

(2019) 10 DEL CK 0173

In the Delhi High Court

Case No : Civil Writ Petition No. 12111 Of 2016

Govt. Of Nct Of Delhi & Anr

APPELLANT

Vs

Krishan Kumar

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Right to Information Act, 2005 — Section 2(f), 3, 18, 19, 20

Citation : (2019) 10 DEL CK 0173

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Zahid Hanief, Naushad Ahmed Khan, Anil Tomar, Davinder Verma

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This writ petition is filed seeking to issue an appropriate writ, order or direction to set-aside the impugned order dated 07.09.2015 passed by Central Information Commission (CIC).

2. The case of the respondent is that in 1987 a plot measuring 112 sq yards under the 20 Point Programme bearing plot no.170, Village Gram Sabha, Bawana was allotted to the petitioner. On 14.10.1987, he deposited Rs.54 for the aforesaid land but the possession of the said plot has still not been handed over to him. Based on the above, the respondent filed an RTI application on 13.01.2011, where he sought information as to why the possession of the plot allotted to him has still not been handed over to him and how much time authorities will take to handover the possession to him. The CPIO dealing with the aforesaid application only noted that in the year 1987, possession for the plots allotted under the 20 Point Programme was given by the Gram Pradhaan, Block Development officer and Panchayat Secretary and no possession proceedings were carried out by the Patwari and Kanungo. The appeal filed by the respondent was dismissed on 11.04.2011.

By the Impugned order, CIC had made the following directions:

5. As on today BDO, District North has to take responsibility for tracing the record and to provide possession of land. Interestingly, the appellant has complete records. Though his name was declared in the meeting to allocate land, he was just given receipt of Rs.54/- signed by Pradhan of the village. The very fact of the case is that, there is entry of Khatoni in the Form P-4 indicated existence of Patta in favour of the appellant BDO North must have this record in his office. File is pertaining to sanction given by Lt. Governor in favour of Gram Shabha Bawana allocating plot to Dalit in the village under 20 point programme. Dy. Commissioner and BDO North is hereby directed to inform the appellant as to when they will be providing him Patta, possession of the plot of 120sq. Yd. sanctioned in 1987 within 30 days from the date of receipt of this order.

6. The Commission directs the Dy. Commissioner and BDO North to explain why compensation should not be granted to the appellant as he was being harassed, since 1987, by claiming that files are missing, within 21 days from the date of receipt of this order. The Commission cannot accept this and observes it is mis-appropriate and unreasonable claim of missing files as explanation for denial of information about Patta. The case of appellant reflects the condition of allottees of land under 20 Point Programme in 1987. It also reflects the state of affairs prevailing in District North where the files relating to allocation of land could not be traced. The commission observes that respondent authority is liable to pay compensation to the appellant, besides allocating sanctioned plot of 120 sq. Yd., as they had taken Rs.54/- in 1987 from the appellant. It is their duty to implement the promise given in the formal ceremonial allocation of land to Mr. Krishan Kumar.

7. The Commission also directs Dy. Commissioner and BDO North to explain and establish their efforts to trace the missing files. The Commission directs the Dy. Commissioner to take serious view on frequent claims made by the PIO about file missing as it is illegal claim. With the above directions, case is disposed of."

3. I have heard learned counsel for the parties. Learned counsel for the petitioner has submitted that CIC cannot direct handing over of the possession of the plot to the respondent, which is contrary to the RTI Act. Learned counsel for the petitioner also states that the files in question have been lost as they were not transferred by the Village Pradhan to the concerned functionary, hence it is not possible to hand over the necessary documents, as sought for by the respondent.

4. Learned counsel for the respondent has relied upon the judgement of the Single Bench of this court in Narain Singh & Anr v. Delhi Administration & Ors. in W.P. (C) No.4836/1993 dated 31.10.2011 and the appeal order in Delhi Administration vs. Narain Singh, 2015 SCC OnLine Del 4127 dated 17.12.2015 to claim that persons under the 20 point programme are being dealt with in a very haphazard and arbitrary manner by the petitioner. Learned counsel for the

respondent further states that the necessary documents are available with them and the same have not been disputed by the petitioner and hence the petitioner should take steps based on the document filed by the respondent.

5. It is true that vide impugned order the CIC has made some direction to the petitioner to implement their decision for allotment of the plot to the respondent. The Impugned order states that the petitioner is liable to allocate the sanctioned plot for which he has taken Rs.54 and it is their duty to implement the policy given. To the extent that the impugned order directs the petitioner to hand over the possession of the plot in question the order suffers from manifest errors.

6. A mere reading of Sections 18, 19 and 20 of the RTI Act, 2005 clearly shows that the CIC cannot give directions to handover the possession of the plot to the respondent. Further, passing such an order would be beyond the scope of powers and functions of the CIC as stated under the RTI Act, 2005. Reliance in this regard may be placed upon the judgment of the Supreme Court in the case of Union of India vs. Namit Sharma, (2013) 10 SCC 359 where the Supreme Court noted as follows:-

"24. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority; under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person; and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act

25. Section 2(j) defines "right to information" conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, "which is held by or under the control of any public authority". While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions."

7. In view of the above, CIC cannot give directions to the petitioner to implement its commitment and obligations to any contract.

8. However, I may only note observations of the Division Bench in the case of Delhi Administration v. Narain Singh & Anr. (supra) where also the issue pertained to possession of the plot allotted under the 20 Point Programme in

village Gaon Sabha. The Division bench held as follows:

"11. As could be seen, there is no consensus regarding the availability of the alternative land. Whatever may be the reason the fact remains that the writ petitioners have not been put in possession of the plots allotted to them till date. It may be true that the resolution passed by the Gaon Sabha, Rangpuri did not refer to the prior approval as required under the Delhi Panchayat Raj Rules, 1959 and that there were procedural lapses in issuing the allotment certificates. However, it has already been held by this court as well as the Supreme Court that the same cannot be a valid ground to allow the Delhi Administration to wriggle out of their commitment to honour the allotments made to the petitioner.

12. On a perusal of the report filed by the Delhi Administration, it appears to us that they failed to come out with any justifiable reason as to why the previous sanction was not obtained before the allotment letters were issued to the petitioners. Except repeating the stand taken earlier that the resolution of the Gaon Sabha and the issuance of the allotment certificates were not in conformity with the provisions of the Delhi Panchayat Raj Rules, 1959, it appears to us that no genuine effort is made to locate the land which can now be made available for achieving the purpose of 20-Point Program of the Government. From the material available on record, prima-facie we are of the view that the difficulty sought to be projected for implementation of the directions of the learned Single Judge is not genuine but only an attempt to circumvent the said directions which have attained finality".

9. It is clear that the issue of allotment of plots has been pending since quite long. To that extent the grievance of the respondent is justified. Let the respondent approach the petitioner with the complete set of documents available with him regarding the allocation of the land in his favour under the 20 point program. Based on the documents that are placed on record by the respondent, the petitioner will take steps and deal with the issue as per law. Needful be done within twelve weeks from the date of receipt of the necessary document from the respondent substantiating his claim to the plot in question.

10. With the above said directions, the petition stands disposed of.