
(2009) 03 DEL CK 0065

In the Delhi High Court

Case No : Writ Petition (Civil) 3430 of 1992

Randhir Kumar Sharma and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 158 DLT 225

Hon'ble Judges : Siddharth Mridul, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : S.C. Nigam, Arabinda Nayak and S.R. Khandelwal, for LR's of Petitioner No. 1 in Writ Petition Civil 3430/1992, Shyam Moorjani, in Writ Petition Civil 331/1993 and S.C. Nigam and Arabinda Nayak, in Writ Petition Civil 3529/199, for the Appellant; Rajinder Nischal in Writ Petition (Civil) 3430/1992 and 330/1993, Gaurav Duggal in Writ Petition (Civil) 331/1993 and Ankur Chhibber in Writ Petition (Civil) 3529/1992, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—These four petitions raise a common issue and seek similar reliefs and we are, therefore, proposing to dispose them of by this common order.

2. The facts as are relevant for the determination of the present writ petitions are briefly adumbrated as follows:

(a) The Petitioners are displaced persons from Pakistan having migrated to India in the year 1947.

(b) The Petitioners occupied land unauthorizedly before 15th August, 1950. The Petitioners started business from the site unauthorizedly occupied by them and are in occupation of the said unauthorized land uninterruptedly.

(c) According to the Petitioners, the Government gave an assurance to displaced persons on the floor of the Parliament on the 29th September, 1951, whereby the said displaced persons who without being authorized to do so had occupied any public land or constructed any building on such land before 15th August,

1950, were not to be removed unless they had been provided accommodation on developed land in pursuance of a proposed plan that may be approved by the Central Government. The said assurance dated 29th September, 1951 on which the Petitioners rely came to be popularly known as the "Gadgil Assurance".

(d) The Petitioners rely upon an office order dated 27th September, 1966, whereby on a survey of fuel depots it was discovered by the Land and Development Officer that the said depots existed on Government land but paid tehbazari to NDMC. It was, therefore, decided vide the said office order dated 27th September, 1966 that the said fuel depot holders should not be treated as unauthorized occupants, but they should be treated at par with temporary allottees and that Land and Development Officer should effect recoveries from them with immediate effect at scheduled rates on account of occupation charges of these sites.

(e) The Petitioners also state that notices under Sub-section 2 of Section 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1958 claiming damages issued in the years 1964 to 1969 respectively to the Petitioners, were withdrawn vide order during the year 1975, presumably on the Respondents being enlightened regarding the rights of the Petitioners.

(f) The Respondents, however, subsequently issued notices to the Petitioners u/s 7(3) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 claiming amounts as damages and another notice of even date u/s 4(1) of the Act for their eviction.

(g) The Petitioners are aggrieved by the said notices under the provisions of the said Act as being contrary to the above mentioned "Gadgil Assurance".

(h) The Petitioners prosecuted the proceedings before the Respondents by producing proof of their being displaced persons and on the ground of their still awaiting rehabilitation as per the "Gadgil Assurance". The Respondents, according to the Petitioners while being satisfied with the character of the Petitioners to be displaced persons and of the latter being unauthorizedly on the land before 15th August, 1950, took an altogether different view that the "Gadgil Assurance" did not apply to persons who are in occupation of the land for commercial purposes and by order dated 28th August, 1992, impugned herein, ordered that the Petitioners were unauthorized occupants of public land for commercial purposes and did not come under the purview of the "Gadgil Assurance".

(i) The Respondents thereafter proceeded to take proceedings against the Petitioners under the said Act which are also the subject matter of the challenge in the present writ petition.

3. It is the common case of all the Petitioners that the Respondents have taken an erroneous view of the "Gadgil Assurance" by observing that the same did not apply to commercial premises.

4. The said issue is no longer res integra. A Division Bench of this Court in the case of Madan Lal Jain v. Union of India and Anr. in CWP No. 3530/92 determined this issue vide its order dated 11th July, 2002. In that case the petitioner was also a displaced person who came to India in April, 1947 and occupied the site in dispute and started the business of fuel. In that case the petitioner had challenged the impugned order whereby the learned Estate Officer, inter alia, held that the "Gadgil Assurance" was not applicable in his case and thereafter initiated proceedings against the petitioner for eviction as an unauthorized occupant of public land. The Division Bench of this Court whilst considering the aforesaid issue observed that:

Mr. Nigam, the learned Counsel appearing on behalf of the petitioner would contend that keeping in view the fact that the petitioner is in possession of several documents to show that he had been in possession of the land in question since 1947, the Estate Officer has acted illegally and without jurisdiction in passing the impugned judgment. Drawing our attention to the purported Gadgil Assurance as also the report of the Committee appointed by the Government of India for regularization of unauthorized constructions put up by the displaced persons on government land prior to 15th August, 1950, commonly known as Chanda Report, the learned Counsel would contend that the petitioner could not have been subjected to the proceedings under the said Act.

