

In the Court of Commissioner for Persons with Disabilities
25, D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-23216001, Telefax: 23216005
Email : comdis.delhi@nic.in

[Vested with power of Civil Court under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995]

Case No. 4(590)/2014-Wel./CD/ **211-12**

Dated: **22.12.14**

In the matter of :

Sh.Jageram
S/o Sh. Jee Ram
H.No.152, Hastal Village
Uttam Nagar New Delhi-59

..... **Petitioner**

Versus

Sh.C.R.Garg
Deputy Commissioner (Revenue)
Office of the Deputy Commissioner (Revenue)
West District
Old Middle School Building Rampura
Delhi-35

..... **Respondent**

ORDER

1. A representation was filed by Sh.Jageram a disabled person stating that he was allotted a residential plot under 20 Point Programme of Prime Minister in Village Hastal vide Khasra No.63/3, 60/23 Housing Complex Hastal Village Near M Block Mohan Garden measuring 80 sq. yards. The petitioner had secured the plot by erecting a wall and since he could not look after the plot being around 3 kilometres from the village the land mafia of the area in collusion with property dealers usurped the plot and sold it away on forged documents. They also got an illegal tower of Airtel Company erected in the plot in connivance with the corrupt officials of the Municipal Corporation of Delhi. The petitioner prayed that he should be helped in getting back his plot and action against the culprits who had the audacity of selling off his legally allotted plot should be initiated. The petitioner enclosed copies of the certificate and LR receipt as proof of allotment of the plot to him.
2. The Deputy Commissioner Revenue West District was requested to send his comments in the matter and since no comments were received from the Deputy Commissioner hearings were held in the case. It was reported by the Tehsildar Patel Nagar on 30.7.14 that the said

plot was allotted under the 20 Point programme by the Gram Panchayat. The land pertains to Village Hastal under Khasra No.63/3, 60/23 and the colony is known as Housing Complex Hastal village New Delhi. As per the report of the Patwari the Plot No.12 measuring 80 Sq. yards in Khasra No.63/3, 60/23 in the name of Sh.Jageram S/o Sh.Jee Ram R/o Village Hastal New Delhi was allotted on the Gram Sabha land and that the BDO West had been requested to take further necessary action as the matter pertains to the Gram Sabha. The Tchsildar Patel Nagar filed second report on 19.11.14 stating that **Quote** "as per the LR-37 receipt no.54 the plot was shown in the name of Sh.Jage Ram S/o Sh.Jee Ram. It is further added that this list has not been found approved by the Competent Authority. Further no document of approval of Competent Authority in respect of the LR-37 issued by the then Pradhan is available. It seems the approval of Competent Authority was not obtained. From the record available it appears that the possession of Plot No.1 to 50 was not handed over as the physical possession of the vested land was not with the BDO (West). Also as per the survey list of 2005-2006 there is no information of possession of plot no.1 to 50. Both the parties i.e Sh.Jage Ram and Sh.Jitender Singh were issued letter dated 23.8.2014 and subsequent reminders dated 10.9.2014, 24.9.2014 and 15.10.2014 to submit the documents of the complete chain of ownership. Sh.Jage Ram furnished the ownership documents on 17.9.2014 in this office in which it is mentioned that he was allotted a plot of 80 Sq. Yards vide letter dated 4.2.1987. However Sh.Jitender Singh R/o M-27, Mohan Garden Uttam Nagar New Delhi neither submitted any documents nor appeared in this office. As per Patwari report the property in question is locked for last many years", **Unquote**.

3. The BDO West in his report stated that **Quote** "said land bearing khasra No.63/3 and 60/23 is not a original Gram Sabha land but is actually vested Gram Sabha land under Section 81 of DLR Act on 1.8.84 in case no.60/84/SDM. The physical possession of the land has not been handed over to the Gram Sabha. As per the site report of the EA (Agri)/Panchayat Secretary the site was visited alongwith Sh.Kala Pradhan Member of Local Association and Sh.Golu S/o Sh.Shyam Sunder was found available at Plot No.13 and he refused to cooperate/provide any information. There is an old house comprising ground, 1st and 2nd floor and no airtel tower was found installed at Plot No.12. The local enquiry revealed that the said person has been residing at Plot No.12 for the last about 25 years. There is no authentic record containing the approval of the Competent Authority for allotment of Plot No.12 in the said Khasra Number to Sh.Jage Ram S/o Sh.Jee Ram.

