

(2005) 12 DEL CK 0040

In the Delhi High Court

Case No : Writ Petition (C) No. 17527 and 17528 of 2004

Ishwar Chandra Dutta and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Citation : (2006) 127 DLT 608

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Bimal Roy Jad, for the Appellant; Anil Sapra, Kailash Gambhir and Arun Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.

CM No. 4632-33/2005 in WP (C) No. 17527-28/2004

1. At the commencement of argument I have asked counsel for the Petitioner whether he intends to oppose these applications. They have been vehemently opposed. Counsel for the Applicant drew my attention to the prayers in the Writ Petition which are calculatedly against 96 persons who have already been granted allotment, and are members of the Intervenor. On my further query of how a Writ Petition can be issued against a person who is not a party thereto, counsel for the Petitioner concedes that the applications may be allowed.

2. The applications are allowed. WP (C) No. 17527-28/2004 2. After hearing counsel for the parties I understand the grievance of the Petitioners to relate to the failure of allotment of shops on terms identical to those 96 persons, whose eligibility was forwarded by the Screening Committee of the Government with the assistance of the EPDP Association. The criteria for conforming eligibility included the following:

(1) Certified copies of Citizenship Certificate.

- (2) Migration Certificate.
- (3) Refugee Registration Certificate.
- (4) Border slips.
- (5) Certified copies of National Census Register.
- (6) Certified copy of the first page of the Service Book.

3. On verification of these documents, as already mentioned, 96 persons were found eligible for allotment of alternative shop sites at half the prevailing rate, in substitution of the areas in which they were squatting. The verification was carried out from 1984 to 1988. It has been explained that allotment took place in 2004 for the reason that the Respondents had to make available to the affected persons an interim site in order to facilitate the squatters to carry on their trade in the interregnum from that site with the ultimate objective of eventually moving to the shops constructed by the Respondents. The group of 96 persons have been allotted shops on the Ground floor at half the rate applicable to the other group of twelve persons in which the present eight Petitioners fall.

4. The Petitioners have paid 25% of the cost of the shops as the amount demanded by the Respondents and have received their allotments. Having acted upon the Scheme, and having enjoyed its fruits, ordinarily they would be estopped from raising objections thereto, especially in writ proceedings.

5. After the aforementioned verification of 96 candidates/squatters had been carried out, the group of 12 persons made a representation to the Respondents for receiving allotment on terms similar to the group of 96. Reliance has been placed by the Petitioners on a letter dated 17.8.1994 which reads as follows: "With reference to your application dt. 4.4.94 for consideration of allotment of a shop in market No. I Chittaranjan Park, New Delhi. In this regard 96 applicants have already been found eligible for allotment of shops by the Screening Committee. Your case Along with other 11 cases have been considered and listed within 96 cases i.e. total 108 (96 plus 12) by the Screening Committee to finalise eligibility for allotment of the shops in the above said market. In these 12 cases the shops will be allotted after fulfilling the requirements of the aforesaid 96 applicants who have already been screened and approved by the Screening Committee as eligible. You have already been informed by J.S. Ministry of Urban Development and advised to keep yourself in touch with this office in this matter for ascertaining further progress."

6. It is a salutary principle of law that matters of antiquity should not be considered and undone in Writ proceedings. Allotments in favor of the group of 96 persons, which is now sought to be over-turned, is palpably barred by the principles of laches. So far as the Respondents are concerned, it is the contention that the 12 persons (of which eight persons are in this batch of Petitions) were not squatting prior to 1971. The argument that the verification of 96 persons has not been carried out correctly ought not to be entertained in Writ proceedings

filed in 2004 These are settled matters which should not be interfered with at the instance of dissatisfied persons. There is an intelligible differentia between the present Petitioners and the 96 persons who have already received allotments on the ground floor at half the price. If this matter is to be reopened it will indubitably throw up hotly contested questions of fact which cannot be determined effectively in these Writ proceedings. It is clarified that this Court has not granted its imprimatur on the allotments made to the group of 96 persons earlier in point of time than the Petitioner, since that controversy has not arisen for adjudication.

7. As has been stated in the first paragraph, the grievance of the Petitioners are that they have not been accommodated on the ground floor and that they have been called upon to pay twice the price. If they do not fall within the same group as the 96 persons this is an expected consequence. No mala fides can be attributed to the Respondent; on the other hand they have been quick to effect allotments to the Petitioners even though they do not strictly fall within the purview of the original Rehabilitation Scheme. It would indeed be relevant to reproduce the observations of the Hon'ble Supreme Court in this regard which have withstood the test of one decade of time. The said observations in Chandigarh Administration and another Vs. Jagjit Singh and another, read as follows:

"8. ...Generally speaking, the mere fact that the respondent`-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favor of the petitioner on the plea of discrimination. The order in favor of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favor of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent- authority to repeat the illegality or to pass another unwarranted order.

8. It has also been submitted that in on-going enquiries by the Respondents some of the 96 persons have now been found not to be eligible. These Orders do not affect those findings. If the argument of the Petitioners is carried to its logical conclusion, and it is accepted that some persons out of the group of 96 did not fulfill the requisite criteria, that fact per se would create no right in favor of the Petitioners. A wrong already committed does not justify further commission and perpetuation of the same wrong.

9. It is conceded that there are some vacant shops on the ground floor. The submission on behalf of the Respondents is that these shops would now be auctioned in order to earn the highest price available. Once the 12 persons are in a category different to the other 96, disparate treatment would be legitimate. New schemes can be enforced. In my view for this Court to issue a Mandamus or any other Writ directing the Respondents to allot the vacant shops to the

Petitioners is not legally permissible.

10. Original file has been perused and handed back to the Land DO.

11. The Writ Petitions are dismissed.