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

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*Reserved on : 08.08.2022*  
*Pronounced on: 22.08.2022*

+ **W.P.(C) 8206/2016**

**VED PRAKASH MANCHANDA** ..... Petitioner

Through: Mr. N. Tripathi and Divyanshu  
Priyam, Advocates

versus

**DELHI URBAN SHELTER IMPROVEMENT  
BOARD & ORS.** ..... Respondents

Through: Mr. Parvinder Chauhan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE GAURANG KANTH**

## **J U D G M E N T**

**GAURANG KANTH, J.**

1. The Petitioner filed the present Writ Petition, inter alia, seeking the following reliefs:

*“(i) to pass appropriate Writ, Order, Direction, in the nature of Mandamus, commanding upon the respondents to regularize the long and continuous occupation of the petitioner for the last more than 25, by executing a Lease Deed / any other requisite document of title, in favour of the petitioner in respect of the 'suit premises' i.e. C - 14, Shiv Shankar Market, Madangir, New Delhi.*

*(ii) to quash the order dt. 24.08.2016 as passed by the Hon'ble Lieutenant Governor of Delhi, being contrary to law.*

*(iii) To quash the order dt. 29.11.2011, which is contrary to the principles of promissory estoppel and issue*

*directions to the respondents, not to disturb the petitioner from use and enjoyment of the property bearing no. C -14, Shiv Shankar Market, Madangir, New Delhi in the Interest of Justice;*

*(iv) to pass such further order(s) / direction(s), as this Hon'ble Court may deem fit, proper and appropriate in the circumstances of this case."*

2. It is the case of the Petitioner that he has been in use and occupation of premises No. C-14, Shiv Shankar Market, Madangir, New Delhi (**"Property in dispute"**), ever since 1990-91. It is the case of the Petitioner that since then he was enjoying this site as a Tehbazari site. The Respondents used to collect License Fee / Damages / Penalty from the Petitioner from time to time. Electricity connection was sanctioned in favour of the Petitioner based on the 'No Objection Certificate' issued by the Respondents.
3. The Petitioner received a Regularization Notice dated 05.08.2002 by the then Slum & J. J. Department, whereby the Petitioner was called upon to pay the regularization charges @ Rs. 6,39,418/-, as per L.&D.O. rates of 01.04.1999, within a period of 30 days. The Petitioner deposited a sum of Rs. 6,39,418/- vide receipt no. 338976, dated 07.08.2002 towards the regularisation charges. However, despite the payment and completion of all other formalities, no Lease Deed was executed by the Respondents.
4. Aggrieved by the inaction of the Respondents, the Petitioner vide representation dated Nil approached the Secretary, Public Grievances Commission, Government of N.C.T. of Delhi seeking a direction to direct the Slum & J. J. Department of MCD to execute the sale deed in favour of the petitioner pertaining to Shop No. C-14, Shiv Shankar

Market, Delhi. The Respondents vide letter dated 27.12.2002 informed the Petitioner that it has been decided that the Department will charge Rs. 44,472/- per square meter from the petitioner as cost of land equal to average auction price including the damage charges for 10 years, the property in question will be sold to the Petitioner as per Rules and Regulations. Later, vide letter dated 16.11.2004, the competent authority asked the Petitioner for completion of formalities so that the Lease can be executed subject to payment of auction rates prevalent at present and after approval of the Hon'ble Lieutenant Governor, Delhi. The Petitioner completed all the formalities and deposited the amount as demanded by the Respondents, however, no Lease Deed was executed in his favour.

5. The Petitioner filed W.P.(C) No. 1102/2010 which was disposed of by this Hon'ble Court vide order dated 14.03.2011 with a direction to the Respondent/DUSIB to treat the writ petition as representation of the petitioner and to take a decision either to execute the sale deed or to pass a speaking order of rejection. Hence in compliance of the order of this Court, the Respondent/DUSIB passed a speaking order dated 29.11.2011 rejecting the claim of the Petitioner and held that the petitioner herein has trespassed Government land and is required to be evicted from the said Land. Subsequently, the premises of the Petitioner was sealed on 23.02.2016 pursuant to an order dated 01.02.2016 passed by the Respondent/DUSIB. The Petitioner preferred W. P. (C) No. 2007/2016 challenging the said action of the Respondents, however, the said Writ Petition was withdrawn with liberty to file appropriate legal proceedings. The Petitioner preferred

an appeal against the order dated 01.02.2016 passed by Director (Vig.), DUSIB before the Hon'ble Lieutenant Governor of Delhi. Later on vide order dated 24.08.2016, the said Appeal No. 38/2016 preferred by the petitioner was dismissed by the Hon'ble Lieutenant Governor, Delhi. By way of the present writ petition, the Petitioner has challenged the order dated 24.08.2016 passed by Hon'ble Lieutenant Governor of Delhi.

