

**BEFORE APPELLATE AUTHORITY TO HEAR THE APPEALS/
REDRESS THE GRIEVANCES RELATED TO DETERMINATION/
RELOCATION OF JJ DWELLERS OF KATHPUTLI COLONY**

Appeal No: 278 of 2023

Date of Institution: 20.08.2024


Date of Order: 27.08.2024


Present: Appellant/ Claimant Mohd. Nizam S/o Atabul

Sh. Radhe Shyam Meena, Dy. Director, for DDA

ORDER

1. This order disposes off the present appeal filed by the Appellant/Claimant against order dated 10.11.2021 passed by the Eligibility Determination Committee.
2. The Appellant/Claimant, Mohd. Nizam S/o Atabul, had sought alternative allotment from DDA against Jhuggi bearing No. E-30/H-23, DDA No. 1748, Kathputli Colony but his claim was rejected by the Eligibility Determination Committee (hereinafter called EDC) and the Rejection Order dated bearing No. F/KPC(1748)13/Survey/LM/WZ/3824 dated 10.11.2021 (Annexure-Y) was duly communicated to him by the Nodal Officer, Kathputli Colony. The Appellant/Claimant had challenged the same before this Appellate Authority by filing an appeal dated 17.11.2021 (Annexure-W).
3. It is pertinent to point out that the Appeals filed by the dwellers aggrieved by the Rejection Order passed by Eligibility Determination Committee are not directly entertained by the Appellate Authority. However, a mechanism has been devised to entertain the same as per the Cutoff Date/Time Deadline fixed by the Administrative Department of DDA either directly by the Administrative Department of DDA at its own level or by getting the Appeals filed at Counter No. 4, Reception Center, D-Block, Vikas Sadan. After receiving the Appeals, the same are segregated and the survey records available on the DDA files are also attached with each Appeal. Thereafter, the Appeals are sent to the Appellate Authority for disposal.
4. The Appellant/Claimant had challenged the Rejection Order dated 10.11.2021 (Annexure-Y) before this Appellate Authority by filing an appeal dated 17.11.2021 (Annexure-W) but inadvertently his appeal was not placed before us by the Administrative Department for


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the reasons best known to them. This led to filing of W.P. (C) 9676/2024 and CM APPL. 39751/2024 (Stay) titled "Mohd Nizam vs Delhi Development Authority" by Appellant/Claimant before the Hon'ble High Court of Delhi and the same was disposed off vide order dated 18.07.2024 (Annexure-X) thereby directing that the representation filed by the Appellant/Claimant, if any, shall be disposed off by the concerned authority in a time bound manner within four weeks from the date of passing of the impugned Order. The operative Paras 4 to 6 of order dated 18.07.2024 passed by the Hon'ble High Court are reproduced as under: -


"4. Having heard learned counsels for the parties, let the present writ petition be treated as a fresh representation on behalf of the petitioner, which be considered alongwith the pending appeal before the Competent Authority, if any, filed by the petitioner.


5. The representation is directed to be disposed of in a time bound manner by the concerned authority within four weeks from today.

6. The writ petition is disposed of accordingly."

5. In compliance of the directions given by the Hon'ble High Court the appeal dated 17.11.2021 (Annexure-W) filed by the Appellant/Claimant was placed before us for the first time on 20.08.2024 by the Administrative Department vide Letter No. F02/AA/ISR/PMAY/DDA/224 dated 20.08.2024. It was ordered to be checked & registered 20.08.2024 and it was also directed that day to day hearing shall be conducted as the present appeal has to be decided in a time bound manner as per directions given by the Hon'ble High Court. Since the time period of four weeks granted vide order dated 18.07.2024 passed in in W.P.(C) 9676/2024 and CM APPL. 39751/2024 (Stay) titled "Mohd Nizam vs DDA" has expired on 19.08.2024 (17th & 18th August being holidays), whereas the present appeal was put up before us for the first time on 20.08.2024, therefore, the Administrative Department was also directed to simultaneously file appropriate application without delay in the Hon'ble High Court of Delhi thereby seeking extension of time granted in W.P.(C) 9676/2024 and CM APPL. 39751/2024 (Stay) titled "Mohd Nizam vs DDA".

6. It is pointed out that DDA has constituted this Appellate Authority for redressal of the grievances related to the determination of eligibility for allotment of alternative dwelling


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unit for rehabilitation and relocation of JJ dwellers. As per the Standard Operating Protocol for Appellate Authority, any JJ Dweller, whose eligibility has been determined by the Eligibility Determination Committee (EDC) under the provisions of the Part-B of the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 adopted by DDA, feeling aggrieved by any order passed by such EDC, is entitled to file an Appeal before the Appellate Authority within a period of thirty days from the date of communication of the impugned order. Furthermore, the Appellate Authority may, for the good and sufficient reasons, is empowered to entertain an Appeal filed beyond the period of limitation of thirty days. Further Standard Operating Protocol for Appellate Authority also prescribes that the appeal has to be decided within 30 days, thereby, specifically providing that the appeal shall be disposed off in not more than two hearings.


7. On 20.08.2024 the Notice for Appearance was issued for 21.08.2024 for procuring the presence of the Appellant/Claimant thereby directing that it be got served by deputing official/special messenger and the copy of the same be also pasted on the Notice Board in Kathputli Colony as well as on the main gate of the Transit Accommodation allotted to the Appellant/Claimant in Transit Camp, Anand Parbat in which he is living at present and in addition to that attempt be also made through the Call Centre of DDA to intimate the Appellant/Claimant by calling him on his mobile number. However, none had appeared on behalf of the Appellant/Claimant on 21.08.2024 and accordingly fresh notice was issued for 22.08.2024. In response thereto the presence of the Appellant/Claimant was procured on 22.08.2024 and we had proceeded to conduct further proceedings to dispose off the appeal thereby giving opportunity to both the parties to tender documents in favour of their respective claim/stand. Now vide the present order dated 27.08.2024 we hereby proceed to disposes off on merit the present appeal filed by the Appellant/Claimant against order dated 10.11.2021.
8. In brief, the present Appellant/ Claimant has made a Representation to the Competent Authority, thereby, alleging that he is living in Jhuggi bearing No. E-30/H-23, DDA No. 1748 in Kathputli Colony. A Notice by DDA was pasted in the Kathputli Colony to inform the Jhuggi dwellers about the survey to be conducted in the said basti. The Appellant/ Claimant submitted representation to the competent authority along with requisite documents, thereby, alleging that he fulfills the eligibility criteria. He was found provisionally eligible and accordingly Relocation-cum-Allotment Slip, which is commonly called as "DS" No.



