

(2005) 02 DEL CK 0027

In the Delhi High Court

Case No : LPA 940, 983 and 991 of 2004 and 101-208 and 209-307 of 2005

Nafees Ahmad and Others, Satbeer Rathi and Others and
Manokaran and Others

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Citation : (2005) 02 DEL CK 0027

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : K.C. Mittal and Amit Yadav, for the Appellant; Vinay Sabharwal, for Rs - 1 and 2, J.M. Sabharwal, Senior Advocate, S.K. Sabharwal and Gaurav Sarin for R - 4/DDA, Anusuya Salwan, for Rs - 5 and 6/Govt. of NCT of Delhi in LPAs Nos. 983 and 991/2004, Sanjiv Khanna and Jyoti Chaturvedi for Rs - 5 and 6/Govt. of NCT of Delhi in LPA No. 940/2004, Public Prosecutor Malhotra, ASG, Sidharth Mridul and Tanuj Khurana for R - 7/UOI, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The appellants in these appeals are the residents of Kanak Durga Colony located in Sector-12, R.K. Puram, New Delhi. The appellants are in occupation of a jhuggi jhopri cluster, which has been given the aforesaid name.

2. The appellants are aggrieved by the impugned order of learned Single Judge dated 16.09.2004 rejecting the claim of the petitioners to be rehabilitated at their place of occupation by upgradation of the slum cluster rather than their shifting to an alternative site.

3. There is no dispute about the fact that the appellants have no right, title and interest in the land in question and have merely encroached upon the public land. There is also no dispute that the respondents are willing to rehabilitate the appellants alternative sites.

4. The only question, which is thus required to be considered, is the claim of the appellants based on a policy of the Union of India formulated in the year 1989

for in-site upgradation of jhuggi cluster. This policy was an attempt by the Government to identify certain clusters for in-situ upgradation rather than dislocating and relocating them to different areas. The extracts of the policy have been placed on record and the relevant paragraphs are as under:

"" I. 3. IN-SITU UPGRADATION OF JJ CLUSTERS AND INFORMAL SHELTERS (RS.200.00 LAKH)

One specific policy intervention contemplates in-situ upgradation of JJ Clusters / informal shelters on the encroached land, wherever the land owning agencies issue a NO OBJECTION CERTIFICATE, enabling the Sand Department to go ahead with this strategy.

This scheme envisages that the existing J.J. Dwelling units are upgraded in an improved and modified layout by socializing the distribution of land and amenities amongst the squatter families.

... ..

IV. DIRECTIVES OF GOVERNMENT OF INDIA.

It is in view of the Ministry that general approach to JJ clusters should be for the environmental improvement of eligible clusters and their in-situ upgradation to the extent possible, rather than for their resettlement of alternative sites. Relocation of JJ Cluster to alternative sites should be restored to only a case to case basis with specific reference to the urgency of requirement of the land owning agency for a priority public purpose project, and subject to the land owning agency undertakings to bear the entire cost of developed site in the new location.""

5. The policy also records that 672 families have been covered in two demonstrative projects known as Ekta Vihar in South Delhi, R.K. Puram and Prayog Vihar in Hari Nagar, West Delhi. The third project at Madras Basti, Moti Bagh had resulted in 112 families being covered under the said policy.

6. A reading of the aforesaid policy shows that firstly such J.J. Clusters, which could be in-situ upgraded, were to be identified and secondly, the implementation of the same was dependent on a No Objection Certificate (NOC) from the land-owning agency.

The object of this NOC was clear since the land being in the nature of public land, there may be other priority public purpose requirements for the same.

7. The appellants have strongly relied upon a communication dated 24.01.1991 addressed from the Land and Development Office to the Commissioner (Slums), which enclosed as Category B, the list of clusters, which had been identified for in-situ upgradation. It is not in dispute that the cluster of the appellants was at Serial No. 35 of this Category B.

8. There was some progress in the aforesaid matter as is apparent from a

communication dated 07.08.1990 issued by the Slum Wing of DDA to the Secretary, Vivid Vikas Samiti for the purpose of formation of multi-purpose co-operative society inter alias in respect of the cluster in question. It is not, however, disputed that ultimately in-situ upgradation did not take place in this cluster for the reasons not known.

9. Learned Single Judge has relied upon the policy itself to come to the conclusion that the very bedrock of the claim of the appellants was the NOC to be obtained from the land-owning agency, which was not granted in the present case. This conclusion was arrived at on the basis of a communication dated 14.10.1999 from the OSD to the Chief Minister addressed to the Co-operative Society of the appellants stating that the Land DO had not given any such NOC. Learned Single Judge held that the appellants have to right to seek a writ of mandamus, as prayed for, especially in view of the absence of any NOC.

