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

Date of Decision: 30.05.2024

+ **CONT.CAS(C) 1765/2023 & CM APPL. 33701/2024**

BANSRAJ PAL

..... Petitioner

Through: Mr. Kamlesh Kumar Mishra, Mr.
Dipak, Ms. Shivani Verma,
Advocates
Mob: 9582388509

versus

SH MANISH KUMAR GUPTA AND ANR. Respondents

Through: Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advocates for DUSIB
Mob: 8077154576
Email:
parvinderchauhan.adv@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. The present petition has been filed alleging willful disobedience of the order dated 9th September, 2020 passed in *W.P.(C) No. 4300/2020*, wherein, directions had been given to the respondent-Delhi Urban Shelter Improvement Board ("DUSIB") to give hearing to the petitioner, and pass a Speaking Order, before any action is taken against the petitioner.
2. As per the facts as canvassed in the petition, the petitioner was allotted *Property No. J-145, JJ Colony, Savda Ghevra, New Delhi-110081* ('subject property'), by the DUSIB in lieu of the jhuggi of the petitioner after paying the necessary charges of ₹ 7,000/- to the DUSIB. The petitioner



raised construction therein, and started living along with his family members.

3. The petitioner wrote to DUSIB on 10th October, 2007, requesting for regularisation of his allotment. However, on 19th August, 2019, the petitioner was served with a notice by the respondent-DUSIB, whereby, the petitioner was asked to hand over the possession of *Plot Nos. J-145 and J-146, JJ Colony, Savda Ghevra, New Delhi*, on account of amalgamation of the above said plots, as well as for using these plots commercially by erecting mobile tower on the roof. Moreover, the respondent-DUSIB vide letter dated 18th October, 2019, sought police assistance from SHO, PS Kanjhawala, New Delhi-110081, for sealing and retrieval of the aforesaid plots.

4. Further, on 18th February, 2020, respondent-DUSIB pasted a notice for vacation of the *Plot Nos. J-145 and J-146, JJ Colony, Savda Ghevra, New Delhi*, stating that the property shall be sealed, since allotment of the aforesaid plots, had already been cancelled.

5. Aggrieved by the aforesaid, the petitioner filed a writ petition being *W.P.(C) No. 4300/2020* before this Court. In the said writ proceedings, it was brought forth that the respondent-DUSIB had already cancelled the allotment of the aforesaid plots, without affording an opportunity of hearing to the petitioner. Since it came to the fore that no hearing had been granted to the petitioner before cancellation of the allotment, this Court by order dated 9th September, 2020, passed directions that the petitioner shall be given a hearing by the DUSIB and a reasoned order shall be passed. Till then no precipitate action was to be taken against the petitioner. Order dated 9th September, 2020 passed in *W.P.(C) No. 4300/2020*, reads as under:



“1. On the last date of hearing i.e. 17.07.2020, this Court observed, inter alia, as under:

- “... 9. On a query being put to the learned counsel for the Delhi Urban Shelter Improvement Board (DUSIB), as to whether the petitioners were heard before their allotment was cancelled and/or before they were directed to vacate the premises, the answer is in the negative. The petitioners, evidently, have been occupying the said premises for the past almost 14 years; if DUSIB wanted to cancel the allotment and directed them to vacate the premises, then in fairness, it ought to have at least heard to them ...
2. The respondent's counter affidavit does not allude to any hearing having been granted to the petitioners prior to the issuance of the impugned notice, declaring them 'unauthorized occupants' of government land. DUSIB contends that the allotment letter issued to the petitioners had been subsequently cancelled. On a query as to whether they were individually intimated about the allotment, the answer is in the negative. It is, however submitted, that a general notice was published. Admittedly, the allotment was made individually to each of the petitioners. That being the position, nothing stopped the DUSIB from extending a similar courtesy and fairness of procedure, to intimate the petitioners/allottees likewise, i.e. individually, of the cancellation of their allotments.
3. In the circumstances, it will be fair that before taking any precipitate action against the petitioners, they be at least heard by the DUSIB. Let it be so done in the next one month. A reasoned order shall be passed by DUSIB, which shall be communicated to the petitioners within six weeks from today. Till then, no precipitate action shall be taken against the petitioners.
4. The petition, along with pending application, is disposed-off in terms of the above.

xxx xxx xxx”

(Emphasis Supplied)

6. Since the plots in question were partly sealed on 29th November, 2023 and an order dated 08th December, 2023 was issued by the DUSIB directing the petitioner herein, to vacate the plots in question, the present petition came to be filed.



