

(2002) 12 DEL CK 0087

In the Delhi High Court

Case No : R.A. No. 12428 and C.M. 12429 of 2002 in CWP. 3530 of 1992

Madan Lal Jain

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 4(1), 7(2)

Citation : (2003) 103 DLT 416

Hon'ble Judges : Devinder Gupta, Acting C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Neeraj Kishan Kaul and Nikhil Nayyar, for the Appellant; Jayant Bhushan, Manish and Kusumlata Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—By means of this Review Application No. 12428/2002 the petitioner is seeking review of judgment and order dated 11.7.2002 passed in this writ petition whereby the said writ petition of the petitioner was dismissed with costs. As Mr. Jayant Bhushan appeared for the respondents, without issuing formal notice in this review application, both the parties were heard at length.

2. The contention of the petitioner in this review application is that in the aforesaid judgment this Court failed to place reliance on various documents and admissions made on record by the respondents, and as such, said judgment of this Court suffers from errors apparent on the face of the record. The petitioner has annexed certain documents along with this review application and the submission made is that these documents would demonstrate that the petitioner is entitled to relief claimed in the writ petition.

3. Before coming to the detailed arguments advanced by the parties, it would be necessary to recapitulate the controversy and the decision given in judgment dated 11.7.2002 inasmuch as the same would facilitate understanding of the arguments in better way.

4. The petitioner migrated to India in 1947 on the partition of the country and is a displaced person. He occupied a site bearing No. T-34, Mirdard Road, New Delhi and commenced business of coal and firewood in the name and style of "M/s. Kundan Lal Madan Lal". Although the initial unauthorised occupation was of much Lesser space, the petitioner kept on expanding it and by the year 1959 it was extended to 720 sq. yds. and on or about 28.8.1992 he was found to be in unauthorised occupation of 831 sq. yds.

5. The respondents had framed a scheme for rehabilitation of displaced persons, popularly known as Gadgil Assurances. Certain conditions were stipulated in the said scheme and any person fulfilling those conditions was eligible for allotment of alternate land.

6. Proceedings were initiated on 18.3.1964 by issuing notice u/s 7(2) of the Public Premises (Eviction of Unauthorised Occupant) Act, 1958 (hereinafter referred to as the "Act") which were, however, dropped. Thereafter, notice dated 10.6.1986 u/s 4(1) of the Act was issued to the petitioner for eviction. Pursuant thereto proceedings were initiated before the Estate Officer. The petitioner took the plea that he was entitled to an alternate plot under the Gadgil Assurances. During the proceedings an offer for an alternate plot was made. However, as the petitioner did not accept the offer (we may state that there is some dispute on this aspect to which we shall advert to at appropriate stage) the Estate Officer proceeded to decide the question of applicability of Gadgil Assurances and vide his order dated 28.8.1992 held that the petitioner was unauthorised occupant of the land in question bearing No. T-34, Mirdard Road, New Delhi and that Gadgil Assurances Scheme did not apply to commercial premises and, Therefore, he could not be given the benefit of the said scheme. At this stage the aforesaid writ petition was filed for quashing of order dated 28.8.1992 as also seeking direction to respondent No. 1 to allot and put the petitioner in possession of an alternative business site/ accommodation at appropriate place as per the Gadgil Assurances Scheme.

7. While dismissing the writ petition vide judgment dated 11.7.2002 this Court answered following two questions:

(i) Whether Gadgil Assurance is applicable in the case of the petitioner; and

(ii) Whether in any event, the petitioner had been offered alternative sites.

8. First question was answered in the negative after taking note of provisions of Gadgil Assurances as well as certain other documents, inter alia, holding that the petitioner did not fulfill the conditions under the Scheme. A finding was recorded to the effect that the Gadgil Assurances did not cover the cases of commercial squatters by interpreting the scheme in the light of various documents including Office Memorandum dated 31.1.1969. Second question was answered by holding that the petitioner had been offered an alternate site during the proceedings before the Estate officer but the petitioner refused to accept the offer as he insisted for allotment of the same site. For this conclusion reference has been

made to proceedings before the Estate Officer as stated in the counter-affidavit filed on behalf of respondents 1 and 2 by reproducing the relevant portion thereof.

