subject Property'*) each ad-measuring 25 sq. yds., by the Respondent/DUSIB.

3. Shorn of unnecessary details, the facts leading to the instant writ petition are as follows:-

- i. It is stated that property bearing Plot No. Z-II, 184, Welcome, Seelampur, Phase-III, Delhi-110053 was allotted in the name of Dayal Swaroop Mandir on 16.12.1975 on license basis. It is stated that the subject property changed hands several times and one Smt. Gosiya Begum transferred the said property by way of a Power of Attorney, Agreement to Sell and Will of Possession Letter dated 04.06.2011 in favour of the Petitioner No.1.
- ii. Similarly, Z-II, 185, Welcome, Seelampur, Phase-III, Delhi-110053, also changed hands several times and was ultimately transferred in favour of Petitioner No.2 by one by Mohd. Iqbal by way of Power of Attorney, Agreement to Sell and Will dated 20.07.2011.
- iii. Since both the properties were adjacent to each other they were amalgamated by the Petitioner and were being put to commercial use.
- iv. It is stated that in the year 2013, the Respondent/DUSIB came out with a Freehold Policy for grant of freehold rights for persons who had been allotted land under the rehabilitation Scheme. It is stated that on 04.12.2012, a notice was issued by the Respondent /DUSIB to the Petitioners asking them to file documents proving their possession.
- v. It is stated that on 15.05.2017, Deputy Director (JJR) issued an



order cancelling the allotment of the Petitioners stating that the Subject Property could not be amalgamated and that there is a change in use of land which is in violation of the terms and conditions of the allotment.

- vi. The Petitioners challenged the said order of cancellation passed by the Deputy Director (JJR) by filing an appeal before the Director (JJR) under Section 41 and 42 of the DUSIB Act, 2010. The Director (JJR) vide Order dated 13.02.2020, has observed as under:-

"I have considered the rival contentions of the parties. The three principals of natural justice are 1. Nemo to propna causa judex. Esse debet- (No one should be made a judge of in his own case. 2. Audi alterem pattern, and 3. Speaking orders or reasoned decisions. The principals of natural justice concern fairness and ensure a fair decision is reached by an objective decision maker and enhances public confidence in the process. The Hon'ble Supreme Court in the case of Uma Nath Pandey v. State of U.P. AIR 2009 SC 2375 exhaustively explained natural justice.

-"6. Natural 'justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted Writ Petition No.6427/2017 considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form."

In the present matter, it is admitted fact that plot bearing no. Z-II/184, Welcome, Seelampur Delhi-110053 was



allotted in the name of Dayal Swaroop Mandir on license basis. It is also admitted that plot No. Z-11/184, Welcome, Seelampur Ph.III, Delhi-110053, had been amalgamated with adjacent- plot bearing No. Z-II/185. Moreover six shops have been built-up on ground floor, and 1st floor of these plots and are being utilized for commercial purpose in violation of terms and condition of allotment, which are initially allotted to Dayal Swaroop Mandir for religious purpose. It is also not disputed that the change of land use of these plots is also in violation of terms and condition of license.

The competent Authority has therefore rightly observed that the said amalgamation of two plots and change of use of land are violation of terms and condition of allotment. The decision to cancel the allotment of aforesaid plots with immediate effect therefore cannot be held wrong in any manner. The appellant has failed to bring any defence except seeking mercy on the grounds of mercy.

I therefore direct the appellants/occupants to hand over the possession of the aforesaid plots bearing No..Z-H, 184-185, Welcome Seelampur,-III, Delhi 53 to Executive Engineer C-8 DUSIB, 1st floor Community Hall A-block, New Seemapuri, Delhi within 10 days of the receipt of the order failing which appropriate action for eviction and taking over the possession of the plots be sealing the same will be initiated by EE C-10.

