
(2011) 10 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) No. 4836 of 1993

Narain Singh and Another

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Delhi Panchayat Raj Rules, 1959 — Rule 178
Delhi Police Act, 1978 — Section 100, 119, 65

Citation : (2011) 10 DEL CK 0215

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Disposed Off

Judgement

Sunil Gaur, J.—Initially, two petitioners had sought mandamus to the Respondents to hand over the possession of plots admeasuring 120 sq.yds. allotted to the petitioners by the Gaon Sabha of Village Rangpuri, Delhi under the 20-Point Program of the Government vide letters of 20th November, 1983. As per the petitioners, many other economically weaker and backward residents of this Village were also allotted plots from the Gaon Sabha land to provide shelter over their heads and the allotment letters like Annexure P-1 were distributed by the Pradhan of Gaon Sabha to the economically weaker residents of this village in a public function held on 9th April, 1986 and the photographs of the said function have been placed on record as Annexure P-2.

2. Petitioners assert that the physical possession of the plots allotted to them out of Khasra No.1480 and 1482 of Village Rangpuri, Delhi was not handed over to them as it was stated by the Respondents that development work at the site was in progress and after demarcation of the plots, the physical possession of the same would be handed over to the petitioners. It is claimed by the petitioners that they had learnt that due to pressure and influence exerted by the big landlords of this village, petitioners were man-handled when they had visited the

site on 29th August, 1993 to ascertain whether demarcation of the plots allotted to them has been done or not and they were misled into believing that there is some stay order from this Court in relation to these khasra numbers. In relation to the aforesaid incident of 29th August, 1993, as per petitioners, at the behest of vested interests, a case was registered against the petitioners for the offences u/s 65, 119 and 100 of Delhi Police Act, charging them for trying to raise construction on Government land and when the petitioners had produced the allotment letters issued to them by the Gaon Sabha in respect to the subject land, the concerned Metropolitan Magistrate had discharged the petitioners after admonition on 8.9.1993. Thereafter, petitioners had a reasonable apprehension that physical possession of the plots allotted to them would not be given by the Respondents and left with no alternative the present petition was filed seeking directions to the Respondents to hand over the physical possession of the subject land allotted to the petitioners vide letter Annexure P-1.

3. The Respondents except the second Respondent, i.e., Director (Lands) of Delhi Administration, had contested the petitioners' claim made in this writ petition by asserting in the counter affidavit filed, that the approval of the Competent Authority was never granted to the allotment of the house sites in question and that the question of handing over the physical possession of the subject land to the petitioners did not arise as this Court in C.W.P.No.246/1987 Badam & Ors. v. UOI, had stayed the dispossession of the occupants of the Gaon Sabha land including the subject land.

4. In the rejoinder, the two petitioners had wondered as to how the plots in question were allotted to them without the approval of the Competent Authority but had not disputed that the plots were allotted to them out of Khasra No.1480 and 1482 of Village Rangpuri, Delhi. It was asserted by the petitioners that aforesaid Khasra numbers of Village Rangpuri were not the subject matter of CWP of 246/1987 and so status quo order in the aforesaid writ cannot be a ground to deny the physical possession of the plots in question to the petitioners.

5. CM No.6865/1995 was filed by 94 applicants who had claimed to be similarly placed as the petitioners and their application was allowed on 9th August, 1996 and they were impleaded as co-petitioners. However, they had not chosen to amend the writ petition to incorporate their individual claim. Perhaps, they had claimed parity with the original two petitioners of this petition.

6. It stands noted in the Order of 2nd April, 2008 that CWP No.246/1987 stood dismissed as abated and that the stand taken by the Respondents in CWP No.246/1987 was contrary to the stand taken by them in this petition and so, Respondents were directed to file a specific affidavit stating whether any approval was granted under Rule 178 of Delhi Panchayat Raj Rules, 1959. Accordingly, affidavit dated 25.08.2009 was filed by the fourth Respondent, i.e., BDO, South-West, Najafgarh to state that as per record submitted by the Pradhan of Gaon Sabha upon dissolution of the Panchayat system, a resolution was passed by Gaon Panchayat wherein it was suggested to allot gaon sabha

land to landless persons.

7. What was revealed in the aforesaid affidavit of 25th August, 2009 is shocking. It was disclosed in this affidavit that resolution was passed by Gaon Sabha in respect of Khasra No.1862 to 1865, 1871 to 1874 of Village Rangpuri, Delhi, which was not Gaon Sabha land and had belonged to the private parties. What is more shocking is the disclosure made in this affidavit of 25.8.2009 to the effect that Gaon Sabha without verifying the resolution register and without looking into the factual position, issued the allotment letters to the landless villagers pertaining to Khasra No.1472 to 1482 of Gaon Sabha land in Village Rangpuri, Delhi. In effect, what is asserted in this affidavit is that since resolution passed by the Gaon Sabha was not in respect of the subject land, therefore mere issuance of allotment letters by the Pradhan of the Gaon Sabha does not confer any right in favour of the petitioners. Further revelation made in this affidavit is that out of Khasra No.1472 to 1482 of Gaon Sabha land of Village Rangpuri, Delhi, Khasra No.1475, 1476, 1480 and 1481 stands transferred to Forest Department for development of the Ridge in terms of the orders of the Apex Court in the writ petition filed by M.C.Mehta, as the aforesaid were uncultivable waste lands and the remaining land of the aforesaid khasra numbers as per Revenue Record is gair mumkin pahar and the Gaon Sabha land falling in the aforesaid khasra numbers, i.e., except Khasra No.1475, 1476, 1480, 1481, continues to be Gaon Sabha land.

