

(2010) 06 DEL CK 0012

In the Delhi High Court

Case No : Writ Petition (C) No. 2806-2934 of 2004

Jagjit Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4
National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 —
Section 3, 4, 6

Citation : (2010) 06 DEL CK 0012

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Ravinder Sethi, Rajiv Ghawana and Inder Bir Singh, for the Appellant; Najmi Waziri for Govt. of NCT, Sanjay Poddar and Mukesh Kumar for LAC and Vinay Sabharwal, O.P. Saxena and Sumeet Pushkarna for MCD and S and JJ Deptt., for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioners by way of present writ petitions under Article 226 of the Constitution of India seek to challenge the notification dated 04.03.2003 u/s 4 of the Land Acquisition Act, 1894 ("the said Act" for short) and the declaration dated 04.02.2004 u/s 6 of the said Act in respect of the lands situated in Village Bhalswa, Jahangirpur, Delhi. The public purpose of acquisition, as indicated in the notification, is rehabilitation of JJ clusters.

2. It is the case of the petitioners that the persons who had occupied public land cannot be rehabilitated at the cost of the petitioners by acquiring their land.

3. During the course of hearing of the present writ petitions, strong reliance was placed on behalf of the petitioners inter alia on the judgment of the Division Bench of this Court in Wazirpur Barta Nirmata Sangh Vs. Union of India (UOI) and Others, . In terms of that judgment, the policy of the respondents for resettlement/rehabilitation of Jhuggi Jhopri dwellers who squat on government land unauthorizedly and were being allotted plots of land to move them from the

squatting site was quashed. It would be useful to reproduce the operative portion of that order, which is as under:

46. We are thus of the considered view that the continuing existence of such a policy serves no social purpose. Such a policy without any social criteria, is illegal and arbitrary and we hereby proceed to quash the same which requires alternative sites to be provided to slum dwellers occupying land before they can be removed from such public land. Needless to say it will be open to the respondents to devise a policy for rehabilitation of the economically weaker sections based on a legitimate criteria but the criteria cannot be encroachment on public land.

47. The question, however, remains as to what directions are now to be issued taking into consideration that much water has flowed since the policy was originally devised in 1990.

48. We have considered the suggestions given at the Bar and have applied ourselves to the problem at hand. While quashing the policy aforementioned we consider it appropriate to give the following consequential directions:

(1) The cut-off date should be maintained as 31.1.1990 and a verification should be carried out of all the persons who have been allotted alternative sites. The needful be done within a period of 6 months from today and in any case by 30.6.2003.

(2) The persons found in occupation of the original sites would be allowed to continue to occupy the same but strictly on license basis and appropriate license deeds should be issued to them clearly stating that the rights are not transferable in any manner whatsoever.

(3) In so far as the persons who are occupying the alternative sites and who have transferred it to third parties, the plots should be got cleared from occupation of such third parties and should be allotted only to those who still remain to be allotted plots in terms of the 1990 scheme with the cut-off date remaining as 31.1.1990. Steps in this direction should also be taken up and the task should be completed within a period of one year from today and not later than 31.12.2003. Such occupants would have no right to continue to occupy since admittedly these sites were given on a license fee basis and should not have been transferred.

(4) If some persons still remain without allotment and were in occupation of any site prior to 31.1.1990, the money, if received from them should be refunded and no further plots be created to accommodate such persons.

(5) Insofar as the persons who have been allotted sites and who had encroached upon land after 31.1.1990 are concerned, the same criteria would be applied as in paras 1, 2, 3 above. However, no further allotment should be made for any such persons and the sites got vacated should be utilised for the benefit of those persons who have been occupying sites prior to cut-off date of 31.1.1990.

(6) No allotment will be converted into ownership basis as is proposed by the Government of NCT of Delhi in its policy guidelines for implementation of the scheme for relocation.

(7) No alternative sites are to be provided in future for removal of persons who are squatting on public land.

(8) Encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before such encroachment is removed or cleared.

(9) The land owning agencies should collect data and verify the position about the land vested in them for planned Development of Delhi and keep a periodic check to ensure that no further encroachment takes place on the public land and that the encroachments already existing are removed expeditiously.