7. During the pendency of the present petition, a fresh application, being *CM APPL. 33701/2024*, has been filed on behalf of the petitioner for interim relief of temporarily de-sealing the property of the petitioner, which had been partly sealed by the DUSIB. Learned counsel appearing for the petitioner prays for de-sealing of the part-property, which is lying sealed, on the ground that the same has been sealed illegally in contravention of the order dated 9th September, 2020.

8. Per contra, learned counsel appearing for the respondent-DUSIB, has drawn the attention of this Court to the Status Report filed on behalf of the DUSIB, to submit that in compliance of the order dated 9th September, 2020, petitioner herein was afforded an opportunity of hearing on 13th October, 2020. Subsequently, another hearing was granted to the petitioner on 7th December, 2023 and thus, a Speaking Order dated 8th December, 2023 has been passed.

9. The Status Report filed on behalf of DUSIB, reads as under:

“xxx xxx xxx

7. *That in the above context of the matter, it is apposite to mention here that, after the aforesaid order dated 09.09.2020, Petitioner was afforded hearing on 13.10.2020. However, due to administrative reasons, formal orders were not passed. As such, with a view to obviate any hyper-technical objection, another hearing was granted to the Petitioner on 07.12.2023. The Petitioner, alongwith his counsel, appeared and presented some documents in support of his plea. Since, the Petitioner was carrying some documents, as such, the Petitioner was allowed to submit those on 08.12.2023. Thereafter, in exercise of powers delegated unto him, the Director (SUR) has directed that the Plot Nos. J-145 and J-146 be retrieved back. A copy of the said order dated 08.12.2023 is being annexed herewith as ANNEXURE - R/1.*

8. *That, evidently, in the light of the aforesaid, even if there was any lapse in compliance of the order dated 09.09.2020, same stands purged.*

9. *That, kind attention of this Hon'ble Court is invited to the order*



dated 30.11.2023, inter-alia recording a submission of the Ld. Counsel for the Petitioner to the effect that the property in question has been sealed. The Ld. Counsel for the Petitioner also took a position “that there is no commercial activity going on from the premises and in case the same is going on, the same shall be stopped immediately with effect from today i.e. 30.11.2023”.

10. That, however, the Petitioner has failed to stop commercial user and the shops, at the ground floor, are still being run by the Petitioner. Photographs showing the said shops are being annexed herewith as **ANNEXURE - R/2**.

11. That, in the light of the breach of the assurance as recorded in the para 6 of the order dated 30.11.2023, the Petitioner is liable to be summoned and prosecuted for contempt of this Hon'ble Court.

12. **That further, the Petitioner has also broken open/removed the seals which were placed upon the portion of the premises. As such, the Answering Respondent has lodged an FIR dated 30.11.2023 against the Petitioner vide FIR No. 0501 dated 30.11.2023 at PS Kanjhawala. A copy of the said FIR dated 30.11.2023 is being annexed herewith as ANNEXURE - R/3.**

(Emphasis Supplied)

10. Perusal of the aforesaid Status Report, manifests that pursuant to the hearing granted to the petitioner, Speaking Order dated 8th December, 2023 has been passed by the DUSIB, which reads as under:

**“DELHI URBAN SHELTER IMPROVEMENT BOARD
GOVT. OF NCT OF DELHI
(SUR Branch)**

H-9, Vikas Kuteer, I.P. Estate, New Delhi-110002

No.: D.D(SUR)/DUSIB/2023/D-334

Date:- 8/12/2023

ORDER

WHEREAS, as per the records available in SUR section, plot No. J-145, Savda Ghevra was allotted in the name of Sh. Bans Raj Pal S/o Sh. Ram Dev on dated 23/02/2007 in lieu of demolished jhuggie No. S-10/B-217 R.V.B.(Bara Pula), Sarai Kale Khan and Plot No. J-146, Savda Ghevra was allotted in the name of Sh. P. Lok Nath S/o Sh. Pivumail on dated



23/02/2007 in lieu of demolished jhuggie No. S-10/B-222 R.V.B.(Bara Pula), Sarai Kale Khan. As per terms and conditions of allotment under the Rehabilitation Scheme, the allottee was supposed to take the possession of the alternative site within 15 days from the date of allotment and also to carry construction of dwelling unit within 6 months. But in the present matter, the allottee neither took the possession from the area J.E nor carried out construction in accordance with the terms and conditions of allotment as discussed above. Hence, allotment was cancelled for violation of terms and conditions of allotment in respect of both the aforesaid plots.