No report has been received from SHO, P.S Uttam Nagar in response to the order dated 10.6.14 of SDM Patel Nagar” **Unquote.**

4. The petitioner filed the rejoinder on the reports filed by Tehsildar and BDO of West District stating that **Quote** “the para no.2 of the said report in which it is mentioned that as per Patwari report the Plot No.12 area measuring 80 Sq. Yards pertaining to Khasra No.63/3, 60/23 in the name of Sh.Jageram S/o Sh.Jee Ram R/o Village Hastal New Delhi was allotted on the Gram Sabha land which shows that I have been allotted the said plot after completing all the formalities by the then competent authorities. That in the last three paras of the said report it is mentioned that both the parties i.e Sh.Jageram and Sh.Jitender Singh were issued letter dated 23.8.2014 and subsequent reminders dated 10.9.2014, 24.09.2014 and 15.10.2014 to submit the documents of the complete chain of ownership. Sh.Jageram furnished the ownership documents on 17.9.2014 in this office in which it is mentioned that he was allotted a plot of 80 Sq. Yards vide letter dated 4.2.1987. However Sh.Jitender Singh R/o M-27 Mohan Garden Uttam Nagar New Delhi neither submitted any documents nor appeared in this office. As per Patwari report the property in question is locked for last many years. I want to say that I have been called by the SDM (Patel Nagar) vide his notice dated 10.9.2014 and accordingly I have submitted the complete chain of ownership of my allotted Plot on 17.9.2014. After that I have been called by the SDM (Patel Nagar) on dated 25.9.2014, 9.10.2014, 15.10.2014 and 27.10.2014 to attend the hearing which I have attended regularly but I have not been told any irregularity in my said ownership documents. That I am submitting the document dated 14.6.1996 signed by the then BDO in which he has mentioned the name of the competent officials who had allotted the said plots namely Gram Pradhan – Sh.Ramanand Tyagi, Dy.Director (Panchayat) – Sh.J.K.Dadu, BDO – Sh.P.Rammya, Inspector Panchayat – Sh.C.L.Gour, Panchayat Secretary- Sh.Mahipal Singh, Patwari- Sh.Ashok. In the above report it is very much clear that the possession of the said plots 1 to 50 had been given to the allottees. That the SDM (Patel Nagar), BDO West and Tehsildar (Patel Nagar) have not denied specifically that I have been allotted the said plot no.12. That the SDM (Patel Nagar) has taken action on my complaint dated 3.2.2014 and ordered on 10.6.2014 the SHO PS Uttam Nagar to investigate and submit the status report by 20.6.2014 and made the case u/s 133 of Cr.P.C and any other relevant act against Sh.Jitender Singh etc respondents. But SHO PS Uttam Nagar has not submitted any report till date which is very clear that the concerned Police Station Uttam Nagar New Delhi- 110059 is involved with the land grabbers. Hon’ble Sir it is requested to kindly instruct the

SDM (Patel Nagar), BDO West Nangloi, DCP (West) Rajouri Garden/SHO PS Uttam Nagar New Delhi-110059 to vacate my above Plot No.12 as per Delhi Government MID Map and known as M-27, Mohan Garden Uttam Nagar New Delhi-110059 according to land grabbers map and take strict action against the person who has grabbed my said plot in collusion with the land grabber on the basis of forged documents.” **Unquote**

5. The facts of the case are that the petitioner Sh.Jageram S/o Jee Ram was allotted a residential plot under 20 Point Programme of the Government and to substantiate his claim he filed copies of the certificate dated 4.2.87, LR-37 dated 4.2.1987, Minor Irrigation Department Delhi Administration map, list of house site allotted at Village Hastal for the year 1986-87, Khasra Girdawari of 2008-2009, copy of LR Form 38 (Resolution no.2 of Pradhan Hastal Village). The Block Development Officer (BDO) West is on record to state that the residential plots under 20 Point Programme were allotted to the backward, poor, landless people in village Hastal. The possession however of plots no. 1 to 50 could not be handed over to most of the allottees who are now seeking possession of the allotted plots and since physical possession of these plots had not been handed over to the BDO (as per the reports of Khatoni and Patwari alongwith Kanungo report dated 24.5.99) after the order issued under section 81 of Delhi Land Reform Acts vesting the land in Gram Sabha the allottees could not be given possession of the plots. The BDO requested that necessary action for removal of encroachment should be taken on priority and thereafter the physical possession of land may be given to the BDO West enabling him to take further action. There is another report available on file which indicates that as per available records a total of 225 plots were allotted to landless/harijans vide Resolution number 1 dated 5.1.1983. The ex- Pradhan had submitted another proposal for allotment of plots to 287 landless persons after seeking approval of the Competent Authority however the Director Panchayat approved allotment only to 210 persons. The allotment of residential plots was made from Khasra No.64/18 (4-01), 64/24/1 (1-0), 64/19(8-14) and 64/23 (4-1). The said report further states that the Tehsildar Patel Nagar has calrified that the land comprising Khasra No.63/3, 60/23 belongs to Sh.Diwan S/o Sh.Kude. Sh.Diwan had converted his agricultural land and sold it by carving out residential plots in 1984-85 through General Power of Attorney but the then SDM had vested Khasra No.63/3 and 60/23 in the Gram Sabha vide case no.60/84 dated 1.8.84. The BDO West requested the Sub Divisional Magistrate Patel Nagar to remove encroachment and handover physical possession of land comprising in Khasra No.63/3 and 60/23 on priority. The SDM Patel Nagar vide his order no.SDM/PN/2014/5342-43 dated 10.6.14 directed the SHO Police

