
(2000) 07 DEL CK 0164
In the Delhi High Court
Case No : L.P.A. NO. 19 of 1996

N.D.M.C.

APPELLANT

Vs

Gian Chand Gupta

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2000) 07 DEL CK 0164

Hon'ble Judges : Dr. M.K. Sharma, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. Amit Bansal, for the Appellant; Mr. Rajiv Sharma, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present Letters Patent Appeal is directed against the judgment and order dated 12.12.1995 passed by the learned Single Judge in C.W.P. No.1508/1985. By the aforesaid judgment and order, the writ petition filed by the petitioner (respondent herein) was allowed with a direction that the respondent (appellant herein) would allot any site to the respondent within the radius of two kilometres from Connaught Place area, on the basis of his eligibility as per the own list of the appellant within a period of three months from the date of delivery of the judgment.

2. The respondent filed the aforesaid writ petition in this Court seeking for a direction to the appellant to allot alternative shop/stall to the petitioner in Palika Bazar, Connaught Place, New Delhi pursuant to and consequent upon Resolution No.18 of the respondent. It was contended in the said writ petition that the petitioner was carrying out his business of ready made garments in a corner of Connaught Place Verandah, E-Block, Connaught Place, New Delhi, since the partition of the country. It was also stated that in respect of the aforesaid site in occupation of the petitioner, litigation started between the appellant Committee and the respondent when they tried to remove the respondent from the site and accordingly a suit was filed which was finally disposed of being R.S.A. Nos. 1-D/1965 and 2-D/1965. It was also stated that the appellant-Council conducted a

survey in the year 1968 and the name of the respondent was also included in the said survey as a verified squatter of Connaught Place Verandah, New Delhi.

3. On 27.9.1977, the respondent applied to the appellant-Council for allotment of an alternative shop/stall in Palika Bazar in view of his entitlement by virtue of his being a squatter in a corner of E-Block, Connaught Place, New Delhi. The said representation was made pursuant to the policy of respondent in that regard which is Resolution No.18 of the Appellant Committee. As the appellant sought to evict the respondent from the aforesaid place, the aforesaid writ petition was filed in this Court in the year 1985. After hearing the parties, the writ petition was allowed and the aforesaid directions were issued as against which the present appeal has been preferred.

4. Mr. Amit Bansal, counsel for the appellant submitted before us that the learned Single Judge committed an error of law in holding that the case of the respondent herein was not covered by Resolution No. 28 dated 10.11.1987 for giving effect to which Thareja Committee was appointed by the Supreme Court and the Report was submitted. He submitted that the case in hand was covered by the Report of the Thareja Committee for even Shri G.P. Thareja considered the case of the respondent and found that the respondent has no case at all. He also submitted that the learned Single Judge was not justified in holding that Resolution No. 18 dated 27.1.1979 is applicable to the facts and circumstances of the present case.

5. Mr. Rajiv Sharma, counsel for the respondent on the other hand submitted that it is fallacious to argue that the case in hand is covered by Resolution No. 28 which was adopted on 10.11.1987. He submitted that the present writ petition was filed by the petitioner in the month of June, 1985 whereas, the aforesaid Resolution No. 28 was adopted in the month of November, 1987. Therefore, according to him, the aforesaid Resolution has no application at all and the findings of the Thareja Committee in respect of the case of the respondent was without jurisdiction. He drew out attention to the order of Shri G.P. Thareja passed in respect of the case of the respondent which was passed pursuant to the orders passed by this Court directing the respondent to approach the Thareja Committee before taking up the writ petition for consideration. On the basis thereof he submitted that the contents of the order itself would show that Shri G.P. Thareja himself had held that Resolution No. 28 is applicable to such claimants who had squatted or continued to be so upto the end of 1987.

6. In the light of the aforesaid submissions, we proceed to deal with the merit of the submissions of the learned counsel for the parties.

7. Resolution No.18 was adopted in the meeting of the Allotment Sub-Committee held on 27.1.1979 wherein an amendment was brought in. In terms of the aforesaid amendment, the decision of the Allotment Sub-Committee would read like this:-

"As regards, the remaining allottees of R.K. Ashram Marg Complex who are

requesting for allotment in Palika Bazar, the A.S.C. recommends that the allottees mentioned at categories No.2,3,4,5 may be considered individually on merits after proper scrutiny of their records for allotment of stalls in the Palika Bazar along with such of the pre-1957 verified squatters and those from erstwhile T.C. Building in Connaught Place area in whom eligibility is certified by the Allotment Sub-Committee and for this a proposal may be brought separately before the A.S.C. Each such case, as stated above, will be examined separately on merits and be noted to the A.S.C. for consideration."

