
(2011) 10 DEL CK 0085

In the Delhi High Court

Case No : Writ Petition (C) 1798 of 2011

Dharampal Singh and Others

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Citation : (2011) 10 DEL CK 0085

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Pooja Singh and Ms. Malyashree Sridharan, for the Appellant; Megha Bharara for Ms. Ruchi Sindhwani, for R-1, 5 and 10. Mr. L.K. Garg, for R-2 to 4 and 6 to 9, Mr. O.P. Saxena, with Mr. Harish Vats, Dy. Director (Rehabilitation) of DUSIB. Ms. Madhu Tewatia and Ms. Sidhi Arora, for NDMC. ASI Charan Dass, PS-Mandir Marg, New Delhi., for the Respondent

Judgement

Rajiv Sahai Endlaw

1. The seventy Petitioners, claiming to be residents along with their families of the Jhuggi Jhopri Cluster at G-Point, Kali Bari Lane, Behind Dr. RML Hospital, Ashok Road, New Delhi and whose hutments were demolished on 22nd November, 2010, have filed this petition seeking rehabilitation in accordance with the Relocation/Rehabilitation Policy of the Respondent No. 1 GNCTD.
2. Notice of the petition was issued and vide order dated 18th March, 2011 Respondent Delhi Urban Shelter Improvement Board (DUSIB) directed to visit the area and to report the status thereof.
3. The Respondent DUSIB did not comply with the order of this Court and on 31st March, 2011 sought extension of time for complying with the order. A Status Report dated 19th April, 2011 was filed by Respondent DUSIB reporting that the land on which the demolition activity had been carried out continued to be occupied by seventy Petitioners and of which only sixty had shown and produced photocopy of their residential proof. It was further stated that the said

documents were required to be verified and eligibility of each of the claimants as per the Policy required to be determined.

4. This Court from time to time issued orders for providing necessary amenities of toilet, drinking water etc. to the Petitioners and also directed the Respondent DUSIB to carry out survey and place its report before this Court.

5. Notwithstanding the aforesaid clear direction dated 6th April, 2011 of this Court, the survey report has not been placed before this Court by the Respondent DUSIB till date. In the mean while, since the land on which demolition was carried out had been allotted by the land owning agency i.e. L&DO to Dr. Ram Manohar Lohia Hospital for expansion of the said hospital, the counsel for the Respondent Hospital had been expressing urgency since the work of expansion of the Respondent Hospital was held up.

6. In the circumstances, vide order dated 29th September, 2011 the Director (Survey) of the Respondent DUSIB was directed to appear before this Court today. Notwithstanding the aforesaid clear direction and failure to comply with the orders of this Court, the Director (Survey) namely Mr. J.K. Jain has failed to appear. It is stated that he has proceeded on leave from 1st October, 2011 and is to join back only on 19th October, 2011.

7. The aforesaid is no explanation for the absence of Mr. J.K. Jain especially since he has also not complied with the orders of this Court. Mr. Harish Vats, Dy. Director (Rehabilitation) of Respondent DUSIB appears.

8. On enquiry as to why the direction of this Court has not been complied with till now, the counsel for the Respondent DUSIB first states that notice has been issued on 2nd September, 2011 to the Respondent L&DO and to the Respondent Hospital to join in carrying out the survey. It is not understandable as to why the said notice has been issued after nearly six months of the direction contained in the order dated 6th April, 2011. The counsel for the Respondent DUSIB then states that as per the Policy of Respondent GNCTD of rehabilitation, the land owning agency is required to participate in the survey and the Respondent Hospital has been asked to join since the land has now been allotted to it. On further enquiry, it is stated that it is necessary to join the land owning agency so that it is bound by the report of the survey. However the counsel for the Respondent DUSIB though has some Policy in his file but is unable to point out therefrom any requirement for the land owning agency as the L&DO to join in the survey. Moreover, no such plea having been taken on 6th April, 2011 when a direction was issued to the Respondent DUSIB, the same cannot be a ground for failure to comply with the order.

9. The counsel for the Respondent DUSIB next states that the charges for survey were not paid to the Respondent DUSIB. However no such plea also was taken earlier. The counsel for the Respondent DUSIB however at the time the order is being dictated states that no charges for survey are to be received.

10. The counsel for the Respondent DUSIB next states that survey is now not possible since the Petitioners have already been removed. The same is controverted by the counsel for the Petitioners who contends that all the seventy Petitioners and their families continue to occupy the land where the demolition was carried out. The counsel for the Respondent Hospital also states that thirty odd families are still in occupation of the land and owing where to the work of expansion of the Respondent Hospital is held up.

