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

Date of order: 22nd August 2022

+ W.P.(C) 2118/2020 & CM APPL. 7474/2020

SHRI OM PRAKASH Petitioner

Through: Mr. S.C. Singhal and Ms. Poonam
Taneja, Advocates

versus

THE ESTATE OFFICER AND ANR Respondent

Through: Mr. Anuj Chaturvedi, Mr. Anish
Dhingra and Mr. Nakul Ahuja,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner against the order dated 18th January 2020 passed by learned District and Sessions Judge, East District, Karkardooma Courts, Delhi in PPA No. 15/16.

FACTUAL MATRIX

2. The brief background of the matter reveals that under a Resettlement Scheme titled 'Sight & Service Scheme', Delhi Development Authority (hereinafter "DDA") allotted plots to persons belonging to weaker classes, who were evicted from places they were

illegally encroaching upon. Plot was granted to the custodians on perpetual leasehold basis on deposit of initial payment. The Scheme came to be known as 'New Kondli Scheme, Delhi'.

3. The original allotment was in the name of one Keshav Dass who transferred it to third persons, which eventually was transferred in the name of the petitioner.

4. A Show Cause Notice dated 3rd April 2014 was issued in the name of original allottee under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, alleging that the property had been converted to residential-cum-commercial property. The petitioner alongwith other recipients of the Show Cause Notice approached the Vice Chairman of DDA aggrieved by the fact that the said Show Cause Notice was issued only to 6 persons out of 700 occupants.

5. An enquiry was, thereafter, conducted by the Estate Officer and as per his Report No. F.5308/SSK/3013/S&JJ/EZA/91/123 dated 27th February 2015, it was found that 95 plots out of more than 700 plots allotted by DDA in A-1 to C-1 New Kondli, Delhi were sold without permission of the DDA and were being used as small shops cum residence.

6. Subsequently, after conducting a physical survey of the area concerned, recommendations were made by the Estate Officer and ultimately, the petitioner was declared an unauthorised occupant and an eviction order dated 25th October 2016 was passed.

7. The petitioner preferred an appeal against the eviction order, whereby, vide order dated 18th January 2020, learned District &

Sessions Judge (East), Karkardooma Court, Delhi dismissed the appeal and directed the petitioner to vacate the land under his occupation failing which the respondents therein were given the liberty to take coercive action.

8. The petitioner is before this Court impugning the said order passed by the learned District & Sessions Judge.

SUBMISSIONS

9. Learned counsel appearing on behalf of the petitioner submitted that the Show Cause Notice dated 3rd April 2014 was issued selectively and discriminatorily only to 6 persons out of the 700 occupants of the area concerned.

10. It is submitted that pursuant to the report dated 27th February 2015, the Estate Officer made the following observations after a physical survey of the site was conducted:-

“(a) Whether the properties bearing numbers which were already cancelled as per the date mentioned against them may be sealed or not:-

(i) Plot No. 15, Block : B-1, New Kondli, Delhi in respect of Shri Vijay Pal, the allotment cancelled on 17.01.2006 and presently occupied by Shri R.C. Shukla.

(ii) Plot No. 16, Block : B-1, New Kondli, Delhi in respect of Shri Keshav Dass, the allotment cancelled on 27.02.2014 and presently occupied by Shri Cm Prakash.

(iii) Plot No. 17, Block : B-1, New Kondli, Delhi in respect of Smt. Leelawati, the allotment cancelled on 17.01.2006 and presently occupied by Shri Dharam Bir Sabharwal.

(iv) Plot No. 18, Block : B-1, New Kondli, Delhi in respect of Shri Raj Kumar, the allotment cancelled on 17.01.2006 and presently occupied by Shri Yashbir Singh.

(v) Plot No. 60 Block : B-1, New Kondli, Delhi in respect of Shri Babu Bhai, the allotment cancelled on 17.01.2006 and presently occupied by Shri Rishi Pal.

(vi) Plot No. 61, Block : B-1, New Kondli, Delhi in respect of Shri Hakeem Ali, the allotment cancelled on 17.01.2006 and presently occupied by Shri Rishi Pal.

(b) Besides above six properties, there are other 700 properties in Block A-1 to C-1 at New Kondli which were earlier allotted to evictees and have been sold by them without prior permission of DDA as per terms and conditions of allotment letter and now commercial activities are going on therein may either be cancelled as done in above six properties'

OR

All these properties may be freehold. These issues have not been resolved so far."

It is submitted that the above mentioned showed that there were 700 other plots that were sold without prior permission of the DDA, however, actions were taken only against the petitioner and a few others. Further, as per the recommendations of the Estate Officer, which were approved at the level of the Lt. Governor, action should have been taken against all the 700 properties and not only against the

selected 6 persons and their respective properties.

11. Learned counsel for the petitioner submitted that no action was required to be taken against the petitioner as he himself made requisite efforts for conversion of freehold rights in his favour. It is further submitted that the Show Cause Notice, initiation of proceedings against the petitioner as well as the eviction order were not tenable and in accordance with the policy of the respondents and even the recommendations made by the Estate Officer.

12. It is submitted that the impugned order dated 18th January 2020 passed by the learned District & Sessions Judge was illegal, erroneous and passed without considering the actual facts. The learned District & Sessions Judge failed to consider that there are other 700 plot holders similarly placed as the petitioner, however, no action was taken against them. The petitioner cannot be discriminated against and a uniform policy should be made applicable on all those similarly placed persons.