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00854 dated 22.12.2016 was issued in favour of Appellant/Claimant subject to final approval by Eligibility Determination Committee (hereinafter called EDC) on merit after scrutiny of the required documents and his fulfilling the requisite conditions as per the policy guidelines issued by DDA. The Appellant/ Claimant had also given an undertaking that if any facts/documents is/are found to be false/forged then his claim shall be liable to be cancelled. The Eligibility Determination Committee has considered the claim of the Appellant/ Claimant on merits and on verifications of documents submitted by the Appellant/ Claimant the Eligibility Determination Committee has come to the conclusion that the Appellant/ Claimant was found to have been using the said Jhuggi bearing No. E-30/H-23 exclusively for commercial purposes and accordingly the present Appellant/ Claimant does not fulfill the eligibility criteria as per the policy guidelines issued by DDA and consequently rejected his claim and the Nodal Officer, Kathputli Colony, duly communicated its order bearing No. F/KPC(1748)13/Survey/LM/WZ/3824 dated 10.11.2021 to the present Appellant/Claimant. Aggrieved by the same, the present Appeal No. 278 of 2023 has been filed by the present Appellant/Claimant.

9. In response to the notice, the Appellant/ Claimant has appeared in person. Whereas DDA is being represented by Sh. Radhe Shyam Meena, Dy. Director.
10. The statement of the Appellant/Claimant has been recorded before us on 22.08.2024. The Appellant/Claimant has also tendered documents, Annexure-A & Annexure-Y, in support of his claim. DDA has examined Dilshad Ahemad, Assistant Director, before us on 22.08.2024 and has furnished the survey records & also the Video Clipping prepared along with the survey.
11. Arguments advanced by the Appellant/Claimant as well as Sh. Radhe Shyam Meena, Dy. Director, for DDA heard at great length and the documents submitted by both the parties are also minutely appraised.
12. It is the admitted fact that as per survey records, the Appellant/ Claimant's Jhuggi bearing No. E-30/H-23, DDA No. 1748 was found to have been used for commercial purposes and accordingly he was not found entitled for alternate allotment as per the policy guidelines. Accordingly, the Eligibility Determination Committee has rejected the claim of the Appellant/ Claimant, which was communicated to him by the Nodal Officer vide Rejection Order dated 10.11.2021 whereby the reasons for rejection is mentioned to be "Use of


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Jhuggi as Commercial” and aggrieved by the same the Appellant/ Claimant has come before us by way of filing the present Appeal.


13. Thus in the present Appeal we are concerned with dispute with regard to the eligibility of the present Appellant/Claimant. We shall appraise the material placed on file to determine as to whether the Appellant/ Claimant’s Jhuggi bearing No. E-30/H-23, DDA No. 1748 was rightly found to have been exclusively used for commercial purposes on the cutoff date of 01.01.2015 and accordingly the present Appellant/Claimant is not entitled for alternate allotment as per the policy guidelines.

14. Therefore, it has to be first seen as to what is the legal position with regard to running of shop under the policy guidelines issued by DDA. First of all, we shall discuss the legal position under the DDA policy. The Part-B of the Delhi Slum and JJ Rehabilitation and Relocation Policy 2015 adopted by DDA is reproduced as under:

“Part-B

The eligibility criteria for allotment of alternative dwelling units to rehabilitation and relocate JJ dwellers would be as under :-

1. The JJ dwellers must be a citizen of India and not less than 18 years of age.
2. The Jhuggi Jhoopri basti in which the JJ dwellers are residing must be in existence prior to 01-01-2006, the cut-off date of residing in the Jhuggi for becoming eligible for rehabilitation shall be 01-01-2015.
3. The name of JJ dwellers must appear in at least on the voter list of the year’s 2012, 2013, 2014 and 2015 (prior to 01-01-2015) and also in the year of survey, for the purpose of rehabilitation.
4. The name of the JJ dwellers must appear in the survey conducted by LM Department.
5. The JJ dweller(s) will be subjected to bio-metric authentication by Aadhar Card or bio-metric identification by other mechanism.
6. JJ dwellers must possess any one of the 12 documents issued before 01-01-2015 as prescribed in the subsequent para.
7. Neither the JJ dweller nor any of his/her family members should own any house/plot /flat in full or in part, in Delhi. The JJ dweller should not have been any house allotted any residential house or plot or flat on license fee basis or on lease-hold basis or on free-hold basis in the NCT of Delhi by any of the Department or Agencies of GNCTD of Govt. of India, either in his/her own name or in the name of any member of his/her family.
8. No dwelling unit shall be allotted if the jhuggi is used solely for commercial purpose.
9. In case, the jhuggi being used for both residential and commercial purposes can be considered allotment of one residential plot only. In case, the ground floor of the jhuggi is being used for commercial purposes and other floors


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for residential purposes that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person.

10. If a different family, having separate Ration Card issued prior to 01-01-2015, which fulfills all the other eligibility criteria is living on upper floor, the same will also be considered for allotment of a separate dwelling units.
11. The ineligible JJ dwellers will be removed from the JJ cluster at the time of its rehabilitation /relocation/clearance of JJ Basti.


As envisaged in para above, the JJ dwellers must possess any one of the following documents issued before 01.01.2015 to become eligible for the purpose of allotment of dwelling units:

- Passport.
- Ration Card with photograph.
- Electricity Bill
- Driving License.
- Identity Card/Smart Card with photograph issued by state/central Government and /or its autonomous bodies/agencies like PSU/Local Bodies.
- Passbook issued by public sector Bank/Post Office with photograph.
- SC/ST/OBC certificates issued by Competent Authority with photograph.
- Pension documents with photograph such as Ex-servicemen's pension book, Pension payment order, Ex-servicemen's widow/dependent certificate, old age pension order or widow pension order.
- Freedom fighter identity card with photograph.
- Certificate of physical handicapped with photograph issued by Competent Authority.
- Health Insurance Scheme Smart Card with photograph (Ministry of Labour's Scheme).
- Identity Card with Photograph issued in the name of descendants of the slum/JJ dwellers from Govt. School or certificate with photograph issued by the Principal of a Govt. School mentioning therein that the descendants of the JJ dwellers was the student of the School."