The Gadgil Assurance, as noticed hereinbefore, must be considered having regard to the fact situation obtaining at the relevant point of time, is required to be construed. Condition No. (b) referred to hereinbefore states that alternative accommodation would be provided on development land which would be as far as practicable near the place of business or employment of the displaced persons. Had the intention of the Hon'ble Minister to give the said assurance been confined to commercial squatters also, the words "near the place of business or employment" would not have been mentioned. The very fact that alternative accommodation was to be provided for near the place of business or employment, such an unauthorized occupation, as contemplated, was occupation for residential purposes.

Mr. Jayant Bhushan, the learned Counsel appearing on behalf of the Union of India has placed before us from the records, an Office Memorandum dated 31st January 1969, the relevant portion whereof is in following terms: Para 29 - The Committee felt that after taking clearances from the Committee on Assurances in their Third Report - December 1956, no serious effort was made by the authorities to regularize the pre - 15th August 1950 constructions put up the displaced persons or to provide them alternative accommodation on developed land as far as practicable, near the place of business or employment of displaced persons as envisaged in the Gadgil Assurance given in the House on the 29th September, 1951.

The position was reviewed and it was felt that, by and large, the Gadgil Assurances had been implemented, except in a few stray pockets, where the

unauthorized occupation by displaced persons could not be regularized because of the non conforming land-use of the sites and the reluctance of the persons to shift. It was also explained that the Gadgil Assurances covered residential squatters and not commercial squatters. This position had already been clarified to the Lok Sabha Secretariat, when the position in respect of Ice Factories on Bela Raod was explained."

The said Office Memorandum was issued at a point of time when there did not exist any dispute. The genuineness of the said Office Memo, therefore, is undisputable. A bare perusal of the said Office memo clearly shows that the same covers only residential areas in relation whereto an encroachment had been made by a poor person.

In any event, it is now well known that an assurance given by the Minister does not culminate in a legal right in derogation of the provisions of statute. An assurance given by a Minister during debate of a Bill which has got nothing to do with the provision of the said Act, in our opinion, would not clothe the petitioner with the legal right to maintain this application and/or to contend that the provisions of the said Act have no application.

The Division Bench, therefore, held that:

In the afore-mentioned situation, we are of the opinion that even the Gadgil Assurance would not curtail the jurisdiction of the Estate Officer who is a statutory authority under the said Act as the statutory power can be curtailed or abridged or taken away only by reasons of the provisions of the statute and not otherwise.

In this view of the matter the Division Bench came to a conclusion that having regard to the larger public interest it would not exercise discretionary jurisdiction under Article 226 of the Constitution of India and consequently dismissed the writ petition. Aggrieved by the said order dated 11th July, 2002 the petitioner filed a review petition. In the review petition the Division Bench found that:

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.

The review petition evidently came to be dismissed vide order dated 20th December, 2002.

5. In the circumstances, it is seen that the contention of the Petitioners that, the Petitioners as displaced persons were protected by the "Gadgil Assurance" and that the "Gadgil Assurance" was applicable in the case of commercial sites as well, was specifically rejected.

6. Furthermore, in re: Madan Lal Jain (supra) the Division Bench also observed that "we may notice that the Respondents have categorically stated that even the policy of 1966 is no longer in existence".

7. It is observed that the Division Bench of this Court decided the very issue raised by the Petitioners in the present writ petitions. The Division Bench held that the "Gadgil Assurance" would not curtail the jurisdiction of the Estate Officer who is a statutory authority under the said Act, as the statutory power can be curtailed or abridged or taken away only by reason of the provisions of statute and not otherwise. Further, it came to a conclusion that a bare perusal of the office memorandum dated 31st January, 1969 referred to in the judgment of Madan Lal Jain (supra) clearly shows that the "Gadgil Assurance" covers only residential areas in relation where to an encroachment had been made by poor persons.

8. We cannot but agree with the decision of the Division Bench in re: Madan Lal Jain (supra). Thus, the submission of the Petitioners that their unauthorized occupation for the purpose of carrying out their business was covered by the "Gadgil Assurance" is without any merit. In the circumstances, we are of the opinion that in a case of this nature this Court having regard to the larger public interest, would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India. The writ petitions are, therefore, dismissed without any order, however, as to costs.