
(2010) 07 DEL CK 0200
In the Delhi High Court
Case No : Cont. CAS (C) 7 of 2008

Sudesh Kumar Arora

APPELLANT

Vs

D.M. Sapolia and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0200

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Naresh K. Thanai, for the Appellant; V.K. Tandon, for the Respondent

Judgement

G.S. Sistani, J.—Learned Counsel for the petitioner submits that the respondents have willfully violated the orders passed by this Court on

3.8.2004 in W.P. (C) No. 3005/2003 and on 31.10.2006 in Cont. Cas (C) No. 574/2006.

2. Learned Counsel for the petitioner submits that petitioner was running a shop at Kashmiri Gate. In view of the DMRC project, the shop of the

petitioner was removed and an alternate shop was made available to him being shop no.29 at ISBT, Kashmere Gate, New Delhi. The petitioner,

however, sought a direction from this Court by filing W.P. (C) No. 3005/2003 that he should be treated as similarly situated evictees of "Dhaba

Block". The writ petition was allowed and the following order was passed on 3.8.2004.

IN THE HIGH COURT OF DELHI AT NEW DELHI

03.08.2004

Present: Mr. Arvind Singh, Advocate for the petitioner. Mr. Saleem Ahmed, Advocate for the respondents.

WP (C) 3005/2003

The petitioner is a physically challenged person suffering from 45% disability and was displaced from his allotted shop in view of the DMRC project.

The limited grievance of the petitioner is that the petitioner is being treated differently from the other persons who have been displaced as a consequence of the DMRC project and allotted shops.

The only defence taken in the counter-affidavit is that a policy was framed but only for evictees of dhaba block of Kashmere Gate. It is stated that

petitioner is in a different block and could not be covered by the policy. I fail to appreciate the distinction since once the petitioner is evicted from

the same area under the DMRC project, there will apparently be no distinction between the evictees. I am thus of the considered view that the

petitioner is entitled to be treated at par with the other evictees of ISBT who were rehabilitated. All these evictions took place as a consequence of the DMRC project.

In view of the aforesaid, it is directed that respondents should work out the similar parameters to apply the same to the case of the petitioner as

applied to other evictees of DMRC project from ISBT where the petitioner was originally located.

The writ petition is disposed of with the aforesaid terms.

CM 5113/2003

Dismissed.

Sanjay Kishan Kaul, J.

August 03, 2004

3. As the order dated 3.8.2004 passed in W.P. (C) No. 3005/2003 was not complied with, the petitioner filed contempt case no.574/2006

before this Court. While disposing of the contempt petition on 31.10.2006 a direction was issued to the respondents to ensure that a suitable

alternative shop is handed over to the petitioner within eight weeks subject to availability.

4. Although a trolley has been allotted to the petitioner, which has been duly accepted by him. Grievance of the petitioner is that the respondents

have not charged the rates as per the policy as directed by this Court in its order

dated 3.8.2004 while disposing of the writ petition and the subsequent order passed on 31.10.2006 in contempt petition.

5. Learned Counsel for the petitioner submits that as per the order dated 3.8.2004 the petitioner was entitled to be treated at par with the other evictees of ISBT and, thus, the petitioner would be covered by the policy and rates fixed therein. Thus the respondents cannot discriminate against the petitioner and charge rates in excess of the policy.

6. Mr. Naresh K. Thanai, counsel for the petitioner, submits that one Mrs. Chandra Kanta Nanda, was initially charged market rates vide communication dated 26.9.2001, but the mistake was rectified by a communication dated 5.1.2009. Copies of both these communications have been placed on record.

7. Learned Counsel for the respondents submits that there is no willful violation of the orders passed by this Court in view of the fact that while allotting shop no.29, ISBT, the policy was uniformly applied to the case of the petitioner. Counsel further submits that while allotting shop no.29, ISBT, the petitioner was charged rates as per the policy. Counsel also submits that as this shop was not suitable to the petitioner he requested for another shop. The petitioner was allotted a trolley, which was duly accepted by him and has also signed all the necessary papers including the Clause by which the rates have been notified and thus, at this stage, the petitioner is estopped from raising the plea with regard to fixation of rates.

8. I have heard counsel for the parties and also perused the pleadings and the annexures filed along with the pleadings. The order dated

31.10.2006 read with order dated 3.8.2004 makes it absolutely clear that the respondents are to consider the case of the petitioner for allotment

of an alternate shop based on the policy formulated. As per the policy the petitioner was to be charged the rates prevalent at the relevant time. this

Court while disposing of the contempt petition on 31.10.2006 made an observation that the question of rates no longer survives as the petitioner is

to be treated at par with other allottees, who were initially given other allotment of shops after they made a request and were given alternate re-

allotments. The Court directed the respondents to ensure that a suitable alternate shop be handed over to the petitioner. The order dated

31.10.2006 reads as under:

ORDER

31.10.2006

1. The petitioner had earlier approached this Court by filing WP(C)3005/2003. He had been allotted some premises for the purpose of selling

food stuffs, on compassionate basis, as he is a person with disability.

2. The Delhi Rail Metro Corporation project was sought to be implemented; as a result the Petitioner and other persons, shopkeepers in various

areas including the premises occupied by the petitioner and another place known as dhaba block were sought to be removed. The petitioner was

offered an alternative shop being No.29. Hence approached the Court claiming that those premises were not suitable having regard to the location

of a toilet adjacent to it. Other grievances too were raised. The petitioner wanted similar treatment along with others who had been allotted

alternative shop after relocation. this Court disposed off his petition, directing that he too ought to be treated in a similar manner as other allottees

be given the facility of an alternative shop, (alternative shop No.29).

3. In these proceedings, the only question which has been agitated (since the grievance with regard to the rates no longer survives) - is whether the

Respondents had complied with the directions to treat the Petitioner at par with the other allottees who were initially given other allotment of a shop

and after they made a request, given alternative reallotments.

4. Having considered the materials on record, I am of the opinion that the Respondents could not have made any distinction between the Petitioner

and the other allottees. Seven other instances where similar allottees were shifted to other shops after relocation have been brought to the notice of

the Court. They have not been denied. The distinction sought to be made is that those persons did not take possession earlier. I am of the opinion

that such a specious distinction is not enough for the Respondents to discriminate and certainly not to defeat the order of the court. In these

circumstances the Respondents shall ensure that a suitable alternative shop is handed over to the petitioner within eight weeks from today subject

to availability.

The contempt petition is accordingly disposed off.

9. A joint reading of the aforesaid two orders would show that when the

allotment of an alternative shop was made the respondents could not have even demanded additional rates from the petitioner than what was to be charged as per the policy. Accordingly, six weeks time is granted to the respondents to comply with the order dated 3.8.2004 and 31.10.2006. In case the order is not complied with within the time allowed, liberty, is granted to the petitioner to revive this petition to enable this Court to hear the matter on contempt against the respondents.

10. Petition stands disposed of in view of above.