
(1995) 12 DEL CK 0059

In the Delhi High Court

Case No : Civil Writ Petition No. 1508 of 1985

Gian Chand Gupta

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 12-12-1995

Acts Referred:

Citation : (1996) 1 AD 185 : (1996) 61 DLT 308

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajeev Sharma, H.P. Sharma and S.D. Salwan, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is a writ petition filed by the petitioner aggrieved by the inaction of the respondent-New Delhi Municipal Committee (in short "NDMC"), who have failed to allot any alternative site to the petitioner. Petitioner belongs to the category of squatters belonging to pre-1957 period.

(2) Mr. Rajiv Sharma, learned Counsel appearing for the petitioner, has relied upon a judgment of this Court in the case of Pashupati Nath & Ors. v. New Delhi Municipal Committee, C.W.P. No. 285/1980 which was decided on 20.3.1985. He has contended that the NDMC itself has considered on the basis of Sub Committee recommendations and eligibility was modified for those squatters, who were squatting in the NDMC area. It has also been incorporated in the aforesaid judgment that -

"SUCH of the pre-1957 verified squatters and those from erstwhile T.C. Building in Connaught Place area in whom eligibility is certified by the Allotment Sub Committee."

(3) Learned Counsel appearing for the petitioner says that this case is at par with the case of petitioner No. 3, whose petition was allowed pursuant to the said judgment. Mr. Rajiv Sharma has further contended that the petitioner was

squatting in E-Block, Connaught Place, New Delhi since 1950. In support of his contention, he has relied upon the affidavit filed by the respondent-NDMC, which is at page-66 of the C.W.P.No. 1508/1985, which was filed as "Annexure-D". Annexure D is a list of squatters considered to be pre-1957 in the year 1979 but not allotted any site. The name of the present petitioner figures at Serial No. 10. In view of the admitted position that the petitioner was a squatter, who was considered to be pre- 1957 squatter even in the year 1979 but had not been allotted any site till date, I do not see any justification on the part of the respondent not to allot the site to the petitioner as per the policy of the respondent applicable to such kind of cases.

(4) On the other hand, learned Counsel appearing for the respondent has argued that after the appointment of Thareja Committee by the Supreme Court, the petitioner's case cannot be considered and if the petitioner had applied to the Thareja Committee, his case ought to have been considered by the said Committee. The sum and substance of the arguments of the learned Counsel appearing for the respondent is that after the appointment of the Thareja Committee by the Apex Court, it was only on the recommendation of the Thareja Committee that any allotment was to be made by the respondent-NDMC. Mr. Salwan, learned Counsel for the respondent, has vehemently argued that on 11th February, 1991 when the petitioner had appeared in person pursuant to the directions of this Court, he had filed an application before the Thareja Committee and in view of the fact that the Thareja Committee had gone into all the aspects of the matter, now at this stage no allotment can be made to the petitioner. Counsel for the respondent has also contended that the case of the petitioner was considered by the Thareja Committee in detail and after its rejection by the Thareja Committee, nothing survives in favor of the petitioner.

(5) I have heard the learned Counsel appearing for both the parties at length. As a matter of fact, appearance of petitioner on 11th February, 1991 before Committee, when the petitioner had appeared in person pursuant to the directions of this Court, cannot be used against the petitioner. Court had directed that let application of the petitioner be first considered by the Thareja Committee and the writ petition will be decided thereafter. The Court has not ordered that the decision of the Thareja Committee would be final or binding. The Thareja Committee was appointed by the Apex Court in view of the Resolution No. 28 passed by the NDMC, which dealt with allotment of alternative sites to the squatters in the NDMC area, who have continuously been squatting till 1987 and claims of such squatters were to be decided by the Thareja Committee. Whereas the case of the petitioner, admittedly, is not that he has been continuously squatting in Connaught Place till 1987. The case of the petitioner was covered by Resolution No. 18 dated 27.1.1979, which inter alia has been dealt with in C.W.P.No. 285/1980.

(6) In view of the admitted position by the respondent-NDMC by virtue of the list which they had filed in the present C.W.P.No. 1508/1985 as "Annexure-D" where

the name of the petitioner was shown at Serial No 10 in the list of squatters, who were considered to be pre-1957 squatters in the year 1979 but not allotted any site, I do not see any force in the arguments of the learned Counsel for the respondent that the petitioner was not squatting till 1987 and, Therefore, on that ground the Thareja Committee did not recommend any allotment of space to the petitioner, petitioner cannot be allotted any alternative site. Petitioner was admittedly a squatter as per their own resolution of the respondent-NDMC passed in the year 1979. From 1979, the petitioner, after having been removed, was agitating before the said Committee for allotment of site, but he was not given allotment of alternative site, which was given to similarly situated persons, and ultimately he had to file this writ petition in 1985, speaks volume about the inaction on the representation of petitioner by the respondent. As a matter of fact, in view of these kind of cases the Apex Court was compelled to appoint a Committee headed by a Judicial Officer of Higher Judicial Services to look into the complaints and claims of squatters.

(7) The respondent under the garb of Thareja Committee is denying legal right to the petitioner. Affidavit has been filed by Shri T.M. Balakrishnan, Director (Enforcement), NDMC on 21.8.1995 in which the respondent itself has stated that claim of the petitioner was found to be outside the boundaries of the Resolution No. 28 and, Therefore, the same was rejected by Thareja Judicial Committee.

(8) I have gone through the order of Judicial Committee. The ground mentioned for rejection is that as the petitioner was not squatting in the NDMC area till the end of 1987, Therefore, his claim could not be acceded to and rejected the claim of the petitioner. As discussed above, the petitioner was a squatter of pre-1957, as per "Annexure-D", which was filed by the respondent to the present writ petition. "Annexure-D" was a list of squatters, considered to be pre 1957 period, those, who were eligible but not allotted any site and his status, as such was determined by the respondent in the year 1979. In view of their own list, the respondent is estopped to plead that the petitioner was not entitled for any alternative site when similarly situated persons have already been allotted site. As a matter of fact, in my considered opinion, the Thareja Committee was not dealing with such kind of cases as the present one. Petitioner, who had been squatting but had been removed, preferred their claims and found eligible for allotment by the respondent-NDMC but not allotted, had to wait for over 16 years to get allotment.

(9) In view of the observations made above and following the judgment of this Court in Pashupati Nath's case (supra), I direct the respondent-NDMC to allot any site to the petitioner within the radius of two kilometers from Connaught Place area, on the basis of his being eligible as per their own list, which is "Annexure-D" to the present writ petition within a period of three months from today. The rule is made absolute.