15. It is mandated that there is verification in terms of biometric authentication via Aadhaar card or other mechanism, along with possession of one of 12 specified documents issued before 01.01.2015. It is further stipulated that the name of the JJ dwellers must appear in the survey conducted by LM department and further the applicants should not own property in Delhi or have been allocated residential units by Government of National Capital of Delhi or the Government of India. Moreover, the commercial use of a Jhuggi precludes dwelling unit allocation, while mixed residential-commercial use entitles dwellers to one unit.

16. As already pointed out above, condition contained in Clause 1 (8) & (9) of Part-B of DDA


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policy runs as under:

"8. No dwelling unit shall be allotted if the jhuggi is used solely for commercial purpose."

"9. In case, the jhuggi being used for both residential and commercial purposes can be considered allotment of one residential plot only. In case, the ground floor of the jhuggi is being used for commercial purposes and other floors for residential purposes that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person."


17. Thus the policy guideline issued by DDA stipulates that the commercial use of Jhuggi precludes dwelling unit allocation, while mixed residential-commercial use entitles dwellers to one unit. In the light of our discussion above, we shall appraise the material placed on file to determine as to whether the Appellant/ Claimant is entitled to claim allotment against the said Jhuggi No. E-30/H-23, DDA No. 1748, in Kathputli Colony as per the policy guidelines issued by DDA.
18. Firstly, we shall appraise the material placed on file to determine as to whether the Appellant/ Claimant was using the Jhuggi No. E-30/H-23, DDA No. 1748, exclusively for commercial purposes or it was put to mixed use for residential-cum-commercial purposes. Secondly, in the later part of this order we shall appraise the material placed on file to determine as to whether the Appellant/ Claimant was having all the requisite documents, including Voter ID Card, on the cutoff date of 01.01.2015 and whether his name appears in the voter list of the year's 2012, 2013, 2014 and 2015 (prior to 01-01-2015) & also in the year of survey and whether he possess any one out of the 12 documents issued before 01.01.2015 as enlisted in Clause 2 of the DDA policy, 2015.
19. Now we shall appraise the material placed on file to determine as to whether the Appellant/ Claimant was using the Jhuggi No. E-30/H-23, DDA No. 1748, exclusively for commercial purposes or or it was put to mixed use for residential-cum-commercial purposes.
20. The statement of the Appellant/Claimant Mohd. Nizam has been recorded before us on 22.08.2024 wherein he has stated his parents, Md. Atabul & Subra, are having two sons; Md. Nizam & Md. Shamim and one daughter; Badrun Khatun. All the children are married. Both the parents have died about thirty years ago. Badrun Khatun is married with Kudus and she is living in her matrimonial home in Darbhanga, Bihar. Md. Shamim is married with


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Zainab and having four children and they are also living in Darbhanga, Bihar. Mohd. Nizam (Appellant/Claimant) is married with Nazneen and having six children; Shanshah, Shahnawaj, Saina, Mahzabin, Mumtaza & Kahkashan.

21. The Appellant/Claimant has stated that on the cutoff date of 01.01.2015 he was running a barber shop from the Jhuggi No. E-30/H-23, DDA No. 1748, Kathputli Colony, which was a single storey Jhuggi having roof made with asbestos sheet and also having foldable wooden doors. The Appellant/Claimant had employed Nasim to work as co-barber with him in the said shop and for that he had made provisions by placing two chairs for the customers and the third chair for the customers for waiting for their turn.
22. The Appellant/Claimant has also stated that the Jhuggi of one Tofail was having Jhuggi bearing DDA No. 1747 and it was one Jhuggi away from his barber shop. The Appellant/Claimant has stated that since he was running his barber shop with the assistance of Nasim from early in the morning till late in the night and his wife Nazneen also used to go out to work as maid servant in the nearby colony in day time and accordingly throughout the day all of his six children used to stay in the Jhuggi of the said Tofail. However, in the night the Appellant/Claimant along with his family used to cook food & sleep in the barber shop.
23. The Appellant/Claimant has further stated that he has sought alternative allotment against the said Jhuggi No. E-30/H-23 bearing DDA No. 1748, and regarding that, DDA has made provisional allotment in his favour subject to final approval by Eligibility Determination Committee and a DS No. 00854 dated 22.12.2016 was issued in his favour. The Appellant/Claimant had given an undertaking that if any fact/document is/are found to be false/forged, then his provisional allotment is liable to be cancelled. The Appellant/Claimant had shifted to the Transit Camp, Anand Parbat after provisional allotment was made in his favour.
24. The Appellant/Claimant has stated that subsequently his claim was placed before the Eligibility Determination Committee for final approval but his claim was rejected on the ground that his Jhuggi was found to have been used for commercial purposes in spite the fact that DDA had initially issued DS No. 00854 (Annexure-A) in his favour and further he had been using the said single storey Jhuggi for residential-cum-commercial purposes because throughout the day he was using it as a barber shop and in the night he was using it for sleeping purposes with his family and accordingly, aggrieved by the same, the


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Appellant/Claimant has filed the present Appeal No. 278 of 2023 dated 17.11.2021 (Annexure-W) before the Appellate Authority for redressal. The Appellant/Claimant has tendered documents, Annexure-A to Annexure-Y, in support of his claim and prayed that DDA be directed to make allotment in his favour.

REJECTION OF REPRESENTATION BY EDC VIDE ORDER DATED 19.12.2019

25. Now we shall appraise the material placed on file to show as to how the EDC had proceeded to deal with the claim and more particularly as to whether it was swayed by irrelevant matter or it has determined the claim of the Appellant/ Claimant fairly & independently.
26. It is not disputed that the claim of the Appellant/ Claimant was placed before the Eligibility Determination Committee (hereinafter called EDC). It is pertinent to point out that the claim of the Appellant/ Claimant was rejected by EDC on 19.12.2019 and the Nodal Officer, duly communicated its order bearing No. F/KPC(1748)13/Survey/LM/WZ/3824 dated 10.11.2021 (Annexure-Y) to the present Appellant/Claimant and the EDC Note dated 19.12.2019 (Annexure-V) is reproduced for better understanding of the facts and the grounds on which the claim of the present Appellant/ Claimant was rejected, as under: -

EDC Note dated 19.12.2019 (Annexure-V)

- "1. The case of the applicant has been examined, it is observed that survey team has reported that the use of Jhuggi was commercial (referred 1/a/C).*
- 2. As per policy guidelines, **Part -B The eligibility criteria for allotment of alternative dwelling units for rehabilitation and relocation of JJ dwellers would be as under:-** " No dwelling unit shall be allotted if the Jhuggi is used safely for commercial purpose". As per survey record use of Jhuggi was commercial.*
- 3. Hence, the applicant/claimant does not fulfill the eligibility criteria. **The applicant/claimant is found ineligible for alternative allotment.***