(10) The Commissioner of Police would render all assistance as and when required by the public authorities to clear the encroachment on public land.

(11) The public authorities should make their officers responsible for such protection of public land accountable for any encroachment which takes place on public land since undoubtedly the same takes place in connivance with such public authorities. The local police authorities should also be made responsible to ensure that encroachment does not take place on public land.

49. We part with this judgment with the hope and desire that it would help to make Delhi a more livable place and ease the problems of the residents of this town who undoubtedly suffer and are harassed as a consequence of this encroachment on public land.

4. The Union of India and the Govt. of NCT of Delhi were both aggrieved by the said judgment and preferred special leave to appeal.

5. Leave has been granted in both the matters and is pending consideration before the Supreme Court. There are some interim orders also passed which need to be referred to.

6. In Special Leave to Appeal (Civil) No. 3166-3167/2003 filed by Union of India, interim directions were passed on 19.02.2003 in the following terms:

In the meantime, it will be open to the Union of India to proceed with the impugned policy. However, no allotment of land shall be made in pursuance thereof till further orders.

7. On 03.03.2003, the interim orders were modified in the following terms:

Interim stay shall continue except that the Authority may allot land. However, such allotment would clearly specify that the allotment would be subject to the result of the petitions.

8. In Special Leave to Appeal (Civil) No. 6313-6314/2003 filed by Govt of NCT of

Delhi, similar orders were passed on 2 1.04.2003.

9. Leave was granted on 02/22.03.2007 and interim orders were directed to continue with hearing expedited and liberty to mention.

10. The result of the aforesaid proceedings thus is that there is no stay of the operation of the impugned judgment but Union of India has been permitted to proceed with the impugned policy and make allotment of land subject to the result of the petitions.

11. The original petitioners filed contempt proceedings for violations of the directions contained in Wazirpur Bartan Nirmata Sangh v. UOI and Ors."s case (supra) and in terms of the order dated 18.12.2008 in IA No. 1 of 2008 in Civil Appeal No. 1691/2 007 Govt. of NCT of Delhi v. Okhla Factory Owner"s Association and Ors., the contempt proceedings were stayed.

12. In view of the aforesaid orders, we were examining the question about the consequences of such interim orders and to what extent could reliance be placed on the judgment in Wazirpur Bartan Nirmata Sangh v. UOI and Ors."s case (supra) as the operation of the impugned judgment had not been stayed nor the impugned judgment had been set aside. A further development which took place was the decision of a coordinate Bench of this Court in WP(C) No. 8904/2009 Sudama Singh and Ors. v. Govt. of Delhi and Anr. and other connected matters on 11.02.2010. The Division Bench was seized of the issue of removing certain JJ clusters which had come up on the "right of way" which was sought to be removed. The Division Bench noted the judgment of this Court in Wazirpur Bartan Nirmata Sangh v. UOI and Ors."s case (supra) and proceeded on the basis that the Supreme Court had stayed the order of the High Court and thus the policy was still operative. The conclusions of the Division Bench are contained in para 62 of the judgment, which are as under:

62. It is declared that:

(i) The decision of the respondents holding that the petitioners are on the "Right of Way" and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional.

(ii) In terms of the extant policy for relocation of jhuggi dwellers, which is operational in view of the orders of the Supreme Court, the cases of the petitioners will be considered for relocation.

(iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021 subject to proof of residence prior to cut-off date. This will happen in consultation with each of them in a "meaningful" manner, as indicated in this judgment.

(iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at

the site of relocation.

13. When the aforesaid judgment was brought to our notice, a submission was made before us that a coordinate Bench of this Court could not have differed with the earlier judgment when the earlier judgment had not been set aside by the Supreme Court. Not only that there was not even a blanket stay of the operation of the earlier judgment but allotment of land in terms of the policy was permitted subject to the final outcome of the petitions. We also wanted to know the current stand of the Govt. of NCT of Delhi and thus called upon them to place before us the same.

