

(2012) 04 DEL CK 0103

In the Delhi High Court

Case No : Writ Petition (C) No. 7029 of 2009

Sh. Omkar Nath Bhat

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2012) 8 AD 191 : (2012) 4 AD 327 : (2012) 189 DLT 156

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : B.L. Wali, for the Appellant; Ravinder Agarwal, for R-1, Mr. M. Kaushik and Mr. D. Gupta for R-2 and 3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, claiming to be a permanent resident of Kashmir, forced to settle down in Delhi, has filed this writ petition seeking a mandamus to the respondents UOI and State of Jammu & Kashmir to settle his claim for ex gratia relief in respect of the destruction by burning of his house at Uttersso, Tehsil Shangas, District Anantnag Kashmir. Notice of the petition was issued and the pleadings have been completed. The counsels have been heard. The destruction, by burning, of the house of the petitioner is not in dispute. However, while the petitioner claims that the house was burnt down by the terrorists, the respondents attribute the same to a fire caused by a electrical short circuit. The respondent No.2 State of Jammu & Kashmir in accordance with the Calamity Relief Fund has already disbursed an amount of Rs. 25,000/- to the petitioner. The petitioner however relies on B.L. Wali and Others Vs. Union of India (UOI) and Others, and on judgment dated 19.03.2008 in W.P.(C) No.10653/2006 titled Smt. Durgi Vs. The Resident Commissioner and claims that he is entitled to compensation in accordance therewith. Compensation in the said judgments for damage to immovable property owing to subversive activities was awarded in accordance with the policy therefore.

2. The question which thus arises for consideration is as to whether the destruction of the house of the petitioner was owing to the electrical short circuit

or owing to subversive or terrorist act. The respondents plead that the writ petition is not maintainable for entailing adjudication of disputed questions of fact.

3. Though the respondents in their counter affidavits have also controverted the territorial jurisdiction of this Court but in view of the judgments (*supra*) as also the judgments in *H.L. Warkoo Vs. Kashmir University and Others*, upheld by the Division Bench in judgment reported in *University of Kashmir Srinagar and Another Vs. H.L. Warikoo and Others*, relied upon by the counsel for the petitioners, the said objection is no longer open to the respondents.

4. It is the case of the petitioner, which is not rebutted, and is believable in the entirety of the facts and circumstances, that he had to abandon his house aforesaid in the year 1989-90. It is also not in dispute that the said house of the petitioner between the year 1997-2000 was in occupation of the Indian Army; thereafter the same was occupied by J&K Police and was being used as a police post till September, 2005. The house was burnt on 06.11.2005.

5. The petitioner, who had abandoned his house, naturally has no way of proving the cause of destruction. The respondents on their part have produced the DD report as per which electrical short circuit was the cause of the fire.

6. As per the judgment of this Court in *B.L. Wali (supra)* maximum compensation of Rs. 2,00,000/- is payable for "loss of house as a result of violence attributable to breach of law and order or any other form of civil commotion". What I have wondered is as to what is the difference in the two situations. Even if it is to be believed that the damage to the house of the petitioner was owing to electrical short circuit, such electrical short circuit could result in the burning down of the entire house owing to the same being abandoned. Had the house been lived in, the electrical short circuit, either would not have happened or would have been detected immediately and it is highly unlikely that it would have resulted in burning down of the entire house and which as aforesaid is not disputed. That leads me to the reason for the house lying abandoned. It is sufficiently established that the house was abandoned as a result of violence attributable to breach of law and order or any other form of civil commotion. I am therefore unable to find as to how the petitioner, even if the version of the respondents was to be believed, can be treated differently and be denied the compensation in accordance with the policy applied in *B.L. Wali* and *Smt. Durgi (supra)*.

7. I am moreover of the view that the burden, in the facts and circumstances, was on the respondents of proving destruction of house by electrical short circuit. The respondents have failed to discharge the said burden. The DD report relied upon is sketchy and bereft of any particulars. On the contrary, from the admitted use of the house first by the Army and then by the Police, the likelihood is of the same being the target of the subversive elements. It has not even been shown that after the police claims to have left the house, it still had electrical current. The writ petition is accordingly allowed. The petitioner is found entitled to ex

gratia compensation of Rs. 2,00,000/- for the loss of his house. The petitioner having already received Rs. 25,000/- is found entitled to the balance sum of Rs. 1,75,000/-. Following the dicta in B.L. Wali and Smt. Durgi, the petitioner is also found entitled to simple interest at the rate of 7% per annum. A writ of mandamus is issued directing the respondent No.2 State of Jammu & Kashmir to make the payment to the petitioner of Rs. 1,75,000/- together with interest at 7% per annum from 06.11.2005 till the date of payment within two months of today failing which the Central Government should make the payment and deduct the amount from the grants payable to the State of Jammu & Kashmir or from any other appropriate account. The petitioner is also found entitled to costs quantified at Rs. 10,000/- to be borne by the respondent No.2 State of Jammu & Kashmir.