The appeal is accordingly dismissed.” (emphasis supplied)

- vii. Aggrieved by the said order, the Petitioners approached the Appellate Authority under Section 45 of the DUSIB Act, 2010, i.e., Lt. Governor, Delhi. The Lt. Governor rejected the appeal vide Order dated 02.06.2021, by holding as under:-

“I have considered that submissions made by both the sides



and have also gone through the case files. It is an admitted fact that the appellant is not the original allottee but a subsequent purchaser of the plot in question. The conditions of the licence prohibit the allottee from selling, transferring, alienating or in any manner part with the possession of the shop. The DUSIB has therefore rightly cancelled the allotment of the plot in question. Therefore, I find no reason to interfere with the impugned order, which cogent and logical. The appeal is hereby rejected.”

viii. It is this Order of the Appellate Authority which is under challenge in the present writ petition.

4. Learned Counsel for the Petitioner states that both the plots being Plot No. Z-II, 184 and Z-II, 185 each measuring 25 sq. yds were allotted to Dayal Swaroop Mandir. He states that the plots were allotted in the year 1975 and were sold to several persons and were finally purchased by the Petitioners No.1 and 2 on 04.06.2011 and 20.07.2011 respectively.

5. It is stated that since the plots were allotted to one person, there is no question of amalgamation as stated by the competent authority as the original allotment was in favour of one person and the same has not been held to be erroneous. It is stated that the second ground for cancellation of allotment of the property in question is that the property has been used for commercial purposes is also unsustainable because all the previous owners were also using it for the commercial purposes. He states that initially the property had been allotted for religious purposes, which was against the policy. It is further stated that the other ground taken by the Respondents for cancellation of plot was the subsequent sale, which according to learned Counsel for the Petitioner no longer survives because the subsequent



purchaser is entitled to take benefit under the policy.

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

7. 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. Lands were allotted to person who had encroached government lands but were found entitled to rehabilitation under the Policy formulated by the DUSIB. In 2013, a policy was brought out to give freehold rights to persons who were allotted land by the DUSIB.

8. A Division Bench of this Court *vide* judgment dated 14.02.2023 in Akash Kukreja v. Lt. Governor, GNCT of Delhi & Ors., **LPA 72/2023**, has culled out the policy for conversion to freehold rights was brought out by DUSIB and this Court in the said case observed as under:-

“7...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)”

9. The undisputed facts in this case are that the subject properties were issued to one entity Dayal Swaroop Mandir for residential purpose but each unit was a separate entity and amalgamation was not permitted. The Petitioners, who are subsequent purchasers, have purchased the plots, which were adjacent to each other, cannot be permitted to amalgamate the two plots since it is in direct violation of the policy and also the terms of the original allotment which prohibited the original allottee from transferring the plot.

10. In any event, the present case is not one of considering an application of a person for grant of freehold rights of the property but is a case of cancellation of allotment of plots for violation of the terms and conditions on which the plots were allotted. The contention of DUSIB is that the plots were given for religious purposes. Admittedly, shops are being run on the property, which is in violation of the terms and conditions on which the plots were initially allotted.

11. The contention of the Petitioners is that plots could not be issued for religious purposes, i.e., Dayal Swaroop Mandir, and hence commercial activities could be conducted in the premises cannot be accepted for the fact



that the premises are being used for commercial purposes which is in direct violation of the terms and conditions of allotment.

12. The order of the Lt. Governor indicates that the property could not have been sold by the initial allottee and admittedly the property has been sold several times as stated earlier which was prohibited under the conditions of licence. Even at the cost of repetition, the present case is a case of cancellation of allotment and not for permission for conversion from leasehold to freehold.

13. The authorities have not erred in cancelling the allotment of plots on the ground that the initial allottee could not have transferred the plot. All the three authorities have concurrently upheld the cancellation of allotment. The Petitioners have not been able to demonstrate as to how the conclusions arrived at by the authorities are perverse or are in contravention of any policy or the terms and conditions of the allotment.

14. This Court does not deem it fit to interfere with the orders passed by the authorities.

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

SUBRAMONIUM PRASAD, J

JULY 27, 2023

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