27. The survey records placed on file shows that the Jhuggi No. E-30/H-23 bearing DDA No. 1748 of the Appellant/ Claimant was found to exist but his claim was rejected by the Eligibility Determination Committee on the grounds that the said Jhuggi was found to have been exclusively used for commercial purposes. It is pertinent to point out that EDC has rejected the claim of the Appellant/ Claimant, which was communicated to him by the Nodal Officer vide Rejection Order dated 10.11.2021 (Annexure-Y) whereby the reasons



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for rejection is mentioned to be **"Use of Jhuggi as Commercial"** and the said rejection order is under challenge before us. The bare perusal of the Note dated 19.12.2019 (Annexure-V) also shows that it is nowhere disputed by DDA as far as the existence of the Jhuggi No. E-30/H-23 of the Appellant/ Claimant is concerned but his claim was rejected on the sole ground that the said Jhuggi was found to have been used exclusively for commercial purposes. However, by taking holistic approach we shall appraise the material placed on file to determine as to whether the Appellant/ Claimant was using the Jhuggi No. E-30/H-23 bearing DDA No. 1748 exclusively for commercial purposes or it was put to mixed use for residential-cum-commercial purposes.

28. DDA has examined Dilshad Ahemad, Assistant Director, before us on 22.08.2024 wherein he has stated that the Appellant/Claimant has submitted representation for claiming alternative allotment from DDA against the Jhuggi No. E-30/H-23, Kathputli Colony bearing DDA No. 1748. However, it was found that his name had not appeared in the survey list but on the application made by the Appellant/Claimant, his name was included in the fresh survey list. The survey/videography was conducted by the survey team of the Jhuggi of the Appellant/Claimant bearing Jhuggi No. E-30/H-23. However, his claim was rejected by Eligibility Determination Committee vide EDC Note dated 19.12.2024 thereby mentioning that the Appellant/Claimant was found using the said Jhuggi exclusively for commercial purposes. Accordingly, the Rejection Order was communicated to the Appellant/Claimant vide Order Number F/KPC (1748) 13/Survey/LM/WZ/3824 dated 10.11.2021. The Appellant/Claimant has filed Appeal dated 17.11.2021 against the said Rejection Order.
29. Furthermore, the video clip prepared by the survey team of DDA pertaining to the single storey Jhuggi No. E-30/H-23 bearing DDA No. 1748 was also played before Dilshad Ahemad, Assistant Director, when his statement was recorded before us on 22.08.2024 wherein he has also stated that in the said video clip the Jhuggi No. E-30/H-23 bearing DDA No. 1748 is clearly seen to be a single storey structure and in that the Appellant/Claimant is seen running a barber shop and two chairs for the customers and one chair meant for waiting purposes are seen to have been placed inside the small Jhuggi, which was having roof made with asbestos sheet and having foldable wooden doors and further, two big sized mirrors are seen fixed on the walls. Furthermore, in the video clip, two customers are seen sitting on the customers' chair for haircut/shaving purposes and one person is also seen sitting on the third chair used for waiting purposes and further, one assistant of the


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Appellant/Claimant is also seen standing inside the shop. The Appellant/Claimant is also seen standing outside the gate of his shop and “DDA No. 1748” is seen to have been written on the foldable wooden gate of the shop. Dilshad Ahemad, Assistant Director, has also stated that Appellant/Claimant is also heard stating that he is running a barber shop from the said Jhuggi and furthermore, on the prompting of some other persons, he had changed the statement and stated that the Jhuggi is used as a shop cum residential purposes. Further, 2-3 suitcases are seen on the “taand” but no household articles/bedding/utensils/chulha/cloths, etc., are seen in the video clip.

30. Dilshad Ahemad, Assistant Director has also stated that the material placed on file as well as the video clip prepared by the survey team of DDA shows that the Jhuggi No. E-30/H-23 was exclusively used for commercial purposes on the cutoff date of 01.01.2015 and accordingly his claim was rightly rejected by the Eligibility Determination Committee.

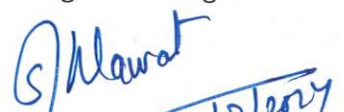
INITIAL STAND TAKEN BY THE APPELLANT/CLAIMANT

31. Here it is also pertinent to point out that the Appellant/Claimant has categorically admitted that he had made an Application dated 14.10.2014 (Annexure-R) to DDA thereby requesting for conducting of survey of his Jhuggi No. E-30/H-23, regarding which he is claiming allotment from DDA. It is pertinent to point out in this Application, a Note has been given by the Appellant/Claimant, which read as “**Note: DDA No. 1748 (SHOP)**”, thereby, showing that the Appellant/Claimant himself has categorically admitted that the said Jhuggi regarding which he has been claiming allotment from DDA was used by him as shop.
32. Here it is pointed out that in the Application dated 14.10.2014 (Annexure-R) it is nowhere mentioned by the Appellant/Claimant that he has been using the Jhuggi No. E-30/H-23 for commercial-cum-residential purposes. But the specific Note appended with the Application dated 14.10.2014 (Annexure-R) clearly shows admission on the part of the Appellant/Claimant that the Jhuggi was exclusively used by him as a shop. Thus the admission of the Appellant/Claimant is a clincher piece of evidence and it unequivocal term shows that on the cutoff date of 01.01.2015 the Jhuggi No. E-30/H-23 was used by him exclusively for commercial purposes.

SUBSEQUENT STAND TAKEN BY THE APPELLANT/CLAIMANT

33. DDA has furnished the survey record along with one video clip pertaining to the single


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storey Jhuggi No. E-30/H-23 bearing DDA No. 1748. The video clip was played before the Appellant/ Claimant when his statement was recorded before us on 22.08.2024 wherein he has stated that the video clip pertains to the single storey Jhuggi No. E-30/H-23 bearing DDA No. 1748 in which the Jhuggi No. E-30/H-23 bearing DDA No. 1748 is clearly seen to be a single storey structure and in that video he is seen running a barber shop and two chairs for the customers and one chair meant for waiting purposes are seen to have been placed inside the small Jhuggi, which was having roof made with asbestos sheet and having foldable wooden doors and further, two big sized mirrors are seen fixed on the walls. Furthermore, in the video clip, two customers are seen sitting on the customers' chair for haircut/shaving purposes and one person is also seen sitting on the third chair used for waiting purposes and further, one assistant, Nasim, of the Appellant/Claimant is also seen standing inside the shop. The Appellant/Claimant is also seen and standing outside the gate of his shop and further **"DDA No. 1748"** is seen to have been written on the foldable wooden gate of the shop. The Appellant/Claimant also categorically stated that he is also heard initially stating that he is running a barber shop from the said Jhuggi and furthermore, on the prompting of some other persons, he had changed the statement and stated that the Jhuggi is used as a shop-cum-residential purposes. Furthermore, the Appellant/Claimant has also specifically stated that two - three suitcases are seen on the *"taand"* but no household articles/bedding/utensils/chulha/cloths, etc., are seen in the video clip.