8. The respondent in the writ petition claimed that the case of the respondent is covered by the aforesaid Resolution No.18 of 1979 as the said respondent was admittedly a squatter for the period from pre-1957 in Connaught Place area and on the basis thereof was entitled for allotment of a stall in Palika Bazar along with such of the pre-1957 verified squatters who have been given similar benefits. Counsel for the appellant, however, refuted the said contention in the writ petition contending, inter alia, that the respondent is not entitled to claim any benefit under Resolution No.18 of 1979 and his case is squarely covered by Resolution No.28 of the New Delhi Municipal Council which was adopted in 1987. The learned Single Judge rejected the contention of the counsel for the appellant and held that the case of the respondent is squarely covered by the Resolution No.18 of 1979 giving reasons thereof.

9. In view of the list of the squatters annexed by the counsel for the appellant with its counter affidavit as "Annexure D", it is crystal clear that the respondent was a verified squatter for the period from pre-1957 in terms of the said verification done in the year 1979. The contention of the counsel for the appellant that the case of the respondent is covered by the subsequent Resolution of the New Delhi Municipal Council namely, 28 of 1987 on the face of it appears to be without any basis for the writ petitioner was before this Court with the present writ petition in the month of June, 1985, when the aforesaid Resolution did not even see the light of the day. Therefore, to say that the said Resolution is applicable to the case of the petitioner amounts to misreading of the records of the case.

10. Since strong reliance was placed by the counsel for the appellant on the contents of Resolution No.28 of 1987 and the Report of the Thareja Committee and his orders passed in the present case, it would be necessary to deal with the said contention as well.

11. A Resolution was adopted by the New Delhi Municipal Council in the form of a Scheme which is dated 10.11.1989. One of the salient features of the said Scheme was that a squatter up to 1977 would be eligible for the allotment of a stall/kiosk while the squatters pertaining to the years 1978 till 1980 would be eligible for tehbazari site, if no shop/kiosk is available. It also provided that the said squatters squatting since between 1981 to 1987 would be considered for allotment for a tehbazari site subject to availability of vacant space. The Supreme Court considered the aforesaid Scheme and appointed a Committee to

examine the claims made by the squatters in the light of the said Scheme and also directed that the decision in Sodan Singh's case be considered by the said Committee and it shall also identify street pavements in different areas where street hawking could be regulated without being a hindrance to other users.

12. A report was submitted by the said Committee Constituting of Shri G.P. Thareja and the said Report was considered by the Supreme Court in the decision in Saudan Singh and Others Vs. N.D.M.C. and Others, . In the said decision, the Supreme Court took notice of the salient features of the NDMC Scheme and made it clear that under Resolution No.28 itself the Committee was expected to scrutinise the claims of the claimants pursuant to the aforesaid Resolution No. 28 on the basis of the various documents and is issued certain directions as contained in the said order. Pursuant to the said orders passed by the Supreme Court, the Thareja Committee scrutinised the claims of various claimants and passed orders thereon.

13. On the present writ petition also an order was passed by the learned Single Judge on 11.2.1991 directing the petitioner to approach the Thareja Committee holding that the writ petition would be taken up for consideration after Shri G.P. Thareja decides the application of the respondent. Pursuant to the aforesaid order, the respondent approached Shri G.P. Thareja with an application on which an order was passed on 8.3.1991. Reference to the said order would indicate that the jurisdiction of the Thareja Committee was restricted in terms of Resolution No.28 whereunder a claimant is required to prove that he was a squatter up to the end of 1987. Shri G.P. Thareja while considering the case of the petitioner specifically referred to the said Resolution No.28 prescribing that the shops/sites are to be allotted to those squatters who have been squatting within the jurisdiction of the NDMC since prior to 1977 or thereafter upto the end of 1987 or continued to be so. On the facts and circumstances of the case, the Thareja Committee held that no document could be shown by the respondent herein that he was squatting upto the end of 1987 and, Therefore, the claim of the respondent was rejected by the Thareja Committee. It is crystal clear, Therefore, that Resolution No.28 as adopted by the respondent is applicable to a squatter if he was squatting upto the end of 1987.

14. When the respondent was before the Court through the writ petition filed in the month of May, 1985, claiming protection as he was being evicted, there was no scope for the said respondent squatting in the area of Connaught Place upto the end of 1987. Therefore, by no stretch of imagination it could be said that the case of the respondent would be covered by Resolution No.28 for at no stage it was the case of any of the parties to the present proceedings that the respondent was squatting in the said place till the end of 1987. But the fact remains that the said respondent was a verified squatter in the year 1979 from pre-1957 period and, Therefore, his case is squarely covered by the Resolution No.18 adopted in 1979, the benefit of which was admittedly given to similarly situated persons. We, Therefore, find no justification in the submission of the

counsel for the appellant for denying similar benefit to the respondent who is admittedly a verified squatter from pre-1957 period as stated by the counsel for the appellant itself in the list annexed as "Annexure D".

15. In our considered opinion, the learned Single Judge did not commit any infirmity in holding that the case of the respondent was not that he was squatting in the Connaught Place till 1987 and that he was covered by Resolution No.18 dated 27.1.1979. In our considered opinion, the findings and the conclusions of the learned Single Judge are in conformity with the records of the case placed before us and we find no infirmity therein. The appeal, Therefore, has no merit and is dismissed.