

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

+ W.P.(C) 7838/2006

RAKESH CHANDRA DUGGAL ..... Petitioner  
Through Mr. K.P. Gupta, Advocate.

versus

M.C.D. & ANR. .... Respondents  
Through Ms. Amita Gupta, Advocate for MCD.  
Mr. Sandeep Aggarwal, Advocate for DJB.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

% **ORDER**  
**05.05.2008**

1. The petitioner was an employee of Water and Sewerage Department of the Municipal Corporation of Delhi. He joined the said department of Municipal Corporation of Delhi on 21<sup>st</sup> October, 1981 and continued to work there till 1998. In 1998, Delhi Jal Board was formed and the petitioner was transferred to the said Board with the MCD no longer looking after water and sewerage in Delhi.

2. On 1<sup>st</sup> December, 2000, the petitioner was allotted flat No. G-63, Type-II at Dhakka Colony, Delhi vide Office Order No. 164. The possession of the flat was handed over to the petitioner on 2<sup>nd</sup> December, 2000 by JE(Works) Ward No. 116, Municipal Corporation of Delhi.

Possession letter/slip issued by JE(Works), MCD has been filed on record.

3. It is apparent that there was some dispute between the Delhi Jal Board and Municipal Corporation of Delhi on the question of allotment and occupation of flats by their employees. It is the case of the petitioner that there were 73 properties in Delhi which were under exchange and mutual adjustment between Delhi Jal Board and the Municipal Corporation of Delhi. The problem had arisen because several employees of the Delhi Jal Board were earlier employees of the Municipal Corporation of Delhi. It appears that on 17 April 2002, the petitioner and two others were sought to be evicted from the flats in their occupation at Dhakka Colony. The occupants gave an undertaking on 17<sup>th</sup> April, 2002, that they should be given ten days' time on humanitarian grounds and undertook that within the said period, the Delhi Jal Board would provide alternative flats to Municipal Corporation of Delhi in lieu of the said flats, failing which they would have no objection in handing over vacant and physical possession of the said flats to Municipal Corporation of Delhi. On 23<sup>rd</sup> April 2002, the Assistant Commissioner (L&E) under the Delhi Jal Board wrote to Additional Commissioner (Land & Estate Department) of Municipal Corporation of Delhi, confirming that as flat no. G-63 had been allotted to the petitioner a suitable flat in exchange would be allotted to the Municipal Corporation of

Delhi. Thereafter on 17<sup>th</sup> May, 2002, Delhi Jal Board wrote a letter to Municipal Corporation of Delhi agreeing to mutual exchange of flats at Pahari Dheeraj Water Tank, Ahata Kedara in lieu of the flats that had been allotted to Delhi Jal Board employees, including the petitioner.

4. After 17<sup>th</sup> May, 2002, MCD and Delhi Jal Board became quiet and no further action was taken. After a gap of about three years, on 3<sup>rd</sup> May, 2006 staff members of MCD came to the flat in question and forcibly evicted the petitioner. It is an admitted case of the respondent- Municipal Corporation of Delhi that no eviction decree or an order under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been passed. It is the case of the petitioner that he was thrown on the road with all his belongings resulting in inconvenience and harassment to the petitioner, his wife, children and aged mother. It is stated that the petitioner's mother was put through with such humiliation and ill treatment and she suffered a stroke and was admitted in a hospital.

5. Respondent-MCD in their counter affidavit have admitted that the petitioner was originally an employee of MCD but ceased to be their employee after enactment of Delhi Water Board Act, 1998. It is further stated that employees transferred to the Water Board were not eligible for regularization of municipal accommodation. Reference in this regard is to

be made to the circular issued by Commissioner, MCD dated 24<sup>th</sup> September, 2001. I may note here that the respondent No. 1-MCD had themselves agreed to the allotment of the flat to the petitioner with the JE(Works) Ward No. 116 handing over possession of the same on 2<sup>nd</sup> December, 2000, which is after the enactment of Water Board Act, 1998.