34. The video clip tendered on file demolishes the story put forward by the Appellant/Claimant that he was using the Jhuggi No. E-30/H-23 bearing DDA No. 1748 for residential-cum-commercial purposes because in the video clip the said Jhuggi is seen to have been used exclusively as barber shop as three chairs are placed and the Appellant/Claimant has also employed one co-worker to help him as he was having good business as three customers are also seen present in his shop at the time of survey. Further, no household articles/bedding/utensils/chulha/cloths, etc., are seen in the video clip except that 2-3 suitcases are seen placed on the *"taand"* and these are not sufficient to draw inference that the said Jhuggi was put to mixed use for residential-cum-commercial purposes.
35. The admission of the Appellant/Claimant is a clincher piece of evidence because he has categorically admitted that in the video clip just 2-3 suitcases are seen on the *"taand"* but no household articles/bedding/utensils/chulha/cloths, etc., are seen and this shows that



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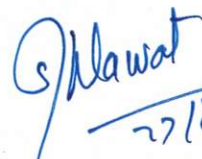

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the single storey Jhuggi No. E-30/H-23 bearing DDA No. 1748 was not used for residential purposes because had it been so then there would have been household articles/bedding/utensils/chulha/cloths, etc., in the said Jhuggi. Furthermore, the Appellant/Claimant has also specifically admitted that in the video clip initially he is heard stating that he is running a barber shop from the said Jhuggi but on the prompting of some other persons, he had changed the statement and stated that the Jhuggi is used as a shop-cum-residential purposes. This further shows that he had changed his statements as per his convenience and that too at the behest of other persons and this has been done with a dishonest & fraudulent intention to grab alternative allotment from DDA by hook or crook.

STORY/STAND IS UNTRUSTWORTHY IN NATURE

36. As already pointed out above, the Appellant/Claimant has stated that since he was running his barber shop with the assistance of Nasim from early in the morning till late in the night and his wife Nazneen also used to go to work as maid servant in the nearby colony in day time and accordingly throughout the day all of his six children used to stay in the Jhuggi of the said Tofail. However, in the night the Appellant/Claimant along with his family used to cook food & sleep in the barber shop.
37. It is pointed out that the Appellant/Claimant has categorically stated that he does not know the name of father & also the name of the village of Tofail except that his village is situated near the village of the Appellant/Claimant in District Darbhanga, Bihar. The Appellant/Claimant has also stated that he was not paying any rent/fee/charges to the said Tofail in lieu of keeping his children throughout the whole day. It is not satisfactorily explained as to why a complete stranger would keep six children and it seems that the Appellant/Claimant has concocted a wrong & false story that the Jhuggi No. E-30/H-23, DDA No. 1748, Kathputli Colony was put to mixed used in order to bring his claim within the purview of the policy guidelines issued by DDA.
38. The material placed on file shows that from early in the morning till late in the night the Appellant/Claimant remained busy in running of his barber shop from the Jhuggi No. E-30/H-23, DDA No. 1748, Kathputli Colony and further his wife Nazneen also remained absent throughout the day from the Kathputli Colony because she was working as maid servant in the nearby colony. Thus neither of the parents were available in the day to look after their six children because the Appellant/Claimant remained occupied in his shop

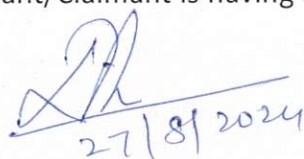

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whereas his wife remained busy while working as maid servant throughout the whole day. However, it cannot be believed that during the absence of both the parents, neighbor Tofail would keep their six children throughout the whole day and that too without charging any fee or rent especially when he is neither related to the Appellant/Claimant nor belonged to his village. And further had it been a normal courtesy for 2 – 3 days then the neighbor would have helped them to look after their children but it was a daily chores and nobody would allow their Jhuggi to be used by neighbor's children because it requires sparing time & energy with extra financial burden. It shows that the Appellant/Claimant has concocted wrong & false story to grab alternative allotment from DDA by hook or crook. Hence, it is pointed out that the statement of the Appellant/Claimant does not inspire confidence and accordingly story put forward by him cannot be believed.

39. The material placed on file as well as the video clip prepared by the survey team of DDA shows that the Jhuggi No. E-30/H-23 is a single storey structure and it is a small Jhuggi. Furthermore, the video clip clearly shows that it has been exclusively used as a barber shop. In the video clip the Appellant/Claimant is seen running a barber shop and two chairs for the customers and one chair meant for waiting purposes are seen to have been placed inside the small Jhuggi, which was having roof made with asbestos sheet and having foldable wooden doors and further, two big sized mirrors are seen fixed on the walls. Furthermore, in the video clip, two customers are seen sitting on the customers' chair for haircut/shaving purposes and one person is also seen sitting on the third chair used for waiting purposes and further, co-barber Nasim of the Appellant/Claimant, is also seen standing inside the shop. The Appellant/Claimant is also heard stating that he is running a barber shop from the said Jhuggi and furthermore, on the prompting of some other persons, he had changed the statement and stated that the Jhuggi is used as a shop cum residential purposes. However, it is pointed out that two three suitcases are seen on the "taand" but no household articles/bedding/utensils/chulha/cloths, etc., are seen in the video clip.