Station Uttam Nagar to verify the facts of the complaint filed by Sh.Jageram regarding unauthorised construction and installation of tower at Khasra No.63/3, 60/23, Housing Complex, Hastal Village Uttam Nagar Delhi and submit the status report and also investigate whether any case was made out u/s 133 of Cr.PC or any other relevant Act by 20.6.14 at 2 P.M. There is yet another letter available on record written by the BDO to SHO Nangloi on 5.7.12 enclosing an order of the CIC in appeal no. CIC/AD/A/2012/000976. As per the order of the Chief Information Commissioner (CIC) the BDO was directed to lodge an FIR with the police regarding the missing file dealing with allotment of plots under the 20 Point Programme. The file pertaining to grant of Perpetual Lease Rights under 20 Point Programme was received by him (BDO) from Deputy Commissioner (West) but the file does not contain the notes pertaining to point no.1 and 2 relating to the applicants RTI dated 17.11.11 and that he was not aware whether any such file pertaining to Resolution and allotment of plots was ever prepared by his office. The BDO requested the SHO to lodge FIR and provide copy of the same so that CIC could be informed accordingly. A perusal of the letter from the President Hastal Bhumiheen Sangharsh Samiti addressed to Director Panchayat dated 30.8.12 indicates that the fact that this plot was allotted under the 20 Point Programme is proved by the demarcation of Khasra No.63/3 and 60/23 which was got done by the BDO West on 6.3.2009. This also further proves the availability of the related files/documents in the office of the BDO West otherwise the BDO would not have informed the SHO Nangloi that encroachments from the residential plots allotted under 20 Point Programme had not been removed.

6. It may be necessary to know the provisions of law etc under which the residential plots were allotted to the landless persons under the 20 Point Programme. There was no statutory provision for allotment of plots prior to 1976. The Delhi Panchayati Raj Rules were amended in 1976 for making allotment of residential and agricultural plots to landless persons. The ADM (Development) of the office of the then Deputy Commissioner Delhi issued guidelines on 18.8.1982 which interalia provided as follows : **Quote** "i. Applicant(s) should not be in possession of any land or house-site either in his own name or in the name of any of his family members dependent upon him or/should be in possession of inadequate housing as determined by the Deputy Director (Panchayat). Priority in allotment of house-sites should in any case be given to those not in possession of land or house site. ii. Monthly income of the applicant should not exceed Rs.750/- per month. (later raised to Rs.1500/- p.m.) iii. The area of the plot allotted should not exceed