6. Respondent Nos. 1 & 2 has filed the Counter Affidavit in the present proceedings raising preliminary objection regarding the maintainability of the Writ Petition. It is the stand of Respondent Nos.1 & 2 that the Petitioner is an encroacher on the public land and the Petitioner has no right to retain the possession of the land in question. The property in occupation of the Petitioner was earmarked and earlier was being used as community lavatory/toilet. However, the same was encroached upon by the Petitioner whereupon a multi-storied building has been constructed by him.
7. Mr. N. Tripathy, learned counsel for the petitioner contended that the impugned order dated 24.08.2016 passed by Hon'ble Lieutenant Governor of Delhi is perverse and has been passed without taking into consideration the fact that the Respondent/DUSIB vide demand notice dated 05.08.2002 has asked the Petitioner to deposit an amount of Rs.6,39,418/- for regularization which has been duly deposited by the Petitioner. Learned counsel further contended that as per Principles of Promissory estoppel, the respondents are bound to execute the lease deed in respect of the suit property when the appellant had acted and complied with the directions issued vide letter dated 05.08.2002.

Learned counsel further relied on the Tehbazari licence issued in his favour contending that he is not a trespasser. Learned counsel further contended that the impugned order is violative of Article 14 of the Constitution of India, and discriminatory, as the persons similarly placed to the petitioner, have been granted a relief, akin to that as claimed by the petitioner herein.

8. Mr. Parvinder Chauhan, learned counsel for the respondent/DUSIB contended that the Petitioner is claiming his right over the property in question based on the demand notice dated 05.08.2002 raised by Slum & J. J. Department, Municipal Corporation of Delhi. The said demand notice was issued in pursuance of the Resolution No. 372 dated 15.10.2001 passed by the House of the Municipal Corporation of Delhi. However, the implementation of the said Resolution was kept in abeyance vide Circular dated 21.07.2002. Subsequently vide Resolution No. 396 dated 25.10.2004, the House of the Municipal Corporation of Delhi carried out an amendment in its earlier Resolution No. 372 dated 15.10.2001 to the following effect: -

*"Resolved further that the following clause dealing with the trespasser be also incorporated:-*

*A trespasser shall not be entitled to be considered for payment of damage charges or license fee in regard to Slum Properties/ Slum Rehabilitation tenements/ flats including the JJR Properties/ tenements, plots whether commercial, residential or institutional, stalls/kiosks, tharas existing not only in the walled city but also all over Delhi. This conditions shall be applicable in respect of the corporation Resolution No. 372 dated 15.10.2001 also such trespasser shall be evicted. However, he/she shall be liable to pay damage charges in respect of the Slum Properties, as aforesaid, for the period during which the land/premises*

*remained under his/her occupation. The recovery of Such damage charges shall be effected in accordance with law".*

9. From the amended Resolution No. 396 dated 25.10.2014, it is evident that the benefit of Resolution No. 372 dated 15.10.2001 cannot be extended to the trespassers of the Government Land as the same was withdrawn. Learned counsel for the Respondents further pointed out that Resolution No. 372 dated 15.10.2001 was kept in abeyance vide Circular dated 21.07.2002 that is prior to the issuance of the demand letter dated 05.08.2002. It is further the submission of the Respondents that the demand letter dated 05.08.2002 was issued based on a Resolution which was contrary to Section 200 of the Delhi Municipal Corporation Act, 1957 ("**DMC Act**"). As per Section 200 of the DMC Act, property of the Corporation could be disposed of only by the Commissioner that too with the sanction of the Standing Committee/Corporation, as the case may be and subject to a further condition that the same shall not be sold, leased or otherwise transferred at a consideration less than which it could have fetched in normal and fair competition. Further it is contended by the Respondents that as held by this Court in the case of *B.S. Khurana Vs. Municipal Corporation of Delhi* reported as (2000) 7 SCC 679, the property of the Corporation could not be sold/transferred even by the unanimous resolution of the house of the Corporation if the same is contrary to the provisions contained in the said Section 200 of the DMC Act.

10. This Court heard the arguments advanced by the learned counsel for the parties and examined the documents placed on record by the parties.
11. It is the specific case of the Respondent/DUSIB that the Petitioner is an encroacher of the Government Land. The land was earmarked and earlier was being used as community lavatory/toilet. However, the same was encroached upon by the Petitioner whereupon a multi-storied building has been constructed by him. No title documents are produced by the Petitioner to establish his right over the property in question. The Petitioner preferred the present Writ Petition based on his possessory rights as he is claiming to be in possession of the land in question from 1991-1992. Hence it is evident that the Petitioner is neither the owner nor tenant qua the land in question, rather he is an illegal and unauthorised occupant of the Government Land. Mere possession of a Tehbazari right does not entitle the occupant to usurp the Government land. Tehbazari right does not entitle the occupant to raise pucca construction. In the present case, record reveals that the Petitioner has encroached upon the public utility land and has raised pucca construction which cannot be permitted.
12. It is well settled principle of law that no order can be passed to protect the possessory rights of an illegal encroacher of the Government Land. The Hon'ble Apex Court in the case of *Jagpal Singh and others Vs. State of Punjab and others* reported as **2011 (11) SCC 396** has taken judicial notice of the fact that since independence, in large parts of the country, unscrupulous persons using muscle powers, money power and political influence have systematically encroached on public