8. In the additional affidavit of 7th August, 2009 filed by the second petitioner, it was disclosed that RTI obtained by him, has revealed that as on 20th April, 2009, Khasra No.1472 to 1474, 1479 and 1482 are still with Gaon Sabha of Village Rangpuri, Delhi and that RTI dated 26th May, 2009 revealed Khasra No.1472 and 1482 is Gaon Sabha land and is lying vacant.

9. Since original record pertaining to CWP No.246/1987 Badam & Ors v. Delhi Administration was not traceable, as noted in Order of 24th February, 2010, this matter proceeded for final hearing but due to non representation on behalf of the petitioners this petition, was dismissed in default and thereafter was restored for final hearing.

10. After having heard learned counsel for the parties and upon perusal of the afore-referred material on record, it becomes apparent that the pleadings of this case are highly deficient and do not clinch the issue. To illustrate it, what was asserted by petitioners' counsel was that the stand taken by the Respondents in this petition is diametrically opposite to the stand taken by them in CWP No.246/1987, as in this petition allotment of the subject land to the petitioners under the 20-Point Program of the Government is faulted with by the Respondents by asserting that it is not supported by the resolution u/s 178 of Delhi Panchayat Raj Rules, 1959, whereas in CWP No.246/1987, the allotment in question under the 20-Point Program of the Government was defended by the Respondents.

11. On the face of it, the aforesaid contention appeals to reason but it is without basis, as the counter affidavit filed by the Respondents in CWP No.246/1987 is not before this Court in these proceedings and so legitimately, the same cannot be looked into. It is elementary principle of judicial adjudication that a fact must be clearly and precisely pleaded, to enable the opposite side to counter it. The information disclosed in additional affidavit by the second petitioner remains untested and is required to be inquired into as a matter of fact, which cannot be done in the writ proceedings, as disputed questions of fact cannot be adjudicated upon in the writ proceedings.

12. Now there are 96 petitioners before this Court with half baked pleadings and infact there are no pleadings on behalf of 94 petitioners. In such a situation, it is just not possible for this Court to reach to any conclusion as to whether any right is conferred upon the petitioners by mere issuance of an allotment letter of a land for dwelling unit under the 20-Point Program of the Government.

13. The legal impediment in achieving the laudable object of giving a shelter over the head of the landless residents of Village Rangpuri, Delhi under the 20-Point Program of the Government is the want of prior sanction of the authorities concerned as mandated by Rule 178 of Delhi Panchayat Raj Rules, 1959, which reads as under:-

178. Lease without premium - In the case of a lease without premium transferring immovable property vested in the Gaon Panchayat, a reasonable annual rent shall be reserved and made payable during the whole term of the lease and the lease or any agreement to grant the lease shall not be made without the previous sanction of the Gaon Panchayat by a resolution:

Provided that when the term of the lease exceeds ten years but not thirty years, the previous sanction of the Deputy Commissioner and when the term exceeds thirty years, the previous sanction of the Chief Commissioner shall also be obtained.

14. The legitimate expectation of the petitioners of obtaining physical possession of the land for dwelling unit allotted to them under the 20-Point Program of the Government cannot be frustrated by the Respondents because it is not their case that allotment in question was fraudulent. Respondents cannot take benefit of their own wrong. They should have obtained prior sanction before making the allotments in question. It was for the Respondents to have complied with Rule 178 of Delhi Panchayat Raj Rules, 1959 and they cannot be allowed to wriggle out of their commitment to honour the allotments made by them.

15. It is unfortunate that during the interregnum period Khasra No.1480 out of which first petitioner was allotted a plot, is no longer available as the same stands transferred to the Forest Department.

16. The law pertaining to development of writ of mandamus is highlighted by Apex Court in Secretary, Cannanore District Muslim Educational Association,

Kanpur Vs. State of Kerala and Others, in following words:-

...and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

17. In the instant case, Respondents have not only legal obligation but also social responsibility to honour their commitment of allotting land to the landless residents of the Village Rangpuri for dwelling units. Since questions of fact as regard to the availability of the Gaon Sabha land under the 20-Point Program of the Government cannot be determined in these proceedings, therefore it would be appropriate to direct the second Respondent to hold an Inquiry in order to determine as to why previous sanction in terms of Rule 178 of Delhi Panchayat Raj Rules, 1959 was not accorded prior to issuance of the allotment letters in question and to locate the land which can now be made available for achieving the purpose of 20-Point Program of the Government and after requisite sanction, to frame a criteria for allotment of the land under this 20-Point program to the petitioners and persons similarly situated after determining their eligibility. Petitioners would be at liberty to make their claims by way of representations within four weeks to the Second Respondent who shall get the same inquired into while affording opportunity of hearing to the authorised representative of the petitioners and alike and to obtain a report within three months from the Inquiry Committee so constituted and thereafter, make the report public, to enable the affected persons to avail of the remedy as available in law. Thereafter, follow up action be taken forthwith.

18. With directions, as aforesaid, this petition stands disposed of with no orders as to costs.