80 square yards in case of house-sites. iv. Applicant should be resident of the concerned village for a period of 4/5 years. v. These guidelines will apply to the distribution of agricultural land and land meant for house-sites and have the approval of the Lt. Governor, Delhi” **Unquote.** Further instructions relating to the procedure were also issued. As per the instructions the Deputy director (Panchayat) was required to open a separate file for each allotment with the following details/documents : **Quote** “i. The resolution(s) in original of the Gaon Panchayat and Gaon Sabha passed in this regard. ii. The list of proposed allottees. iii. Income certificate obtained for each allottee from the revenue agency as also affidavit of each allottee regarding his income. iv. A certificate from the Enquiring Officer i.e Panchayat Secretary that the allottee is a resident of the village supported by ration card details and that he satisfies the other criteria of the allotment policy. v. A certificate from the Patwari that the allottee does not own any other agricultural land or residential plot as the case may be in the village in his name or in the name of any member of his family dependent upon him. vi. A copy of the allotment order passed by the Deputy Director (Panchayat) under Rule 178(2) of the Delhi Panchayat Raj (Amendment) Rules, 1976 in the case of house sites must have been kept on record. vii. One copy of the above documents to be sent to the ADC (P) invariably. The file in which the Deputy Director (Panchayat) processed the case was to be kept in the personal custody of the BDO concerned.” **Unquote.** The Divisional Commissioner in his report submitted to the Seven Member Committee set up by the Hon’ble Speaker of Delhi Legislative Assembly on 18.7.2002 stated that the laid down instructions were not followed and most of the records are reportedly not available **Quote** : “Panchayat Rules which provided for perpetual lease, in many villages allotments had been made for a period of five or nine years. As this time period has now lapsed the allotments are to be regularized i.e the lease is to be converted into a perpetual lease. The Divisional Commissioner in his report has recommended that claim of only those allottees who can support their claim with the following documents, should be considered for regularization of allotment : (i) Proper self-identification LR-37, (ii) Entry in girdawari, khatauni even for a period of one year. (iii) Copy of the patta/allotment order and that out of the 12725 allottees of residential plots that were surveyed only in 3352 cases mutation had been recorded. Therefore, if entries in revenue records were insisted upon very few cases would be eligible for regularization”. **Unquote.** The Seven Member Committee has observed as follows : **Quote** “Official apathy and non-availability or non-maintenance of records cannot be an excuse to deprive the allottees of their rights. The Revenue Department should make all out efforts to trace

the genuine allottees even in villages which have not been surveyed yet and regularize their allotments. The enquiry by the Deputy Commissioners was limited to the allotment of residential plots and they had done a commendable job in covering 89 out of 112 villages. But the task remains unfinished. Besides undertaking the survey of the left out villages the Department should also now cover the allotments of agricultural land under the 20 Point Programme on a war footing. The recent decision of the Government to place the work of the Development and Panchayat Department under the Divisional Commissioner is a welcome move and should help in better coordination among the Officers. The Committee is of the view that allotment of all original allottees of agricultural plots who are in physical possession be regularized by summary mutation and necessary entries in the revenue records be made immediately. In the case of allottees of residential plots the Committee is of the view that those allottees who are in physical possession and have supported their claim with the original allotment order/patta/LR-37 during the One Man Enquiry Committee survey should be regularised after making necessary entries in the revenue records. The Committee was informed that the Government and DDA were acquiring land/plots allotted under the Programme and the compensation in lieu of the acquired land was being paid to the Gaon Sabha of the allottees. Surprisingly, this was happening in spite of the directions of the then Lt. Governor of Delhi, Sh. Jagmohan. Shri Jagmohan in his note dated 22.1.83 addressed to the Vice Chairman DDA had directed the VC (DDA) to ensure that land allotted under 20 Point Programme or any other scheme of the Delhi Administration or Central Government was not to be taken over by the DDA. In cases where such land had been acquired, DDA was to return it to the Development Department for proper allotment to the eligible harijans/allottees. The Committee is of the view that these directions should be strictly adhered to. In circumstances where acquisition has already been done or where acquisition is unavoidable, the Government should ensure that the agency responsible provides alternative agricultural land/residential plots or makes adequate monetary compensation in lieu of the acquired land." **Unquote.** It is a well known fact that the landless persons were allotted residential plots under 20 Point Programme and as per the procedure the Village Pradhan was delegated powers to allot the plots. The Panchayats in Delhi were abolished in the year 1989 and the instructions of the Development Commissioner/Divisional Commissioner etc were issued thereafter and therefore the plea that the Village Pradhan had no authority to allot the residential plots does not gather ground.