utility land. The Hon'ble Supreme Court has also observed that this has been done with the active connivance with the State Authorities. The Hon'ble Apex Court deprecated the action of the State Authorities either in allotting the public utility land in favour of a person or in permitting an encroacher to occupy such public utility land. In another case, titled as *M.I. Builders (P) Ltd. Vs. Radhey Shyam Sahu* reported as *1999 (6) SCC 464*; the Hon'ble Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 Crores. Hence while exercising the discretionary Jurisdiction under Article 226 of the Constitution of India, no relief can be extended to the encroacher of Government land to protect his possessory rights.

13. The Petitioner's case is predicated on the premises that the Respondents, based on the Resolution No.372 dated 15.10.2001 of the Municipal Corporation of Delhi, raised a demand vide letter dated 05.08.2002 for the regularization of the property in question. Since the Petitioner deposited the said demanded amount and completed all formalities as required by the Respondents, the Petitioner is claiming that he has a right to claim regularization. In this regard, it is relevant to quote the dicta of the Hon'ble Supreme Court in its recent Judgement in the case of *Joginder & Anr. Vs. State of Haryana & Ors.* reported as *(2021) 3 SCC 300* which reads as follows:

*“8. It is required to be noted that the persons in illegal occupation of the Government Land/Panchayat Land cannot as a matter of right, claim regularization. Regularization of the illegal occupation of the Government land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the*

*Rules. If it is found that the conditions stipulated for regularization have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization. ....”*

14. In the present case, it is the case of the Respondent/DUSIB that the Resolution No.372 dated 15.10.2001 was amended vide another Resolution No.396 dated 25.10.2004 and as per the amended resolution, the trespassers are not entitled to be considered for the payment of damage charges or license fee qua the Slum Properties/ Slum Rehabilitation tenements/ flats including the JJR Properties/ tenements, plots whether commercial, residential or institutional, stalls/kiosks, tharas. It is also pertinent to note here that the Resolution No. 372 dated 15.10.2001 was kept in abeyance vide Circular dated 21.07.2002, even prior to the issuance of the demand letter dated 05.08.2002. Hence the Respondents ought not to have been issued the demand letter dated 05.08.2002. The Petitioner, who is a trespasser of the Government Land, is not entitled for the benefit of the said Resolution. Therefore, in view of the law laid down by the Hon'ble Supreme Court in ***Joginder & Anr. (supra)***, the Petitioner, who is an illegal encroacher of the Government Land, has no right to claim regularisation of his possessory rights.
15. The Petitioner filed the present Writ Petition invoking the principle of promissory estoppel against the Respondents to claim his right over the property in question. As held by the Hon'ble Supreme Court in ***UOI & Ors Vs Godfrey Philips India Ltd & Ors.***, reported as ***1986 AIR (SC) 806***, the relevant portion of which reads as follows:

*“...It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it.....”*

16. This Court finds that the letter dated 21.07.2002 and the amended Resolution No.396 dated 25.10.2004 are in the public interest and in accordance with law. Benefits of the Government Policies should be extended to the law-abiding citizens and not to the illegal trespassers. Hence as held by the Hon’ble Supreme Court in ***Godfrey Philips India Ltd. (supra)***, the principle of Promissory Estoppel cannot be extended to the Petitioner.
17. Learned counsel for the Petitioner alleges discrimination against him based on the Judgment dated 26.07.2007 passed by this Court in ***W. P. (C) No. 9192/2006 titled as Chandra Shekhar Vs. MCD & Ors.*** A perusal of the said Judgment shows that the said order was passed in the peculiar facts and circumstances of the said case. Hence the

Petitioner cannot take any benefit from the said Judgment and as such this argument of the Petitioner holds no ground.

18. In view of the discussion herein above, this Court finds no merits in the present Writ Petition. No interference in the impugned order dated 24.08.2016 passed by the Hon'ble Lieutenant Governor of Delhi is called for. Writ Petition is hereby dismissed. The Respondents are directed to refund the amount deposited by the Petitioner, if any, after deducting the damage charges for using the said property. The Respondents are further directed to take immediate steps to retrieve the possession of the property in dispute from the Petitioner being the Government land and further put the same to use for the benefit of public at large as per the permissible land use.

**AUGUST 22, 2022**

**GAURANG KANTH, J.**

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