

(2013) 01 SC CK 0052
In the Supreme Court Of India
Case No : SLP (C) No. 39062 of 2012

Delhi Administration	Vs	APPELLANT
Narain Singh and Another		RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 136
Delhi Panchayat Raj Rules, 1959 — Rule 178

Citation : (2013) 1 SCALE 527

Hon'ble Judges : H.L. Gokhale, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. After seeking time from the Division Bench of the High Court to comply with the direction given by the learned Single Judge in the matter of allotment of plot to the Respondents under 20-Point Programme, the Delhi Administration has filed this petition under Article 136 of the Constitution. In a public function organized on 9.4.1986, the Respondents were allotted small pieces of land under 20-Point Programme. However, they were not given possession and the officers of the Delhi Administration created all possible hurdles in the fructification of their legitimate right. This compelled them to file Writ Petition No. 4836 of 1993.

2. On 27.7.2009, learned Counsel appearing for the Petitioner herein made a statement that the land had been handed over to the Forest Department. After taking cognizance of his statement, the learned Single Judge passed the following order:

The present writ petition is filed by the Petitioners praying inter alia for directions to the Respondent/GNCTD to give possession of the plots of land allotted to the Petitioners on 20.11.1983. Counsel for the Petitioner states that the 96 Petitioners, who are parties in the present writ petition, were allotted plots of land out of Khasras No. 1472-1482 in village Rangpuri, Mehrauli, Delhi.

Counsel for the Respondent submits on instructions that the land contained in Khasras No. 1475, 1476, 1480 and 1481 has been handed over to the Forest Department by virtue of a notification dated 02.04.1996. He further concedes that during the pendency of the present writ petition, an earlier writ petition, entitled Badam and Anr. v. Union of India and Ors. registered as WP (C) 246/1987 wherein a stay had been granted in favour of the Petitioners therein, was dismissed for non prosecution on 02.04.2008 and consequently, the stay order operating in respect of the plots of land, part of the aforesaid Khasras wherein the Petitioners were allotted the land, also stands vacated.

As counsel for the Petitioners contends that the plots of land are still available in the remaining Khasras, apart from Khasras No. 1475, 1476, 1480 and 1481, the Respondent is directed to file an affidavit clearly stating inter alia the status of the land available for allotment to the Petitioners in the remaining Khasras as on date. The Respondent shall specify in the said affidavit as to whether the land, comprised in the aforesaid Khasras, has been allotted after 02.04.2008 or not.

Needful shall be done within one week with advance copy to the counsel for the Petitioners, who may file a reply to the said affidavit, if necessary, within one week thereafter.

3. In compliance of the Court's order, Shri M.S. Dagar, B.D.O. South West, Najafgarh, New Delhi filed affidavits sometime in August 2009 stating therein that the land comprised in some of the khasra numbers does not belong to the Gaon Sabha and it had no jurisdiction to pass resolution in respect of some other khasra numbers. After considering the pleadings of the parties including the orders passed during the pendency of the writ petition, the learned Single Judge passed order dated 31.10.2011, paragraphs 13 to 17 of which are extracted below:

13. The legal impediment in achieving the laudable object of giving a shelter over the head of the landless residents of Village Rangpuri, Delhi under the 20-Point Program of the Government is the want of prior sanction of the authorities concerned as mandated by Rule 178 of Delhi Panchayat Raj Rules, 1959, which reads as under:

178. Lease without premium-In the case of a lease without premium transferring immovable property vested in the Gaon Panchayat, a reasonable annual rent shall be reserved and made payable during the whole term of the lease and the lease or any agreement to grant the lease shall not be made without the previous sanction of the Gaon Panchayat by a resolution: Provided that when the term of the lease exceeds ten years but not thirty years, the previous sanction of the Deputy Commissioner and when the term exceeds thirty years, the previous sanction of the Chief Commissioner shall also be obtained.

14. The legitimate expectation of the Petitioners of obtaining physical possession of the land for dwelling unit allotted to them under the 20-Point Program of the Government cannot be frustrated by the Respondents because it is not their case

that allotment in question was fraudulent. Respondents cannot take benefit of their own wrong. They should have obtained prior sanction before making the allotments in question. It was for the Respondents to have complied with Rule 178 of Delhi Panchayat Raj Rules, 1959 and they cannot be allowed to wriggle out of their commitment to honour the allotments made by them.

15. It is unfortunate that during the interregnum period Khasra No. 1480 out of which first Petitioner was allotted a plot, is no longer available as the same stands transferred to the Forest Department.

16. The law pertaining to development of writ of mandamus is highlighted by Apex Court in Secretary, Cannanore District Muslim Educational Association, Kanpur Vs. State of Kerala and Others, in following words:

...and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

17. In the instant case, Respondents have not only legal obligation but also social responsibility to honour their commitment of allotting land to the landless residents of the Village Rangpuri for dwelling units. Since questions of fact as regard to the availability of the Gaon Sabha land under the 20-Point Program of the Government cannot be determined in these proceedings, therefore it would be appropriate to direct the second Respondent to hold an Inquiry in order to determine as to why previous sanction in terms of Rule 178 of Delhi Panchayat Raj Rules, 1959 was not accorded prior to issuance of the allotment letters in question and to locate the land which can now be made available for achieving the purpose of 20-Point Program of the Government and after requisite sanction, to frame a criteria for allotment of the land under this 20-Point program to the Petitioners and persons similarly situated after determining their eligibility. Petitioners would be at liberty to make their claims by way of representations within four weeks to the Second Respondent who shall get the same inquired into while affording opportunity of hearing to the authorised representative of the Petitioners and alike and to obtain a report within three months from the Inquiry Committee so constituted and thereafter, make the report public, to enable the affected persons to avail of the remedy as available in law. Thereafter, follow up action be taken forthwith.

4. Dissatisfied with the order of the learned Single Judge, the Petitioner filed letters patent appeal but could not convince the Division Bench to set aside the direction given by the learned Single Judge. Thereupon, learned Counsel appearing on its behalf made a statement that the order of the Single Judge will be implemented within three months (paragraph 7 of the impugned order).

5. We have heard Shri R.K. Khanna learned Additional Solicitor General, Shri V.P. Sharma, learned Counsel for the Petitioner and perused the record.

6. In our considered view, this petition falls in the category of frivolous cases filed in this Court by the Governments and various administrative authorities, the disposal of which consumes substantial time of the Court. We are surprised to note that after giving an undertaking before the Division Bench of the High Court on July 13, 2012, the Petitioner has invested money in filing a petition on 16.10.2012, which cannot but be described as unwarranted burden on the public exchequer. What the Petitioner was required to do in terms of the direction given by the learned Single Judge was to hold an inquiry to locate the land which may now be made available for achieving the purpose of 20-Point Programme and framed the criteria for allotment of land to the Respondents and similarly situated persons after determining their eligibility. Such innocuous direction did not warrant interference by the Division Bench, which rightly dismissed the letters patent appeal.

7. With the above observations, the SLP is dismissed. For filing a frivolous petition, the Petitioner is saddled with cost of Rs. 2.5 lacs. The amount of cost shall be paid to the Respondents within a period of one month from today and compliance report be submitted to the High Court within six weeks. Thereafter, the matter be listed before the Division Bench of the High Court. If it is found that the Petitioner has failed to implement the direction given by the learned Single Judge and has not paid costs to the Respondents, then the Bench shall be free to initiate proceedings against the defaulting officers under the Contempt of Courts Act, 1971.