

(2024) 03 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1677 Of 2015

Gopal Krishan Age 48 Years S/O Late Sh. Munshi Ram R/O
New Bahu Fort Colony, Jammu

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Citation : (2024) 03 J&K CK 0002

Hon'ble Judges : MA Chowdhary, J

Bench : Single Bench

Advocate : V. R. Wazi, Abhishek Wazir, Adarsh Sharma

Final Decision : Disposed Of

Judgement

MA Chowdhary, J

1. The present petition has been filed seeking quashment of Order No. Secy./JDA/PS/640-43 dated 10.11.2015 regarding plot No. 267 measuring 20' X 40' at New Bahu Fort, Housing Colony Jammu, issued by respondents No. 2 and 3 whereby allotment made in favour of petitioner with respect to aforesaid plot was cancelled and Director Land Management was directed to take over the possession of the plot in question.

2. The facts leading to the filing of the present petition as pleaded are that father of the petitioner was allotted Plot No. 267 in Qasim Nagar, Jammu in the year 1989 on perpetual lease for sole purpose of construction of a residential house on a premium of Rs.3500/- and a lease deed came to be executed in his favour on 09.11.1989. After the demise of the father of petitioner, a suit for declaration declaring the petitioner as legal heir of the deceased, Munshi Ram, allottee of Plot No. 267 was filed. Petitioner, accordingly, obtained a declaration having filed a suit in the Court of learned Munsiff Jammu declaring to be the only legal heir and owner of plot in question. Thereafter, petitioner approached respondent No.2, Vice Chairman, JDA for transfer of the lease hold rights in his favour and

respondent No. 2 granted permission for transfer of the plot in question in favour of the petitioner on the same terms and conditions contained in the erstwhile lease deed. Ultimately the lease hold rights were conferred upon the petitioner who was directed to get the lease deed registered in the office of Sub Registrar, Jammu. Lease deed, thus, came to be registered in favour of the petitioner and possession was handed over to him. It is contention of the petitioner that the respondents having joined together to cancel the lease deed and are trying to dispossess him without any right or authority of law.

3. Objections have been filed by the respondents, wherein, it is stated that petitioner is not entitled for allotment of plot in question as same has been obtained by him by suppressing the true facts and when it came to their notice, allotment was cancelled by passing the order impugned. It is categorically stated by the respondents that in the year 1988, Housing & Urban Development Department decided to shift the inhabitants of Qasim Nagar and provide them alternative residential plots for their rehabilitation. Father of the petitioner was allotted Plot No. 267 vide Letter No.JDA/QN/1444-555 dated 10.10.1988 with the condition that he will surrender the possession of the house at Qasim Nagar and execute lease deed immediately after taking the possession. Possession was handed over to the father of the petitioner by Executive Engineer, Division No. II JDA Vide No. JDA/II/QN25090-12 dated 02.11.1988 and after taking possession of plot in question, father of the petitioner made representation stating that he wants alternate plot as he did not wish to take plot in question and on his request, Plot No.312 was allotted to him in lieu of plot in question. It is stated that father of the petitioner after getting Plot No. 312 in lieu of Plot No. 267 surrendered/vacated the possession of the Plot No. 267 in favour of the respondent-JDA and the petitioner after lapse of about 24 years came up with a representation dated 23.09.2013 to respondent No. 3 for transfer of plot in question in his favour, being legal heir of Munshi Ram, the original allottee. Petitioner, in fact, has deliberately and intentionally concealed the fact from the respondent-authority that his father obtained Plot No. 312 in lieu of Plot No. 267. It is urged that respondent, on receiving a complaint from one Pardeep Kumar S/O late Sh. Gian Chand that Munshi Ram holds three plots in violation of norms and rules of JDA, constituted a Committee of Officers to ascertain factual position regarding allotment made in favour of father of the petitioner. Committee submitted its report whereby afore-narrated facts came to the knowledge of the respondents that father of the petitioner obtained allotment of Plot No. 312 in lieu of Plot No. 267 and had also surrendered the possession, in favour of respondent-JDA at that point of time.

4. This Court vide order dated 16.11.2015 issued notice to the respondents and directed that operation of order impugned shall remain stayed.

5. Learned counsel for the petitioner submits that order impugned cancelling the lease hold rights of the petitioner is illegal as same was issued without issuing notice to the petitioner and without affording an opportunity of being heard to

him. He submits that the once a plot was leased out vide a registered lease deed, the same could not be cancelled unilaterally, without following due course of law.

6. Mr. Adarsh Sharma, learned counsel appearing for the respondent-JDA, on the other hand, submits that allotment made in favour of the petitioner was cancelled on the basis of report of the officers' committee that father of the petitioner obtained allotment of Plot No. 312 in lieu of Plot No. 267 and had also surrendered the possession in favour of JDA at that point of time. Mr. Sharma further argued that respondent-authority was well within its right and competence to cancel lease in favour of petitioner as and when it was found by the authority on the basis of the officers' Committee report that the allotment of plot in question had been obtained by the petitioner as lessee by misrepresentation and suppression of facts by playing a fraud, as such, in terms of Clause 12(3) of the lease deed that respondent-authority was competent to cancel the lease deed and it has rightly done so, which cannot be set aside as prayed for.