10. Learned counsel for the appellants, however, contended that the communications from Land DO itself amount to NOC and if no consent was available, there would have been no occasion to proceed with the matter further including in respect of formation of the society. In this behalf, the averment made in the petition itself may be considered wherein in para 4 it is stated that ""in principle"" the Government had already taken the decision for upgradation of jhuggies at Kanak Durga Colony. At the same time in para 6, an averment has been made as under:

""A similar exercise is yet to be undertaken and completed in so far as the Kanak Durga Colony and Ambedkar Basti, R.K. Puram, New Delhi are concerned.""

11. A reading of the counter affidavit, however, shows that the respondents are not desirous of in-situ upgradation of this cluster as the land has already been allotted to the Rajya Sabha Secretariat for construction of a guest house for Members of Parliament as well as quarters for senior Officers of the Rajya Sabha Secretariat. In so far as the averments about formation of the society are concerned, it is stated in reply to paras 2 to 7 as under:

"" 2-7.

Any Society of slum dwellers that was formed was to assist in the management in the amenities if provided. It is further submitted that in the instant case, when the improvement of the families in that locality was permitted in the year 1991, there was apparently no immediate plan for utilization of the land for any public purpose at that juncture. Since that the land is now required for a public purpose namely construction of Guest Hostel for Members of Parliament as well as quarters for senior offices for which there is an acute shortage, necessary action for relocation of the eligible Jhuggi dwellers as per policy of the Government has already been taken and an amount of Rs.2.34 crores has been sanctioned by the Government for their relocation and had already been deposited with the MCD as relocation charges. The MCD i.e. Respondent No. 1 is taking necessary action for their relocation at suitable place in accordance with the existing policies. No right

in favor of the petitioner can be created of basic amenities were allowed to be provided for improvement of hygiene and living condition in the interim period.""

12. Learned ASG strongly relied upon the Division Bench judgment of this Court in Wazirpur Bartan Nirmata Sangh Vs. Union of India (UOI) and Others, where the very policy of granting alternative sites to encroachers of public land had been quashed. It may be noticed that a number of directions were issued to protect the public land and the same are contained in para 48 of the said judgment, which is as under:

""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. In so far 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 31.1.90.

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 encroachment 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 lands.

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.""

13. The Government authorities, however, aggrieved by the said judgment preferred a SLP being SLPs (Civil) No. 3166-67/2003 in which certain interim orders were passed. The said interim orders are as under:

"" 19.02.2003

In the mean time, 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.""

""03.03.2003

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.""

14. Learned ASG fairly states that there is no stay of the impugned judgment of the Division Bench of this Court by the Hon''ble Supreme Court, but only certain directions have been stayed. It is, thus, assured that the Government will take necessary step for implementation of other directions passed in Wazirpur Barton Nirmata Sangh's case (supra) other than those which are stayed by the Hon''ble Supreme Court. This is more so since the Government cannot rely on the said judgment for the present case where the land is meant for construction of a guest house for Members of Parliament as well as quarters for senior Officers and take a different approach for the encroachments on other public land. There cannot be a policy of pick and choose.

15. The aforesaid judgment of the Division Bench of this Court in Wazirpur Barton Nirmata Sangh's case (supra) has also been relied upon by learned Single Judge in para 18 of the impugned judgment.

16. In respect of the aforesaid, the Division Bench judgment of the Gujarat High Court may also be referred to in *Peoples Union for Civil Liberties and Anr. v. State of Gujarat and Ors.*, 2001 42 GLR 547 where it was held that no one has a Fundamental Right to encroach upon public property and the authorities are not bound to provide alternative accommodation to persons evicted from public places. A duty was, in fact, cast upon the municipalities and public authorities to protect their land.

17. In *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, , it has been held that no one has a right to make use of public property for private purpose and that it is the duty of the competent authorities to remove encroachments which are the consistent source of unhygienic condition, ecological problems, traffic hazard and risk even to pedestrians.

18. Even in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , the Supreme Court had held that the Municipal Commissioner was justified in directing removal of encroachments committed on pavements and footpaths, etc., but time was granted for eviction of the pavement dwellers. It was made clear that the offer of alternative sites to such pavement dwellers was not a condition precedent for removal of encroachments committed by them.