AND WHEREAS, as per cancellation record/list available in SUR Branch, Plot No. J-145 and J-146, Savda Ghevra are cancelled vide letter No. F.01/Savda Ghevra/OSD(SUR)/S&JJ/2007/D-20 dated 03/09/2007. All the cancelled plots are now property of DUSIB.

AND WHEREAS, as per the status report received from Exe. Eng./C-2, the plot Nos. J-145 and J-146, Savda Ghevra are unauthorisely occupied and amalgamated with each other by Sh. Bans Raj Pal. He is residing in the said properties with his family as on date without any permission or fresh allotment from DUSIB. Prima facie, Sh. Bans Raj Pal is a rank trespasser. He is running a grocery shop at ground floor. He has also rented the roof of both plots to M/S. Reliance Jio Infocomm Ltd. for installation of Mobile Tower.

AND WHEREAS, in compliance to the order of Hon'ble High Court dated 09/09/2020 in W.P.(C) No. 4300/2020 & CM APPL. 15472/2020, the opportunity for personal hearing was granted to Sh. Bans Raj Pal on 13/10/2020. But no order could be passed due to administrative reasons. A further hearing was granted to him on 07.12.2023. He attended the hearing with his Advocate. He produced original documents. I have heard his advocate at length. During the personal hearing granted to Sh. Bans Raj Pal, he fairly admitted that he is in possession of both the aforesaid plots. He stated that possession of plot No. J-146, Savda Ghevra, Delhi was given to him by Sh. P. Lok Nath alongwith unregistered instrument of Special Power of Attorney. It is pertinent to mention here that transfer of possession by the allottee is not permissible under the terms conditions of allotment in any manner. In this matter, the allottee is not in possession of plot No. J-146, Savda Ghevra and both plots have been amalgamated which is further violation of terms and conditions of allotment. Besides above, he is carrying commercial activities at ground floor and also rented the roof to M/S Reliance Jio Infocomm Ltd. for installation of Mobile Tower which is also a further violation of terms and conditions of allotment. During the hearing he was given an opportunity to state the reason for not taking possession of the allotted unit within 15 days and carrying out construction within 15 days from the



date of allotment. He stated that the allotted plot was situated at the undeveloped area. Therefore, he was residing in a rented premises. When he was asked to produce rent agreement of any intimation in this regard to this office, he failed to give any reply. It appears that the submission of the occupant is after thought. It is pertinent to mention that the property was sealed on 29.11.2023. But Sh. Bans Raj Pal broke open the seal on 30.11.2023 and again trespassed in the aforesaid property. A complaint/FIR was also lodged by the concerned area Engineer to the local police. During, the hearing Sh. Bans Raj Pal stated that he was having possession slip with him. He further requested for one day time to produce more documents. The matter was accordingly adjourned for 08.12.2023 at 11:00 A.M. On 08.12.2023, Sh. Bans Raj Pal appeared in this office and produced one photocopy on which J-145 was written and signed by somebody on 28.05.07. Neither the name of the signing authority is mentioned nor any stamp or dispatch number is mentioned. The occupant is also not having original of the aforesaid document. Accordingly, it appears to be an unauthentic and vague document. He has also produced two letters one dated 10.10.07 by Sh. Bans Raj Pal and other dated 03.10.07 written by Sh. P. Lok Nath against the affixation of cancelation notice/order and they claimed to be residing at the aforesaid plots. However, no proof of their residing at the aforesaid plots has been produced for the relevant period of the year 2007.