14. The Govt. of NCT of Delhi filed an affidavit of the Special Secretary, Deptt. Of Urban Development, affirmed on 28.05.2010 placing on record its policy regarding the scheme of relocation/rehabilitation of Slum and JJ Dwellers. It was pointed out to us that on 03.02.2010, the Govt. of NCT of Delhi had approved the "Modified Policy Guidelines for Implementation of Scheme for Relocation/ Rehabilitation and Allotment of 7900 flats to Slum and JJ Dwellers in the First Phase". Prior to this modification, there was a policy guideline of 03.02.1994. It has been emphasized that the cut-off date for entitlement to an alternate plot/ flat is 31.12.1998. This Court in Wazirpur Barton Nirmata Sangh v. UOI and Ors."s case (supra) had put the cut-off date as 31.01.1990 in terms of the original policy.

15. The non eligibility conditions specifically deal with jhuggis which would come up after 31.12.1998, owners of jhuggies who have rented out/sold out the jhuggies and were not in possession of the jhuggies at the time of removal, the JJ dwellers squatting on road berms, footpaths, right of way, community areas, safety zones of railways and as per court orders, etc. In para 5 of the affidavit, it has been stated that insofar as eleven directions in Wazirpur Barton Nirmata Sangh v. UOI and Ors."s case (supra) (This case is also known as Okhla Factory Owners Association v. Govt. of NCT of Delhi), the position of the Govt. of NCT of Delhi is that the cut-off date should be 31.12.1998, instead of plots only flats should be now allotted to eligible persons strictly on licence and non transferable basis, almost all the persons who were eligible for allotment of plots have been handed over such plots and in case any application was pending, the same would entitle the person only to flats, no alternative site is to be provided to persons squatting on public land as mentioned in Section 4 of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 and Clause 3.3 of the Regulations for Regularization of Unauthorized Colonies in Delhi and the encroachment already existing on public lands would be protected insofar as protection is available u/s 3 of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009.

16. The aforesaid exceptions are stated to have been recognized in terms of the directions passed in WP(C) No. 7758/2007 Welfare Association (Retd.) Majlis Park v. MCD and Ors.; decided on 27.01.2010 by a Division Bench of this Court directing removal of slum clusters from proposed/earmarked 80 feet wide road.

However, the Division Bench of this Court in *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) has taken a divergent view.

17. The stand of Govt. of NCT of Delhi thus is that *Sudama Singh and Ors. v. Govt. of NCT of Delhi*'s case (supra) not only diverges from the policy of the respondents but is in conflict with a view expressed in *Welfare Association (Retd.) Majlis Park v. MCD and Ors.*'s case (supra) as also *Wazirpur Bartan Nirmata Sangh v. UOI and Ors.*'s case (supra).

18. The second affidavit was filed by the Govt. of NCT of Delhi in the Court today referring the modified policy guidelines of 2010. It has been re-affirmed that under this policy only flats will be allotted to eligible beneficiaries on license fee basis which will not be transferable except in case of death of the licensee and the licensee is not entitled to rent out or part with possession of the flat which has to be utilized exclusively by the members of the family of the licensee. Such allotment will be initially for fifteen years. A specific reference has been made to the eleven directions issued by this Court in *Wazirpur Bartan Nirmata Sangh v. UOI and Ors.*'s case (supra) by re-affirming that the Government stands by its policy though the implementation of the policy rests with Slum and JJ Wing of the MCD. The Slum & JJ Wing has been requested to take appropriate action as per law for implementation of the policy in terms of the meeting held on 31.05.2010.

19. A separate affidavit has been filed by Slum and JJ Department of the MCD. It is reiterated that the allotment of flats is on licence basis initially for a period of 15 years without right to let out or part with possession and the Slum & JJ Wing has the right to cancel allotment of a flat and take over possession in case of violation of the stipulated terms and conditions by the allottee. 60,000 plots are stated to have been allotted to the jhuggi dwellers at various locations namely Dwarka, Rohini, Bakkar Wala, Bawana, Narela, Holumbi Kala, Bhalaswa, Molar Bund and Madan Pur Khaddar etc. Exercise has been done from time to time to check whether the jhuggi dwellers who had been allotted plots are staying themselves in the plots or have transferred the same to third parties. In the exercise carried out in this regard in 1999-2000, 641 plots were found to have changed hands whose allotment was cancelled. A similar exercise was carried out in the year 2002 when 4373 plots were cancelled. In the year 2007, 10539 plots have been cancelled. Thus, the Department has cancelled allotment of 15553 plots and it is stated that the exercise for resumption of possession is being undertaken at the highest level.