19. In *Alm ITR a H. Patel and Anr. v. Union of India and Ors.*, AIR 2000 SC 2017 , the Supreme Court had come down heavily against the grant of indulgence to such encroachers and it was observed that ""Rewarding of encroachers on public land with free alternative site is like giving reward to a pick-pocket"".

20. It may be noticed that it is the aforesaid judgments, which form basis for the directions given in *Wazirpur Barton Nirmata Sangh's* case (supra).

21. It may, however, be emphasised that in the present case the question of providing of alternative accommodation is not in issue as the respondent authorities are making the same available, but it is the appellants who are refusing to shift from the existing site. In fact, learned counsel for the appellants contended that the aforesaid judgments would have no application since the limited issue raised by him is in respect of the right of in-situ upgradation in view of the policy of 1989 read with the communications dated 24.01.1991 and 07.08.1990 of Land DO and DDA respectively.

22. A reading of the pleadings shows that the averments made in the counter affidavit could have been much clearer. The respondents should have taken a stand whether at any stage a decision was taken for in-situ upgradation. Learned ASG, however, submitted fairly that at one stage of time, the cluster of the appellants was considered for in-situ upgradation and some steps were taken, but ultimately in-situ upgradation did not take place. Thus, the issue of NOC from the land-owning agency is not so material in view of the communication of Land DO dated 24.01.1991.

23. At the same time, it cannot be disputed, as is also apparent from the

averments made in the writ petitions, that it was only an in principle decision which had been taken, but the same was not implemented for a number of years.

24. The question, which would thus arise for consideration, is, ""Whether the respondents are prevented from deciding not to do an in-situ upgradation in respect of the cluster in question and provide an alternative site in view of the requirement of the public land for the purpose as specified?"" In our considered view, the answer to this question would be in the negative.

25. The appellants have no right to occupy the public land. It is not a lawful claimant who is sought to be dispossessed from the land in question. The appellants are rank encroachers on the land in question. The only question is of rehabilitating the appellants in view of a larger issue raised of the need of such rehabilitation. The question of providing alternative sites itself has been dealt with by the Division Bench of this Court in Wazirpur Barton Nirmata Singh's case (supra). If the encroacher have no right to alternative allotment, there can be no question of right to in-situ upgradation at the site.

26. Be that as it may, the appellants are being provided alternative sites, but refused to move and insist on a right to occupy the public land which they at present occupy on the ground that they have a right of in-situ upgradation. The subsequent developments over the passage of time have created a situation where there is a greater requirement of the public land for a public purpose and that is why the decision was taken by the respondents to give an alternative site to the appellants rather than provide them with in-situ upgradation. Any writ in favor of the appellants would imply that they have a right to occupy the said public land and a right for in-situ upgradation. This cannot be so.

27. It is not a case where in-situ upgradation has taken place and the policy has been implemented qua the appellants. For more than a decade, there has not been an in-situ upgradation and an urgent need for an alternative public use has arisen. The right of the Government to put its own land for such use cannot be disputed nor can it be over-ridden by such claim of the appellants. It is surprising that the appellants, despite being encroachers on public land, are not even satisfied with the alternative sites being offered to them.

28. Learned counsel for the appellants raised the larger issue of lack of proper planning in as much as the service providers cannot be located at long distances. It is required to be noted that under the Delhi Development Act, it is for the development authority to consider the Master Plan, Zonal Plan and implementation of the same. It is also for this authority to keep in mind the population ratio while providing housing arrangements or allow the construction of houses. It is for this authority to provide residential accommodation for different classes. One should not forget that on account of quick transport available, there would be hardly any difficulty in reaching a place of service. The introduction of the rapid transport system including of metro now facilitates the easier traveling by residence to their workplace. To that extent, some steps have

been taken to ameliorate the problem aforesaid. However, it would not be possible to accept the proposition that if a person has to travel a long distance to his place of occupation, that gives him a right to allow encroachment on public place near his workplace. This would create urban chaos. We are of the considered view that there is no inherent right to occupy public land whether near the place of work or otherwise. This plea cannot, thus, be accepted.

29. In view of the aforesaid, we are of the considered view that the appeals have no merits and the same are dismissed leaving the parties to bear their own costs.

30. Interim orders stand vacated.

31. In view of the assurance given by learned ASG that he would be filing a report showing compliance of the directions passed by Division Bench of this Court in Wazirpur Barton Nirmata Sangh's case (supra) to the extent they are operative, the matter is listed before this Court for directions on 03.05.2005 for consideration of the status report.