
(2011) 10 DEL CK 0148

In the Delhi High Court

Case No : Writ Petition (C) 5823 of 2010 and W.P. (C) 6439 of 2010

Ganga Sharan and Others

APPELLANT

Vs

MCD and Another
 Lata Vs MCD and Others

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Citation : (2011) 10 AD 179

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Mr. Rajat Wadhwa with Mr. Davinder Kumar in W.P. C 5823/2010 and None in W.P. C 6439/2010, for the Appellant; Nikhil Pillai, Advocate for Ms. Shyel Trehan, Advocate for R-1/MCD and Mr. O.P. Saxena, Advocate for R-2 in W.P. (C) 5823/2010, Ms. Saroj Bidawat, Advocate for R-1/MCD and Mr. O.P. Saxena, Advocate for R-2 in W.P. (C) 6439/2010, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The present petitions are filed by the petitioners praying inter alia for directions to the respondents, restraining them from initiating any coercive action of demolition and dispossession of the petitioners from their respective Jhuggis/hutments situated at Gautam Puri, Badarpur, Molar Band, New Delhi. The petitioners have also sought quashing of any order passed by the respondents, cancelling the allotment/occupation made in their favour in respect of their jhuggis under the Rehabilitation Improvement Scheme of respondent No. 1/MCD.

2. On a pointed query posed to the counsel for the petitioners as to the basis of the allotment allegedly made in favour of the petitioners, on the strength of which they are occupying the hutments in question, it is candidly conceded that except for petitioner No. 1 in W.P. (C) 5823/2010 to whom allotment of the hutment was originally made, all the remaining 61 petitioners in that petition are occupying the hutments in question either after the same were vacated by the original allottees, or in some cases, occupation of the hutments is on the

strength of their illegal sale by the original allottees. None appears for the sole petitioner in WP(C) No. 6439/2010. From a perusal of the averments made in the petition, it can be ascertained that the petitioner herein is also not an original allottee and has come to occupy the hutment through a power of attorney executed in her favour.

3. Counsel for respondent No. 2/Slum and J.J. Department states that there is no question of the petitioners laying any claim on the hutments in question as the same had been allotted for a period of ten years only to the eligible jhuggi dwellers for the purpose of their rehabilitation, on a license basis without granting any ownership rights to them. It is submitted that when many of the original allottees vacated the hutments in question, their licenses were cancelled by respondent No. 2 in the year 2007. It is further stated that the petitioners have occupied the hutments in question by entering into illegal sale-purchase agreements in respect of the hutments, which is not permissible under the Rehabilitation Scheme because of which such transfers cannot be recognized by respondent No. 2. It is further stated that none of the petitioners, except for petitioner No. 1 in W.P. (C) 5823/2010, have any ownership rights in the hutments in question and no proof of allotment has been placed on record by any of them.

4. It is further stated that reliance placed by the learned counsel for the petitioners on the order dated 17.11.2009 passed in W.P. (C) 10567/2009 entitled Naresh Kumar and Ors. vs. MCD and Anr. is misplaced inasmuch as the aforesaid writ petition was filed by the original allottees and not by parties like the present petitioners, who have no legal claim to the allotted plots and furthermore, the opportunity of hearing which was claimed by the petitioners therein, was granted based on the facts of that case. In the present case, the petitioners are admittedly not recognized by respondent No. 2 as the original allottees and hence, the question of granting an opportunity for hearing does not arise.

5. Counsel for respondent No. 2/Slum and J.J. Department further states that no policy has been formulated by respondent No. 2 for persons like the petitioners, who claim to be below the poverty line, for allocation of hutments to them. He states that as per the current policy in place, only those persons are eligible for allocation of hutments who were occupying jhuggi clusters, up to the cut-off year of 1991 and the petitioners who have admittedly come into possession only after the year 1991, would not be eligible. It is stated submitted that irrespective of the cut-off date of the year 1991, the present petitioners would still not be entitled to apply under the scheme for relocation as they are admittedly residents in a relocated area and are not living in a jhuggi cluster, for being eligible to apply.

6. In view of the aforesaid submissions made by the counsel for respondent No. 2/Slum and J.J. Department, which remain uncontroverted by the other side, it has to be held that the petitioners are in possession of relocated plots, in which

hutments had been constructed for original allottees who were removed from jhuggi clusters and in the light of the fact that their possession is post the year 1991, which is the cut-off date under the scheme of the Government for relocation, the petitioners cannot be granted the relief as prayed for by them in the present petition. However, in view of the submission made by the learned counsel for the petitioners that the petitioners propose to make a representation to respondent No. 2 for being considered for grant of a license to occupy the hutments in their possession, on payment of license fee, the petitioners are permitted to make such a representation within two weeks, which shall be duly considered and disposed of, by respondent No. 2 as per its prevalent policy in a time bound manner preferably within a period of two weeks from the date of receipt of such representations, under written intimation to the petitioners through their counsel. It is further directed that respondent No. 2/Slum and J.J. Department shall not take any coercive steps against the petitioners for a period of two weeks from the date their representation is disposed of.

7. The petitions are disposed of while leaving the parties to bear their own costs.