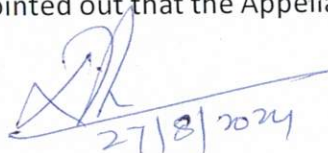
40. It is also pointed out that in the video clip, the single storey Jhuggi which is having foldable wooden door has been exclusively used as barber shop and it is having two chairs for customers and one chair for waiting purposes and there is no space left where the Appellant/Claimant along with his family can sleep. It is not disputed that the Appellant/Claimant is having a very large family, which comprise of his wife Nazneen, and

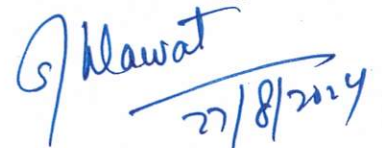

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six children Shanshah, Shahnawaj, Sayna, Mahzabin, Mantaza & Kahkashan and after placing three big chairs no space is left to cook food and sleep there. Furthermore, in the video clip, no household articles/beddings/utensils/chulha/cloths, etc., are seen. There is no doubt that 2-3 suitcases are seen to have been placed on the "Taand" in the video clip but these suitcases are not sufficient to show that the said Jhuggi was also used for residential purposes especially when there is no sign of any person(s) was/were living in the Jhuggi. Since, the Appellant/Claimant is having large family comprising of his wife & six children and accordingly, even if for the sake of arguments the story put forward by the Appellant/Claimant is taken to be gospel truth that he had been using the said Jhuggi for cooking food & sleeping purposes in the night then also it does not help him to claim allotment from DDA because had it been true then there must have been some kitchen utensils/ household articles/bedding/chulha/cloths, etc., lying in the shop and furthermore, the children are school going children and their school bags, books, notebooks, etc., would have also been found but no such articles were found in the Jhuggi No. E-30/H-23, DDA No. 1748. It seems that the Appellant/Claimant has concocted a wrong & false story that he was running a barber shop throughout the day from the Jhuggi No. E-30/H-23, DDA No. 1748, regarding which he is claiming allotment from DDA and during this period, his six children were playing throughout the day in the nearby Jhuggi of Tofail bearing DDA No. 1747 because his wife also had not remained present during the day time to look after the six children as she admittedly used to go to work as maid servant in the nearby colony in day time and further the Jhuggi No. E-30/H-23, DDA No. 1748 was used by the family for cooking food & sleeping in the night. As pointed out above, there is no sign of any kitchen being run in the Jhuggi and further there is no sign of it having been used for sleeping purposes in the night because the Appellant/Claimant has categorically admitted that from early morning till late in the night the Jhuggi was used exclusively for running a barber shop and further in the Application dated 14.10.2014 (Annexure-R) a Note to the effect "**Note: DDA No. 1748 (SHOP)**" was given by the Appellant/Claimant, thereby, showing that the Appellant/Claimant himself has categorically admitted that the said Jhuggi regarding which he has been claiming allotment from DDA had been used by him as shop.

41. Further, the statement of the Appellant/Claimant cannot be believed that throughout the whole day his six children remained in the adjoining Jhuggi bearing DDA No. 1747 of Tofail. It is pointed out that the Appellant/Claimant has specifically stated that the Jhuggi of Tofail


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bearing DDA No. 1747 was situated one Jhuggi away from his Jhuggi but he does not know the name of the father or the name of the village of the said Tofail. The Appellant/Claimant has also stated that he was not paying any rent/charges/fee to said Tofail for keeping his children. But the Appellant/Claimant has vaguely stated that the village of the said Tofail was situated near to his village in District Darbhanga, Bihar but very surprisingly as pointed out above he does not know the name of the village of Tofail and also the name of the father of Tofail. This shows that Tofail was not related to the Appellant/Claimant and they also do not belong to the same village. It is also strange that the said Tofail was not charging any fee/rent from the Appellant/Claimant. Accordingly, it is a matter of common observance that no stranger will keep six children in his house throughout the day, i.e., from very early in the morning up to late in night and that too without charging any rent/fee, etc. However, it seems that the Appellant/Claimant along with his wife Nazneen and six children was living in the Jhuggi of said Tofail or in some other Jhuggi. But the material placed on file in unequivocal terms shows that on the cutoff date of 01.01.2015 they were not living in the Jhuggi No. E-30/H-23 bearing DDA No. 1748 because it was used by the Appellant/Claimant exclusively for commercial purposes for running barber shop.


42. As already pointed out above, condition contained in Clause 1 (8) & (9) of Part-B of DDA policy runs as under: -

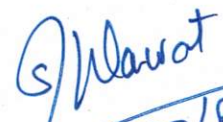
"8. No dwelling unit shall be allotted if the jhuggi is used solely for commercial purpose."

"9. In case, the jhuggi being used for both residential and commercial purposes can be considered allotment of one residential plot only. In case, the ground floor of the jhuggi is being used for commercial purposes and other floors for residential purposes that will entitle him for one residential plot only, if such commercial and residential unit is occupied by the same person."

43. The material placed on file shows that the EDC has rightly found that on the cutoff date of 01.01.2015 the Jhuggi No. E-30/H-23 bearing DDA No. 1748 was exclusively used for commercial purposes as barber shop and accordingly, we have no hesitation in holding that the Appellant/Claimant does not fulfill the eligibility criteria to get alternative allotment as per the policy guidelines issued by DDA.

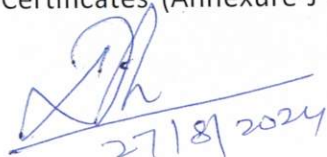
44. Now we shall first appraise the material placed on file to determine the eligibility of

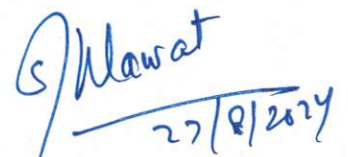

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Appellant/ Claimant on other parameters also as to whether the Appellant/ Claimant was having all the requisite documents, including a Valid Voter ID Card, on the cutoff date of 01.01.2015 and whether his name appears in at least on the voter list of the year's 2012, 2013, 2014 and 2015 (prior to 01-01-2015) & also in the year of survey and whether the Appellant/ Claimant was having "any one" out of the 12 documents issued before 01.01.2015 as enlisted in Clause 2 of the DDA policy, 2015 and whether he is entitled to claim allotment against the Jhuggi No. E-30/H-23 bearing DDA No. 1748 as per the policy guidelines issued by DDA.