Now, therefore after hearing Sh. Bans Raj Pal and considering the above facts and records available in SUR Section, it is in the fitness of things that the possession of plot Nos. J-145 and J-146, Savda Ghevra may be retrieved back. I am constrained to order the unauthorized occupant namely Sh. Bans Raj Pal and all other persons to vacate the above said plots along with mobile tower structure at his own cost within 15 days failing which the above plots will be evicted/got vacated with the help of police force as may be required by Ex. Engineer, C-2 and the malba/debris be removed by this office. The cost of removal of malba/debris etc. from the above mentioned plots will be recovered from the unauthorized occupant."

(Emphasis Supplied)

11. Perusal of the aforesaid Speaking Order passed by the respondent-DUSIB shows that the DUSIB had granted hearing to the petitioner initially on 13th October, 2020. Subsequently, due to the commercial activity being carried out by the petitioner and amalgamation of the two plots in question, part-sealing action was taken by the DUSIB on 29th November, 2023.



However, the petitioner broke open the seal the very next day on 30th November, 2023. A complaint/FIR was also lodged in the local police station in this regard.

12. Further, by way of the aforesaid Speaking Order, the DUSIB has held in categorical terms that the petitioner herein, is a rank trespasser, and direction has been issued to retrieve the aforesaid plot by the DUSIB.

13. Considering the aforesaid, it is manifest that the occupation of the plots in question by the petitioner has been held to be without any authority and the petitioner has been held to be an encroacher. Therefore, in the absence of any subsisting legal or vested right in favour of the petitioner to occupy the premises in question, action taken by the DUSIB cannot be considered to be contemptuous in nature, especially when the part-sealing action was taken by the DUSIB only after affording a hearing to the petitioner. Further, it has also come on record that the petitioner had broken the seal, for which complaint dated 30th November, 2023 was lodged against the petitioner.

14. The Hon'ble Supreme Court in the case of *Jhareswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others*, (2002) 5 SCC 352 has held as follows:

“xxx xxx xxx

11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the



statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant.....

xxx xxx xxx”

(Emphasis Supplied)

15. Similarly, postulating as to what constitutes contempt, the Hon’ble Supreme Court in the case of *Dinesh Kumar Gupta Versus United India Insurance Company Limited and Others*, (2010) 12 SCC 770, has held as follows:

“xxx xxx xxx

15. Nevertheless, it would not be correct on behalf of the appellant to contend that the learned Single Judge was not authorised to initiate contempt proceeding against the appellant merely because he was sitting in a Single Bench although he might have been in a position to notice whether the alleged action at the instance of any party or anyone else who obstructed the cause of justice, amounted to contempt of court of a civil or criminal nature and yet would be precluded from initiating suo motu contempt proceedings. The Contempt of Courts Act, 1971 clearly postulates the existence of only the following preconditions before a person can be held to have committed civil contempt:

(i) There must be a judgment or order or decree or direction or writ or other process of a court; or

An undertaking given to a court;

(ii) The judgment, etc. must be of the court and undertaking must have been given to a court;

(iii) There must be a disobedience to such judgment, etc. or breach of such undertaking;

(iv) The disobedience or breach, as the case may be, must be wilful.



xxx xxx xxx”

(Emphasis Supplied)

16. Likewise, holding that Court is supposed to adopt cautionary approach in contempt jurisdiction and if there is substantial compliance, Court will not probe like a roving enquiry, the Hon’ble Supreme Court in the case of ***Bihar State Government Secondary School Teachers Association Versus Ashok Kumar Sinha and Others***, (2014) 7 SCC 416, has held as follows:

“xxx xxx xxx

*24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. **The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents.** It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued.*

xxx xxx xxx”

(Emphasis Supplied)

17. Accordingly, in view of the aforesaid detailed discussion, it cannot be held that there is any wilful disobedience of the order passed by this Court by the DUSIB. According, no merit is found in the present petition.

18. However, the petitioner is granted liberty to challenge the order dated 8th December, 2023 passed by the DUSIB, within a period of six weeks from today. If the aforesaid order is challenged by the petitioner, within a period



of six weeks, the issue of limitation shall not come in the way of the petitioner.

19. The present petition is disposed of, along with the pending application, in terms of the aforesaid directions.

20. Accordingly, the next date of hearing, i.e., 18th October, 2024, stands cancelled.

MINI PUSHKARNA, J

MAY 30, 2024

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