

(2015) 11 DEL CK 0152
In the Delhi High Court
Case No : W.P.(C) No. 10796/2015

Makhni Kaur

APPELLANT

Vs

The Delhi Urban Shelter Improvement Board (DUSIB)

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2015) 11 DEL CK 0152

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Harshbir Singh Kohli and Tarun Arora, Advocates, for the Appellant; Parvinder Chauhan, Nishant Prateek and Abhilash Vashisht, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

C.M. No. 27731/2015 (for exemption)

1. Allowed, subject to just exceptions.

2. The CM stands disposed of.

W.P.(C) No. 10796/2015.

3. The petition impugns the order dated 18th August, 2007 of the Slum & JJ Department of the Municipal Corporation of Delhi (MCD) being the predecessor of the respondent Delhi Urban Shelter Improvement Board (DUSIB) of cancellation of allotment of plots in Sectors 23, 24, 25, 26 & 27 in Phase-IV of Rohini of the allottees who had not occupied the plots allotted to them within one month of allotment. The petitioner has not filed the copy of the impugned order stating that the same was not served on her and that she learnt of the same from the letter dated 19th September, 2007 of the Slum & JJ Department in response to a query dated 11th May, 2015 made by her under the Right to Information Act, 2005. The petition axiomatically seeks a mandamus to the respondent DUSIB to

allot to the petitioner a jhuggi at Nasirpur or to handover possession of the plot No. B-62, Sector 23, Rohini allotted to the petitioner.

4. The counsel for the petitioner and the counsel for the respondent DUSIB appearing on advance notice have been heard.

5. The petitioner was a resident of jhuggi No. J-212, Tilak Vihar, New Delhi and which jhuggi along with other jhuggies was demolished by the MCD and under the Relocation/Rehabilitation Policy, 12 sq. mtr. plots were allotted to the residents of the said jhuggies. The petitioner was vide letter dated 22nd January, 1998 intimated of the proposal to allot to her 12 sq. mtr. plot at Nasirpur and asked to deposit a sum of Rs. 7,000/- for the same and which the petitioner claims to have deposited on the same day. The petitioner was vide subsequent letter dated 8th May, 1998 allotted plot No. B-62, Sector 23, Rohini and asked to take possession thereof within seven working days. The petitioner however did not take the possession. It is the case of the petitioner that she did not take possession because the allotment, instead of being made at Nasirpur, was made at Rohini. However the petitioner made the first representation in that regard also only on 4th October, 2004. The petitioner admits having been informed on 20th July, 2009 that there was no policy of permitting any such change. The petitioner thereafter vide her letters dated 19th May, 2010, 10th February, 2012, 18th September, 2012 and 19th December, 2012 asked the respondent DUSIB for a plot at Rohini and ultimately claims to have made an RTI query on 28th December, 2012 and in response where to was informed that there is no relocation site at Nasirpur and there is no policy of change of plots. The petitioner again remained quiet till 11th May, 2015 when she again made a RTI query and in response where to was furnished copy of the document dated 19th September, 2007 informing of the impugned decision dated 18th August, 2007. Thereafter this petition has been filed and which has come up today for the first time.

6. What is obvious is that the petitioner by this petition, in the year 2015, is asserting a right which had accrued to the petitioner in January, 1998. Though the petitioner has pursued the matter but sporadically and not diligently or regularly. As aforesaid, upon being asked to take possession of the Rohini plot on 8th May, 1998 the petitioner neither took the plot nor represented there against and sent the first missive only after six years. Thereafter also, the petitioner has waited for more than eleven years to file this petition.

7. The counsel for the respondent DUSIB has rightly drawn attention to the order dated 1st September, 2015 in W.P.(C) No. 7889/2011 titled Dayachand Vs. Union of India in which it has inter alia been held as under:-

"10. Rehabilitation has a sense and element of urgency attached thereto; the whole purpose thereof being to immediately provide alternative accommodation to persons who are dispossessed from their houses, though unauthorizedly made over public land. If it is to be found that the person so dispossessed has not

acted with promptitude and has settled himself elsewhere with his own resources, then that person cannot belatedly attempt to capitalise from the allotment. A distinction has to be carved out between a rehabilitative allotment and an allotment made in pursuance to some housing scheme. The petitioner had not made any investment in any immovable property, for him to say that he is entitled to the benefit thereof at any time. Rather, it may be noticed that even if the petitioner had made such an investment, his right to enforcement thereof would have become barred by time after such long lapse of time.

11. I am therefore of the opinion that the petitioner, for the reason of the delay on his part, has lost the right, if any to be considered for rehabilitation and cannot now seek possession of the plot which was then offered to him, or to any other plot in lieu thereof. The land available for such rehabilitation also is in short supply and far below the number of homeless squatting over public land in the city and cannot be directed to be given to persons who do not appear to be in need thereof.

12. The petitioner is thus not entitled to the relief claimed."

8. The ratio aforesaid squarely applies to the present case also, facts whereof are rather worse than the facts of Dayachand.

9. The petitioner, in the present petition has given her address as of B-34B, Tilak Vihar, New Delhi. I have enquired from the counsel for the petitioner, whose property is the petitioner now in occupation of.

10. The counsel for the petitioner states that the said house is of the son of the petitioner through whom the petitioner has filed this petition and has added that the son of the petitioner has taken the same on a rent of Rs. 1,500/- per month.

11. It is quite obvious that the petitioner who is now stated to be 83 years of age is not in need of any rehabilitative measure at this age. The rehabilitation is sought in pursuance to the demolition action of nearly 18 years back. A person who was in unauthorised occupation of public land when dispossessed therefrom, though entitled under the Rehabilitation Scheme of the Government to relocation, cannot seek such relocation at his or her ipse dixit, whenever desires and cannot treat the same as an investment to be encashed whenever required or after appreciation.

12. It cannot be lost sight of that any direction today for allotment of any plot to the petitioner would be at the cost of other deserving persons who are in need of urgent rehabilitation on account of similar dispossession in current days.

13. There is thus no merit in the petition which is dismissed.

14. However, in accordance with the order in Dayachand, the sum of Rs. 7,000/- deposited by the petitioner be refunded to the petitioner together with simple interest @ 7% per month from the date of deposit till the date of refund, within a period of eight weeks from today, by forwarding/sending the cheque at the

address of the counsel for the petitioner.

No costs.