45. The Appellant/Claimant has tendered his Voter ID Card No. SMM 0061341 (Annexure-B), Aadhar Card (Annexure-C), Voter List of the year 2012 (Annexure-S), Voter List of the year 2013 (Annexure-T) and Voter List of the year 2015 (Annexure-U) in support of his claim.
46. It is pointed out that the Appellant/Claimant has tendered his Voter ID Card (Annexure-B) bearing number SMM 0061341 and it has been issued on 08.10.2008, much prior to the cut off date of 01.01.2015. Further, his Aadhar Card (Annexure-C) is bearing number 6751 2286 2556 but the date of issuance is not mentioned therein. Further, his name appears at Sl. No. 288 in the Voter List of the year 2012 (Annexure-S), at Sl. No. 288 in the Voter List of the year 2013 (Annexure-T) and at Sl. No. 345 in the Voter List of the year 2015 (Annexure-U). It is also pointed out that in all the above mentioned documents; Annexure-B, Annexure-C & Annexure-S to Annexure-U, the address of the Appellant/Claimant is mentioned to be Jhuggi No. E-30/H-23. Accordingly, we have no hesitation in holding that the Appellant/Claimant was having a valid Voter ID Card on the cutoff date of 01.01.2015 and further, his name also appears in the Voter Lists of the year 2012, 2013 & 2015 but it is pointed out that all these documents are not material to determine the eligibility of the the Appellant/Claimant because as per our discussion above on the cutoff date of 01.01.2015 the Jhuggi No. E-30/H-23 bearing DDA No. 1748 was exclusively used by him for commercial purposes as barber shop and accordingly, the Appellant/Claimant does not fulfill the eligibility criteria to get alternative allotment as per the policy guidelines issued by DDA.
47. The Appellant/Claimant has tendered the Voter ID Card No. SMM 2810744 (Annexure-D) & Aadhar Card (Annexure-E) of his wife Nazneen as well as Aadhar Cards (Annexure-F to Annexure-I) of his children Mehazabi, Sahensah, Shah Nawaz & Saina, as well as Birth Certificates (Annexure-J to Annexure-L), of his children Mehazabi, Mohd. Shah Nawaz &


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Shaba Parbeen, School Certificate (Annexure-M) of Mehzabi, Passbook of Andhra Bank (Annexure-N), Passbook of Corporation Bank (Annexure-O), Passbook of Union Bank (Annexure-P) and Ration Card (Annexure-Q) in support of his claim.


48. It is pointed out that the Voter ID Card No. SMM 2810744 (Annexure-D) of his wife Nazneen has been issued on 20.10.2014, much prior to the cut off date of 01.01.2015. Further, her Aadhar Card (Annexure-E) is bearing number 5777 6760 8133 has been issued on 03.05.2014 and accordingly, both the documents have been issued much prior to the cut off date of 01.01.2015. But the Appellant/Claimant has not tendered any Voter List to show that his wife Nazneen had used her Voter ID Card to cast vote in any election and more particularly in the elections held in the years from 2012 to 2015. Furthermore, the Appellant/Claimant has tendered the Aadhar Cards (Annexure-F to Annexure-I), of his children Mehzabi, Sahensah, Shah Nawaz & Saina and the Aadhar Card (Annexure-F) has been issued on 01.04.2014 whereas the date of issuance of Aadhar Card (Annexure-G) has not been mentioned therein and the Aadhar Card (Annexure-H) has been issued on 03.04.2014 whereas the Aadhar Card (Annexure-I) has been issued on 22.03.2016. The Appellant/Claimant has also tendered the Birth Certificate dated 10.08.2007 (Annexure-J) of Mehzabi, Birth Certificate dated 13.04.2009 (Annexure-K) of Mohd. Shah Nawaz, Birth Certificate) dated 19.10.2015 (Annexure-L of Shaba Parveen as well as the School Certificate of Mehzabi dated 03.09.2014 (Annexure-M) and on all these documents, the address has been mentioned to be E-30/H-23. The Appellant/Claimant has tendered three Passbooks (Annexure-N to Annexure-P). The Passbook of Andhra Bank (Annexure-N) shows that his wife Nazneen has opened the account on 26.09.2014. The Passbook of Corporation Bank (Annexure-O) shows that his daughter Mehzabi has opened the account on 15.10.2014 and the Passbook of Union Bank (Annexure-P) shows that his wife Nazneen has opened the account on 26.09.2014 and it shows that all the accounts have been opened much prior to the cut off date of 01.01.2015. The Ration Card (Annexure-Q) is bearing No. 077004827184 and it has been issued in favour of his wife Nazneen and the name of the Appellant/Claimant and other family members has been mentioned but the date of issuance is not mentioned therein. It is pointed out that the above-mentioned documents are of no help to the Appellant/Claimant because these documents do not create any right, title or interest in his favour to claim allotment from DDA because as per our discussion above on the cutoff date of 01.01.2015 the Jhuggi No. E-30/H-23 bearing DDA No. 1748 was exclusively used for commercial purposes for running a barber shop and accordingly,



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the Appellant/Claimant is not entitled to get alternative allotment as per the policy guidelines issued by DDA.


49. The Appellant/ Claimant has contended that his claim was ultimately rejected by the Eligibility Determination Committee vide order dated 10.11.2021 in spite of the fact that much earlier to that DDA has made provisional allotment in his favour by issuing D.S No. 00854 dated 22.12.2016 (Annexure-A) but these facts were not duly considered by EDC. Accordingly, he has come before us thereby challenging the order of rejection dated 10.11.2021.
50. It is not disputed that DDA has made provisional allotment in favour of the present Appellant/ Claimant and had issued D.S No. 00854 dated 22.12.2016 (Annexure-A) in his favour whereas his claim was finally rejected by the EDC on 10.11.2021. Now we shall consider as to what is the legal effect of issuance of D.S No. 00854 dated 22.12.2016 (Annexure-A) in his favour and whether any right of allotment was created in favour of the Appellant/ Claimant merely by issuing DS etc. by DDA in his favour.
51. It is not disputed before us that Kathputli Colony Project is a pilot project of DDA for in-situ development of Kathputli Colony. In 2010, survey teams were constituted by LM Department, DDA for conducting door-to-door survey of Kathputli Colony JJ Cluster. Survey was initiated in January 2010 and completed in January 2011 and videography was also done of each Jhuggi. The survey list was uploaded on the website of DDA and was also displayed on the Notice Board at Transit Camp, Anand Parbat. In compliance of the Orders of the Hon'ble High Court of Delhi, fresh applications were invited for resurvey after giving wide publicity. The resurvey work began with effect from 13.07.2014 and the same was completed by the end month of September 2014. But because of non-submission of complete documents, no fresh name was incorporated in the main survey list in the year 2014. Thereby considering various representations, DDA had conducted special drive from 19.12.2016 to 30.06.2017 and the names of JJ dwellers whose names did not appear in the earlier survey list were added. Subsequently, DDA had adopted DUSIB/GNCTD policy on 10.02.2017 and the cutoff date was changed to 01.01.2015 for Kathputli Colony. Since the cutoff date was changed and it necessitated conducting fresh survey and the last date of submission was extended several times and it was finally extended up to 25.07.2017. Thereafter, a survey was conducted in the month of July/August 2017. The shifting process of dwellers from Kathputli Colony to Transit Camp, Anand Parbat was started in February



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2014 and by the end of July 2014, 527 families were shifted to the Transit Camp. The shifting process was restarted on 19.12.2016 and till 30.06.2017, 826 additional families were shifted to the Transit Camp thereby bringing the total number to 1355. Side by side, the demolition work was also initiated.