7. Heard learned counsel for the parties and perused the record.

8. It is admitted position on record that father of the petitioner was allotted Plot No. 267 in New Bahu Fort, Housing Colony, Jammu in the year 1989 and a lease deed came to be executed on 09.11.1989. After taking possession, his father made a representation to respondent No. 3 for exchange of plot in question as he did not wish to take the said plot and on his request, Plot No. 312 was allotted to him in lieu of plot in question and his father vacated the possession of the Plot No. 267 in favour of the respondent-authority. It is also admitted that the petitioner after lapse of about 24 years came up with a representation dated 23.09.2013 to respondent No.3 for transfer of plot in question in his favour, being legal heir of Munshi Ram, the allottee. It is categorical stand of the respondents that they have never asked the petitioner to obtain legal heir certificate as the father of the petitioner got alternate allotment in lieu of Plot No. 267 and as such lost every right with regard to Plot No. 267 and there is no question of transfer of Plot No. 267 in favour of the petitioner being legal heir of deceased Munshi Ram.

9. Housing & Urban Development Department in the year 1988 decided to shift inhabitants of Qasim Nagar and provided them alternate residential plots for their rehabilitation and amongst others letter of intent was also sent to one Munshi Ram, father of the petitioner for allotment of plot in lieu of his house at Qasim Nagar, asking all the effected persons to submit an affidavit that they shall surrender the land and house at Qasim Nagar before taking possession of the residential plot at Bahu Fort, Housing Colony. The said Munshi Ram vide letter No. JDA/QN/1444-45 dated 10.10.1988 was allotted plot No. 267 measuring 20' X 40' at New Bahu Fort, Housing Colony Jammu with the condition that he shall surrender the possession of the land/house at Qasim Nagar and execute the lease deed immediately after taking the possession. The possession of Plot No.

267 was handed over to Munshi Ram by Executive Engineer Division No. II JDA vide No. JDA/II/QN/25090-12 dated 02.11.1988.

10. Allottee, Munshi Ram after taking possession of Plot No. 267 made a representation that any alternate plot be allotted to him as he did not wish to take Plot No. 267 for personnel reasons as the adjoining plot was allotted to his relative and he did not wish to reside near him. Respondent-authority allotted Plot No. 312 on his request in lieu of Plot No. 267, as such, he had to vacate the possession of Plot No. 267 for the reason that as per the rules/norms of JDA one family was eligible for one plot only.

11. Petitioner on 23.09.2013 was stated to have filed a representation to respondent-JDA for transfer of Plot No. 267 in his favour being legal heir of said Munshi Ram as by that time, said Munshi Ram had died and petitioner had obtained an order and decree from the Court. The stand of the respondent-authority is that petitioner as legal heir of said Munshi Ram was not entitled to allotment of Plot No. 267 as the said Munshi Ram in his life time had exchanged Plot No. 267 against Plot No. 312 and the petitioner concealing the fact that his father had constructed a house on Plot No. 312 obtained a decree from the Court by misrepresenting the facts from the Court with regard to ownership of Plot No. 267 whereas said Munshi Ram had taken possession of Plot No. 312 in lieu of Plot No. 267 in the year 1989. On a complaint received, matter was examined by a Committee of Officers who detected that petitioner had played a fraud upon the respondent-authority by projecting that after the death of original allottee, Munshi Ram i.e. father of the petitioner, he was entitled to transfer of Plot No. 267 in his name as son of the original allottee. Respondent-authority on finding that a fraud had been played with it, cancelled the lease deed registered in favour of the petitioner on the basis of Court decree.

12. It is, however, an admitted fact that petitioner had not been associated with any enquiry conducted by the respondent-authority as lessee of the plot in question and his right of being heard has been violated by the respondent-authority. Contention of the learned counsel for the respondent-authority that lease can be cancelled in view of Clause 12(3) of the lease deed, as it was recited in the Clause that in view of finding that lease has been obtained on misrepresentation or suppression of facts or fraud, same can be cancelled, is a question of law to be decided after hearing the petitioner.

13. Admittedly, petitioner had not been associated with the enquiry, if any, conducted and was not heard before cancellation of allotment of plot leased out in his favour by a registered lease deed. It is also settled law that a registered lease deed cannot be cancelled, unilaterally by any of the parties, but its cancellation can be obtained by following due process of law.

14. For the foregoing reasons and observation made hereinabove, the present petition is allowed and the impugned order is set aside. Respondents are directed to consider the matter afresh and proceed further in accordance with law after

issuance of notice of being heard to the petitioner.

15. With the aforesaid direction, the present petition is disposed of.