11. It has thus been enquired from Mr. Harish Vats, Dy. Director (Rehabilitation) of DUSIB as to when was the site visited last so as to be able to make a statement that the survey is not possible as the Petitioners are not in occupation of land. No plausible answer has been forthcoming.

12. From the aforesaid conduct of the Respondent DUSIB, it is quite evident that the Respondent DUSIB has defied the order dated 6th April, 2011 of this Court, not taken any steps in that regard and shown scant regard for the order. Mr. Ashwani Kumar, Chief Executive Officer of Respondent DUSIB is directed to look into the matter and to take appropriate proceedings against the defaulting officers and to place a report before the Registry of this Court within one month of today.

13. At this stage, the counsel for the Respondent DUSIB states that in the survey earlier conducted, only sixty persons had given their documents which have been sent for verification; their eligibility shall be determined.

14. This Court is of the opinion that the expansion project of the Respondent Hospital is likely to affect a larger section of the population of the city. It was in this spirit that directions were also issued from time to time to the Respondent DUSIB to submit the proposal for temporary rehabilitation of the Petitioners in the nearby places so that the public work of expansion of the Respondent hospital can be commenced at the earliest.

15. Mr. O.P. Saxena, Advocate under instructions from Mr. Harish Vats present in Court states that Respondent DUSIB can accommodate the Petitioners only in the night shelters managed by it and has no other resources to accommodate the Petitioners even temporarily at any other place. A suggestion is mooted to accommodate the Petitioners at the night shelter near Ajmal Khan Park at Karol Bagh.

16. Since the Petitioners are already without a roof above their head, it has been enquired from the counsel for the Petitioners as to why, till the determination of the eligibility of the Petitioners, the Petitioners be not accommodated in the said night shelter.

17. The counsel for the Petitioners has stated that some of the Petitioners work at night also and need a place in the daytime as well. It is also stated that even the family members need a place in daytime and which would not be available in night shelter. It is also stated that the children of the Petitioners are studying in

the nearby schools.

18. Mr. O.P. Saxena under instructions from Mr. Harish Vats states that the Petitioners, their families and children would be allowed to occupy the night shelter in daytime as well. On enquiry as to whether there is any vacancy in the said night shelter, it is stated that only about ten to twelve persons are presently occupying the same as against the capacity of seventy people. It is stated that even if all the Petitioners cannot be accommodated in the said night shelter, they would also be accommodated in other night shelters in the nearby areas and would be allowed to occupy the same in the daytime as well.

19. As far as the argument of the children studying in the nearby schools is concerned, it cannot be lost sight of that the Petitioners were/are in unauthorized occupation of the land. The relief claimed by them is also of relocation only. Even if relocated, they would have been required to change the schools. Though temporary relocation pending final relocation if any may entail change of school twice over but the said difficulty is found to be minimal in comparison to the difficulty which a larger section of society will suffer if the work of expansion of the Respondent Hospital is further delayed.

20. In the circumstances, the petition is disposed of with the following directions:

- a. The Petitioners to vacate the said site on or before 6th November, 2011;
- b. If the Petitioners or any of them or any other person in occupation fail to vacate the site by the said date, the Respondent Hospital shall be entitled to use reasonable force for their removal so that the land is available for the expansion project of the Respondent Hospital. The Respondent No. 10 SHO, PS - Mandir Marg is directed to ensure that the Respondent Hospital has possession of the vacant site as on 7th November, 2011;
- c. The Respondent DUSIB is directed to have the eligibility of all the seventy Petitioners for relocation under the Policy determined on or before 15th December, 2011;
- d. The Electoral Office and the Food Supply Office are directed to immediately respond to the verification sought by the Respondent DUSIB;
- e. The ten Petitioners who are stated to have not submitted their documents to the Respondent DUSIB to submit the same on or before 31st October, 2011;
- f. The Petitioners to appear before Mr. Harish Vats in the first instance on 17th October, 2011 at 1100 hours and thereafter on subsequent dates as may be required to. The Respondent DUSIB to submit its report to the land owning agency i.e. L&DO on or before 20th December, 2011;
- g. The Respondent L&DO is directed to relocate such of the Petitioners as are found eligible as per the report and as per the Policy of the Government;
- h. The Petitioners or such of them if remain aggrieved by the said report shall

have remedies in law;

i. The government schools near to the place where the Petitioners are re-located temporarily or permanently, to allow the transfer of the children of the Petitioners from the government school which they are presently attending to the new school;

j. The CEO of the Respondent DUSIB to comply with the direction aforesaid.

No order as to costs.