13. Learned counsel for the petitioner submitted that the concerned authority as well as the learned District & Sessions Judge failed to consider that the petitioner was discriminated against and action could not have been taken only against selected 6 persons out of 700 persons similarly placed and therefore, in light of the above, the impugned order is liable to be set aside as the same has been passed without proper appreciation of the facts.

14. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that there is no error or illegality in the order passed by the District &

Sessions Judge.

15. It is submitted that the plot in question was allotted to the original allottee on leasehold basis in lieu of demolition of *jhuggi* by government under resettlement scheme for *jhuggi* owners as a compensatory allotment. The said scheme was a rehabilitative scheme for slum dwellers who were evicted from places they had illegally encroached. However, the allottee, in blatant violation of the terms and conditions of the allotment letter sold the plot. The allottee sold the property in question within 6 months of the original allotment, which showed the conduct of the allottee that he intended to attain monetary benefit from the residential plot and not use it as a residential plot.

16. It is submitted that the respondents considered the case of the petitioner, however, it was found that he had violated the terms and conditions of the allotment letter, and hence, lost the right, title and interest over the plot. The transfer of the property/plot in question defeated the very purpose of the allotment of the plot to the poor and underprivileged.

17. Learned counsel for the respondents submitted that the petitioner has challenged the impugned order passed by the learned District & Sessions Judge, however, he has not challenged the cancellation order passed by the competent authority and hence, the said order of cancellation of allotment attained finality. The eviction proceedings follow up the proceedings after the cancellation of the plot to evict the unauthorised occupant of the government property. In the absence of any challenge to the order of cancellation of the

allotment of the plot, the instant petition is not maintainable and hence, is liable to be dismissed.

18. Heard learned counsel for the parties and perused the record. I have perused the impugned order passed by the learned District & Sessions Judge.

FINDINGS

19. Undoubtedly, the Scheme under which the original allottee was allotted the land/plot in question, was a welfare, compensatory and a rehabilitative scheme. The government allotted plots to those poor and underprivileged individuals who lost their homes, in the demolition drive of *jhuggis* carried out by the government for the purposes of development of area concerned. Even though, the slum dwellers were encroachers of public land, they were rehabilitated and compensated by provisions of alternate plots for residential purposes. However, several of these persons, including the original allottee in the instant matter, misused the residential properties allotted to them and violated the terms and conditions of the allotment to seek illicit monetary benefits.

20. The conditions of allotment have been reproduced by the respondents in their reply to the petition in connected matter W.P. (C) 2104/2020 and the same are reproduced hereunder for perusal:-

“a. The overall control and superintendence of the plot shall remain vested in the DDA whose officials shall at responsible hours to be entitled to inspect the said plot about its bonafide use.

b. The residential plot shall be exclusively used

by yourself and shall not be allowed to give the residential plot on rental basis to anybody.

- c. That you will not be entitled to transfer/ sell the resaid residential plot without the permission of the DDA/ Government.*
- d. That the residential plot shall be constructed within six months from the delivery of the possession of the plot in accordance with design approved by the DDA.*
- e. That the use of the residential plot will remain as residence only.*
- f. That the allottee is responsible to get the lease deed executed within three months from the date of final payment of premium/ ground rent and other outstanding dues.”*

21. The above stipulated terms and conditions of allotment, specifically conditions (b) and (c), created an absolute bar upon the allottee to transfer or sell the property, however, the allottee in sheer violation of the said conditions transferred the property to third parties which was eventually sold to the petitioner. Further, the condition (e) was also violated subsequently, since the plot was being used for partly residential and partly commercial purposes. The said property was allotted to the original allottee on leasehold basis on a payment of an amount of Rs. 3000/-, however, no lease deed was signed between the parties. There existed no title in favour of the original allottee that entitled him to transfer or sell the property to a third party.

22. The principal ground taken by the petitioner while challenging

the impugned order dated 18th January 2020, is that there are 700 other occupants who are similarly placed as the petitioner, however, no action has been taken by the respondents against the said occupants and they have selectively picked only 6 people to evict. This Court does not find any merit in this ground taken by the petitioner since equality of treatment cannot be sought where the petitioner himself is in the wrong and has been holding the property in question without authorisation. There is no force in the argument that since action has not been taken against the similarly placed persons, the petitioner is also not liable to be proceeded against by the respondents.

23. The petitioner neither had any right or entitlement nor any title to possess or hold the property in question, especially when the allotment in the name of the original allottee was also cancelled. In absence of the same the petitioner was indeed an illegal and unauthorised occupant and was liable to be evicted from the property in question. The petitioner is now before this Court seeking the prayer of setting aside the order of the learned District & Sessions Judge, however, he himself has not challenged the cancellation of allotment order at any stage.

CONCLUSION

24. Keeping in view the fact that the original allottee transferred the property in questions in gross violation of the terms and conditions of allotment and that the petitioner had no right or title in the property in question, there exists no reason to set aside the impugned order dated 18th January 2020. It seems that the petitioner is seeking equity with

offenders, while himself being one, however, there is no law that allows a wrongdoer to obtain benefits that do not even accrue to him. The petitioner is not one to come to the Court with clean hands and is hence, not entitled to any relief as sought.

25. This Court does not find any cogent reason to interfere in the order passed by the learned District & Sessions Judge dated 18th January 2020. A detailed and reasoned order has been passed by the learned District & Sessions Judge after due deliberation and consideration of all the facts and circumstances, including the material on record before it and there is no error or illegality in the same.

26. Accordingly, the instant petition is dismissed for being devoid of any merit.

27. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 22, 2022

Aj/MS