52. A public notice dated 25.10.2017 was pasted in the Kathputli Colony and also in the Notice Board of the Project Office of the DDA and dwellers were also informed that on the basis of various surveys and documents submitted by the dwellers/applicants, all the eligible persons having requisite documents as per the policy/guidelines have been included in the survey list and the list stands displayed at Kathputli Colony Project Office and also uploaded on the website of DDA. It was further informed that the dwellers declared provisionally eligible having names in this list may shift to the Transit Camp, Anand Parbat or Narela. The demolition work was restarted from 06.01.2017 and all the Jhuggis were demolished.
53. JJ dwellers, who were declared provisionally eligible, were shifted to the Transit Camp, Anand Parbat/Narela and their eligibility was subject to scrutiny by Eligibility Determination Committee. The 771 ineligible persons were issued Ineligibility Letters with an opportunity to file appeal before the Appellate Authority constituted by DDA.
54. As per the record, the shifting process of dwellers from Kathputli Colony to Transit Camp Anand Parbat was started in February 2014 and by the end of July 2014, 527 families were shifted to the Transit Camp at Anand Parbat/Narela and in that drive which was conducted from December 2016 to June 2017, about 855 families of JJ dwellers were shifted.
55. It is not disputed before us that an undertaking was obtained from each dweller, who were declared provisionally eligible, before executing agreement/issue of provisional possession letter while shifting, wherein he/she has undertaken that the information/documents submitted by him/her are true & correct and all the documents submitted by him/her are original & genuine and in future, in case the facts are found to be wrong/false and documents submitted by him/her are found to be forged/fabricated, his/her allotment would be treated as cancelled.
56. The material placed before us also shows that the Eligibility Determination Committee (EDC) has examined and analyzed the individual cases in accordance with the provisions laid down in the JJ rehabilitation policy/guidelines and followed the procedure prescribed in the policy in letter & spirit. The Eligibility Determination Committee has made specific


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recommendations thereby taking a decision in all the cases strictly accordingly to the merit of the individual case as per the material available in individual files of all the Applicants JJ dwellers and also after examining and scrutinizing all the available video clippings, which were recorded during the survey of 2010-2011 and of July 2017 and considering the documents placed on file which were submitted by the JJ dwellers at the time of survey and at later stage.

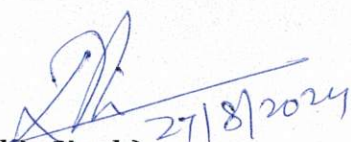
57. Now coming to the fact of the present case it is pertinent to point out that the bare reading of Relocation-cum-Allotment Slip (DS) No. 00854 dated 22.12.2016 (Annexure-A) shows that the issuance of D.S. was subject to fulfillment of terms and conditions of guidelines issued by DDA and this was subject to final scrutiny of eligibility of the Appellant/ Claimant by the Eligibility Determination Committee (EDC) as per the policy guidelines issued by DDA. Furthermore, the Appellant/Claimant had given an undertaking that if any fact/document is/are found to be false/forged, then his provisional allotment would be cancelled. Thus there is no doubt that DDA has made provisional allotment by issuance of Eviction-cum-Demotion Slip No. D.S No. 00854 dated 22.12.2016 (Annexure-A) in his favour and this was subject to final scrutiny of eligibility of the Appellant/ Claimant by the Eligibility Determination Committee as per the policy guidelines issued by DDA and no right of allotment was created in favour of the Appellant/ Claimant merely by issuing DS etc.
58. The material placed on file shows that the Eligibility Determination Committee (EDC) has rightly found that the Appellant/ Claimant is not entitled to alternative allotment because as per our discussion above on the cutoff date of 01.01.2015 the Jhuggi No. E-30/H-23 bearing DDA No. 1748 was exclusively used for commercial purposes for running a barber shop and accordingly he is not entitled to get alternative allotment against Jhuggi No. E-30/H-23 bearing DDA No. 1748 as per the policy guidelines issued by DDA. Moreover, the material placed on file shows that the Appellant/ Claimant had concealed material facts & had made misrepresentation to the DDA authority and succeeded in getting the D.S No. 00854 dated 22.12.2016 (Annexure-A) issued in his favour on the basis of wrong and false facts inspite of the fact that he very well knew that he did not possess requisite documents and does not fulfill the eligibility criteria as per the guidelines issued by DDA. It is already pointed out that the Appellant/Claimant had given an undertaking that if any fact/document is/are found to be false/forged, then his provisional allotment would be cancelled. The material placed on file shows that the Appellant/ Claimant with dishonest


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and fraudulent intention and also in collusion with his family members has tried to cheat & defraud DDA thereby filing a claim on wrong and false facts to maximize allotments from DDA by hook or crook. Thus the documents, Annexure-A to Annexure-Y, furnished by the Appellant/ Claimant do not create any legal right, title and interest in his favour to make his eligible to seek allotment from DDA. Hence, we have no hesitation in holding that the Appellant/ Claimant does not fulfill the eligibility criteria as per the guidelines issued by DDA and accordingly the claim of Appellant/Claimant was rightly rejected by EDC.

59. The Appellant/ Claimant has made misrepresentation and also futile attempt to suppress material facts. The Appellant/ Claimant does not fulfill the eligibility criteria as per guidelines issued by DDA. Hence the Eligibility Determination Committee has rightly rejected his claim. There is no infirmity or illegality in the impugned order bearing No. F/KPC(1748)13/Survey/LM/WZ/3824 dated 10.11.2021. Hence the same is upheld. Consequently, the present appeal No. 278 of 2023 is dismissed being devoid of any merit.
60. Copy of this order be supplied to both the parties as per rules within three days from the date of passing of this order. DDA is further directed to post this order on its website within one week from today in compliance of order dated 11.07.2018 passed by Hon'ble High Court of Delhi in WP(C) No. 6728/2018 and C.M. Appeal 25594/2018 titled "National Alliance of Peoples Movement & Others Vs Delhi Development Authority & Others". The file be consigned to records after due compliance.


(Ranbir Singh) 27/8/2024

Jt. Secretary (Retd.) GOI
MEMBER


(Satish Ahlawat) 27/8/2024

Addl. District & Sessions Judge (Retd.)
CHAIRMAN