9. Regarding findings on first issue, learned Counsel for the review petitioner sought to argue that this Court while deciding that the Gadgil Assurances did not apply to commercial premises committed a clear error and did not take into consideration that in many cases even commercial squatters were given the benefit of said scheme. He also relied upon judgment of a Single Bench of this Court in the case of Surinder Singh Vs. Delhi Development Authorities, , in support of the submission that Gadgil Assurances covered cases of commercial squatters also. An attempt on the part of the petitioner to seek review on the basis of such a contention is clearly misconceived. As already pointed out above, while returning the aforesaid findings, not only provisions of Gadgil Assurances have been interpreted, reference is also made to various other documents. The writ petition was decided on the basis of arguments heard at length and no such documents were referred to by the Counsel for the petitioner who had argued that matter, Even reliance on the judgment in the case of Surinder Singh v. Delhi Development Authority (supra), was not made. That apart, this judgment does not pose or answer the issue whether the said scheme would be applicable in the cases of commercial premises. It is trite law that scope of review is limited. A decision can be reviewed only if some error apparent on the face of record is pointed out or the party seeking review is able to produce some document which was not produced earlier and is able to show that such a document could not be produced in spite of due diligence exercised on his part. No such case is made out. Mr. Kaul, learned Counsel appearing for the petitioner was candid in his admission that he was not the Counsel when the writ petition was argued, he was not in a position to deny that these points were not argued earlier. Be that as it may, the only attempt on the part of the petitioner is to demonstrate that the decision rendered on this issue is erroneous. This may be a ground to challenge the order in appeal but certainly it would not be the basis to seek review.

10. It was also argued that this Court in the aforesaid judgment recorded an incorrect finding while holding that an alternate site was offered but it was not accepted. Learned Counsel in this behalf, relied upon the pleadings and also letters dated 26.10.1968 and 21.8.1968 wherein assurance was given to provide him with an alternate site. He also referred to an affidavit dated 16.9.1995 filed on behalf of respondents 1 and 2 to contend that even as per the respondents alternate sites which are offered were of 47 and 61 sq. mtrs. approximately and as the petitioner was entitled to alternate site measuring 200 sq. yds., he rightly rejected the offer. He thus submitted that clear error apparent on the face of record has crept in by not noticing the aforesaid facts. The petitioner is trying to confuse two different aspects of the matter, i.e., one relating to the proceedings prior to issuance of notice u/s 4 of the Act and second relating to the proceedings before the Estate Officer. There is no doubt that as per the correspondence relied

upon, at one stage there was a proposal to offer him an alternate site of 200 sq. yds. This proposal was made even during proceedings before the Estate Officer. What is held by this Court in the aforesaid judgment that such a proposal made before the Estate Officer was rejected by the petitioner. Proceedings very categorically state that reason for rejection was that the petitioner did not want an alternate site but wanted allotment of plot at the same site and the finding in the judgment to this effect is based on these proceedings. We do not find any error therein. On repeated enquiry, learned Counsel for the petitioner could not point out that the reason for refusing the offer was that alternate plot of approximately 50 sq. yds. was only offer. In fact in support of this, reliance is placed on the affidavit dated 16.9.1995 which records the position as obtaining in the year 1995 regarding the availability of the plots. Such averments in this affidavit cannot be relied upon to contend that plot of Lesser size was offered even during the proceedings before the Estate Officer or that it was the reason for refusing this offer. It is more so, as specific reasons are recorded in the proceedings of the Estate Officer viz. the petitioner did not want an alternate site at any other place but at the place of squatting alone.

11. It was next contended that the notice dated 10.6.1986 u/s 4(1) of the Act was for proceedings in respect of "premises measuring 831 sq. yds. less 200 sq. yds. or the entire land in his unauthorised occupation in excess of 200 sq. yds.". On this basis it was sought to argue that the respondents themselves agreed that the petitioner was entitled to occupy 200 sq. yds. and eviction proceedings were confined to premises measuring 831 sq. yds. less 200 sq. yds. However, this was not the issue when writ petition was decided. As already pointed out in the writ petition the petitioner had prayed for setting aside of order dated 28.8.1992 and for allotment of an alternate plot. Final order has not been passed by the Estate Officer so far. Needless to mention, the jurisdiction of Estate Officer while passing final order is limited to the subject matter on which notice u/s 4(1) of the Act was issued. Therefore, if the notice is issued for premises measuring 831 sq. yds. less 200 sq. yds., it goes without saying that final eviction order, if passed cannot be for entire area of 831 sq. yds. As no such final order was passed, Therefore, there was no question of it being under challenge in writ petition and consequently it was not for the Court to decide said issue in this writ petition.

12. With this clarification, review application is dismissed as without any merit.

CM. 12429/2002:

As we have dismissed review application consequently this application is also dismissed.