20. The result of the aforesaid is that in view of the current stand of the respondents the challenge to the judgment before the Supreme Court in *Wazirpur Bartan Nirmata Sangh v. UOI and Ors.*'s case (supra) is restricted really to the cut-off date of 31.01.1990 or 3 1.12.1998. It is also apparent that there has already been violation of the terms and conditions of the allotment of plots, which has resulted in cancellation of over 15,000 plots and it would be expected that expeditious exercise will be carried out to re-possess them so that

they can be given to genuine beneficiaries.

21. Learned Counsel for the parties have emphasized that the judgment in *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) runs even contrary to a Supreme Court Judgment in *Almitra H. Patel and Another Vs. Union of India (UOI) and Others*, where the Supreme Court came down heavily on the policy of the Government making allotment to persons who had encroached on public land and the court observed that "rewarding of encroachers on public land with free alternative site is like giving reward to a pick pocket". It has been emphasized that the Supreme Court has not stayed the operation of the order in *Wazirpur Barton Nirmata Sangh v. UOI and Ors.*'s case (supra). The approach of the Division Bench in *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) ignoring the judgment in *Wazirpur Barton Nirmata Sangh v. UOI and Ors.*'s case (supra) on the ground of their being a stay is sought to be assailed as there was no finality to the view of the Supreme Court in the SLPs filed against the judgment in *Wazirpur Barton Nirmata Sangh v. UOI and Ors.*'s case (supra). It was pointed out that even factually it was incorrect that the operation of the judgment had been stayed and the Government was only permitted to proceed with its policy in making allotment of land subject to the final outcome of the petitions.

22. Learned Counsel for the petitioners seeks support from the judgment of the Supreme Court in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, where in para 10 it has been observed as under:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

The aforesaid is of significance since undisputedly the judgment in *Wazirpur Barton Nirmata Sangh v. UOI and Ors.*'s case (supra) has not been set aside and there is not even a stay of operation of the judgment but certain interim

directions have been passed.

23. We do find merit in the contention advanced by learned Counsel for the parties that an authoritative pronouncement is necessary in view of the apparent conflict of judicial views in not only the two judgments but also the third judgment pointed out by the Govt. of NCT of Delhi. The question arises whether a coordinate Bench of this Court could have ignored the ratio decidendi of the prior judgment merely because an appeal was pending against the earlier judgment and there were certain interim orders issued without even there being a stay of the earlier judgment.

24. Learned Counsel for the parties, in fact, initially sought to canvass before us that the subsequent judgment in *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) should be ignored, but then, in our considered view, to accept the said submission would be to fall in a trap for which the judgment in *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) is being assailed. We are of the view that where there is conflict of judicial views by a coordinate Bench, the matter ought to be settled by a larger Bench and one coordinate Bench cannot evade the ratio decidendi of an earlier judgment. If one may say so even the counsel for the respondents joined in the request that the matter needs consideration by a larger Bench.

25. We thus deem it appropriate to direct the placing of this matter before the Hon'ble Chief Justice for constitution of a larger Bench to settle the conflicting views in *Wazirpur Barton Nirmata Sangh v. UOI and Ors.*'s case (supra), *Welfare Association (Retd.) Majlis Park v. MCD and Ors.*'s case (supra) & *Sudama Singh and Ors. v. Govt. of Delhi and Anr.*'s case (supra) and also to determine as to what should be the approach of the coordinate Bench when there are earlier authoritative pronouncements having a contrary ratio decidendi and the appeal is pending before the Supreme Court without the judgment being set aside or operation of the judgment being stayed.