7. After careful consideration of the facts and circumstances of the case it emerges that the petitioner was allotted a residential plot under the 20 Point Programme as per the reports filed by the Tehsildar Patel Nagar and the BDO West. The BDO West wrote to SDM Patel Nagar requesting him to handover physical possession of the plots to enable him to take further necessary action i.e for handing over physical possession of the plots to the allottees. The concerned police officers have also not responded so far to the letter written to the SHO by the BDO /Dy. Commissioner West. The issue relating to missing files containing the relevant notings remains unresolved even after the CIC had passed specific orders for lodging FIR etc. The BDO/Tehsildar/Deputy Commissioner confirm the allotment of the residential plot to the petitioner. There is proof enough of the procedure of allotment having been followed however as is clear from the perusal of the order passed by the Chief Information Commissioner the concerned files have gone missing at the instance/behest of some vested interests and therefore the plea that the approval of the Competent Authority was not taken does not sustain. The attitude of the authorities in turning a Nelson's eye from the real issue is totally iniquitous. The Hon'ble High Court of Delhi in WP (C) No. 8337/2005 in the case of All India Institute of Medical Science V/s The Chief Commissioner for Persons with Disabilities has held that **Quote** "Para 12. It is a well settled rule of interpretation that while construing welfare legislations, a beneficial rule of construction should be adopted. (State of Tamil Nadu v. Sabanayagam, (1973) 1 SCC 813; Workmen v. Firestone Tyre & Rubber Co. Ltd, (1973) 1 SCC 813) The construction so placed must effectuate their objectives and also effectuate the rights conferred by the legislation to the disadvantaged. If that is so, rights of the disabled can be safeguarded only if the powers of the authorities created under the Disabilities Act are to be given their widest possible construction. Sections 58(c) and 59 (a) give ample power to the Chief Commissioner to take necessary action, in order to safeguard the rights and facilities made available to the disabled and to look into complaints regarding deprivation of their rights. The position of law in this regard has been summarized in Dilbagh Singh v. Delhi Transport Corporation 2006 (1) LLJ 480 thus: "22..By virtue of Sections 59, that authority has fairly wide powers to make, inter alia, suo motu enquiry into instances of violations of provisions of the Act; including deprivation of rights of persons with disabilities. He also has the power to look into complaints, under Section 62. Rule 42 of the Rules framed in 1996 under the Act prescribes the procedure to be followed while investigating into complaints; the Chief Commissioner can "decide" the matter ex-parte, and decide, on merits, after hearing the parties (sub-rule 8). Powers of a civil court, in


regard to matters specifically listed, inhere with the Chief Commissioner (Section 63(1)); proceedings before him are deemed to be judicial proceedings under Sections 193 and 228 of the Indian Penal Code (Section 63(2)). It can therefore, safely be concluded that the powers and duties of the authority are akin to a quasi judicial tribunal, charged with deciding issues entrusted to it. 23. The Act does not, expressly provide that the orders/decisions of the authority bind the establishment/ government body concerned. However, the statutory provisions noted above give sufficient indication that its functions are not purely recommendatory; it decides the issue of entitlements of individuals. In such a situation, it must necessarily be inferred, in the absence of any provision to the contrary, that full and effectual adjudicatory powers were granted by the statute. To this end, the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) can be invoked. Para 15. The Disabilities Act is a *lex specialis*; and therefore, in cases where the rights of the persons with disabilities are involved, it will take precedence over the provisions of the PP Act. Section 43 of the Disabilities Act, enjoins upon all public authorities the obligation to create opportunities for the full participation of the persons with disabilities, by evolving policies through which they can be ensured a decent standard of livelihood, including, though not limited to granting allotment of public spaces and office or commercial premises. Viewed from this perspective, the action of AIIMS, notwithstanding the order of the Chief Commissioner, is indefensible. Having not disputed possession of the claimant petitioner for the past 25 years, and having being involved in the inauguration of the PCO booth, it would be highly iniquitous for the AIIMS to now contend that the claimant does not have documentary evidence to support his possession. Significantly, the claimant Petitioner does not claim any right, title or interest in the property but only demands that the status quo be maintained. To deny him of this opportunity to earn a decent livelihood would not only be iniquitous, but would run contrary to the spirit of the Disabilities Act and to many of the provisions enshrined in Part III and IV of the Constitution of India. Undoubtedly the authorities of AIIMS are clothed with power to evict unauthorized occupants under the PP Act. Yet, like all forms of power, these powers too are to be used taking into account relevant considerations, and towards securing public interest. Evicting a person with disability who had been in undisputed occupation of premises to earn his livelihood, can hardly benefit the public weal. It may even run counter to the enactment by which AIIMS itself was brought into existence and owes its character as an institution of national importance " Unquote. Further the Hon'ble

Supreme Court of India in the case of Justice Sunanda Bhandare Foundation Vs UOI Writ petition (Civil) No.116 of 1998 has also observed as follows **Quote** "Be that as it may the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A Welfare State, that India is must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity" **Unquote**. There is a need therefore to look into this case in the light of the narration in the preceding paras and hand over physical possession of the residential plot comprised in Khasra No.63/3, 60/23 to Sh.Jageram S/o Sh.Jee Ram R/o H.No.152, Hastal Village, Uttam Nagar New Delhi-110059 to meet the ends of justice.

8. Ordered accordingly.



Given under my hand and the seal of the Court this 22nd day of December, 2014.


(K.S. Mehra)
22/12/14

Commissioner

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02