6. Another allegation made in the counter affidavit is that the original allotment of the flat in question was made to Mr. Brahm Dutt Duggal, father of the petitioner, who had retired on 28<sup>th</sup> February, 1990. Delhi Jal Board, however, in their counter affidavit has clarified that the petitioner was given benefit of policy of father and son relationship and accordingly the allotment of flat in favour of the petitioner was approved. It is also stated that the MCD was informed about this fact on 23<sup>rd</sup> April, 2002. The said respondent had requested MCD for inter pool exchange arrangement in respect of the said flat. The said letter dated 17<sup>th</sup> May, 2002 was written after the petitioner had already given an undertaking dated 17<sup>th</sup> April, 2002 to the MCD. In the said undertaking, the petitioner had agreed that within ten days alternative flat would be provided to MCD by Delhi Jal Board or he shall vacate the premises. Offer of alternative flat was made to MCD by Delhi Jal Board on 17<sup>th</sup> May, 2002.

7. It is apparent that the MCD has acted illegally and taken law in their

own hands by forcibly dispossessing the petitioner from the flat in question on 26<sup>th</sup> February, 2006. Procedure prescribed by law was not followed. MCD has not referred to any correspondence between 17<sup>th</sup> May, 2002 till 3<sup>rd</sup> May, 2006. It is an admitted case that no eviction decree has been passed and no proceedings were initiated under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Learned counsel for the petitioner states that eviction was done pursuant to the order of Hon'ble the Supreme Court in SLP (Civil) No. 17454/2000 and orders passed thereafter. I have examined the orders passed by Hon'ble the Supreme Court. The said orders were passed in an appeal against the judgment of Delhi High Court against allotment of quarters in Azadpur, Dhakka Colony and Nimiri Colony contrary to the provisions of Section 200 of the Delhi Municipal Corporation Act, 1957 to employees of MCD as owners. The Supreme Court upheld the judgment of the Delhi High Court holding that the allotment of flats on sale basis could not have been made to the employees of MCD contrary to Section 200 of Delhi Municipal Corporation Act, 1957. The said judgment and the orders passed therein are not applicable to the facts of the present case. The petitioner was not a party to the said case and the case of the petitioner is not covered by the said judgment. The respondent-MCD has not stated in their counter affidavit that the petitioner had made any claim

for allotment of the said flat on ownership basis. In any case, it is the case of the Delhi Jal Board that allotment of the flat in question was regularized as a licensee as he was an employee of Delhi Jal Board. The petitioner has also placed possession slip dated 2<sup>nd</sup> December, 2000 written by JE(Works) Ward No. 116, MCD.

8. The question which now arises for consideration is, what relief can be granted to the petitioner. Delhi Jal Board in their counter affidavit has stated that the petitioner has been offered accommodation of Type-III and IV quarters as per his entitlement and letter dated 23<sup>rd</sup> March, 2007 has been written to the petitioner. It is further stated that the petitioner has not responded to the said letter. Learned counsel for the petitioner states that the petitioner is no longer interested in allotment of government accommodation as he has made his private arrangement.

9. In view of the above, no further relief is required to be granted as far as allotment of flat to the petitioner is concerned. However, the Court records its displeasure on the conduct of the Municipal Corporation of Delhi in forcibly dispossessing the petitioner on 3<sup>rd</sup> May, 2006 by taking law in their own hands. It is hoped that the respondent-MCD shall not conduct itself in the same manner again. The writ petition is accordingly disposed of with a direction that the concerned officers shall be careful and follow law

before dispossessing any person from official accommodation specially when there is a dispute between them and any other statutory authority.

10. With the above observations, the writ petition is disposed of. The petitioner is also held entitled to costs of Rs.5,000/-. The aforesaid costs will be paid by the respondent-MCD within four weeks by sending a cheque to the petitioner at his residential address which shall be furnished to MCD.

**SANJIV KHANNA, J.**

**MAY 05, 2008**  
**VKR**