
(2019) 02 DEL CK 0202

In the Delhi High Court

Case No : Letter Patent Appeal No. 115 Of 2019, Civil Miscellaneous Nos. 7641, 7643 Of 2019

Vikalp Welfare Society & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Citation : (2019) 02 DEL CK 0202

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Rajat Aneja, Nisha Sharma, Sambit Nanda, Dev P. Bhardwaj, Anubha Bhardwaj, Jatin Teotia, Hashmat Nabi, Farah Naaz, Mini Pushkarna, Swagata Bhuyan, Shiva Pandey

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM No. 7641/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM No. 7643/2019 (for taking additional documents on record)

For the reasons stated in the application, the same is allowed.

Additional documents are taken on record. Application stands disposed of.

LPA 115/2019

1. The challenge in the appeal is to the order dated January 16, 2019 passed by the learned Single Judge dismissing writ petition filed by the appellants herein. The writ petition was filed by the appellants before the learned Single Judge praying for directions to the respondents for initiating appropriate measures to

rehabilitate and relocate them and similarly placed slum dwellers of a slum established on land bearing Khasra No. 484, Sunder Nagar Nursery, Near Delhi Public School, Mathura Road, New Delhi, in terms of the Delhi Slum Rehabilitation and Relocation Policy approved by the Government of N.C.T. of Delhi by an Office Order dated December 11, 2017

2. The learned Single Judge had noted that one Jamia Arabia Nizamia Welfare Educational Society had filed a writ petition in public interest before this Court being W.P.(C) 3927/2010 captioned Jamia Arabia Nizamia Welfare Educational Society v. Delhi Wakf Board and Ors., inter alia, seeking directions for removal of jhuggi jhopris situated on the said land. It was the case of the appellants that none of the inhabitants of the jhuggies in question were made parties to the said writ petition. The said writ petition was disposed of by an order dated January 12, 2011, whereby a Coordinate Bench of this Court had, inter alia, directed the Union of India to proceed against the persons who had unauthorisedly constructed upon and encroached on the said land, in accordance with law. He also noted the filing of a contempt petition being Cont. Case (Civil) No. 519/2012 titled Jamia Arabia Nizamia Welfare Educational Society v. Union of India alleging that the order dated January 12, 2011 had not been complied with. During the said proceedings, it was stated that the office of L&DO would take up the matter with CPWD, for construction of a boundary wall. The Ld. Single Judge has noted the submission that in view of the directions issued in the said proceedings, CPWD has commenced constructing a boundary wall. Aggrieved by the same, the appellants had filed the writ petition. The learned Single Judge has also noted that the appellants had earlier approached the Division Bench for seeking a modification of the order dated January 12, 2011 passed in W.P.(C) 3927/2010. The said application was dismissed with the observation that in case the appellants have any right, they would be required to file individual petitions / claim asserting their right.

3. An issue arose before the learned Single Judge, whether the jhuggi jhopris inhabited by the appellants were raised prior to January 01, 2006 and as such whether they could be evicted without being provided alternate accommodation. The said stand of the appellants that they were in place before January 01, 2006 was disputed by the Union of India. The appellants relied upon various documents to show their habitation since before January 01, 2006. These documents include Election Commission card, bank passbooks / Adhar card etc. Reliance was also placed by the appellants on the additional affidavit filed by respondent no.1 in the Cont. Case (C) No. 519/2012 wherein it was affirmed that in compliance with the directions issued by this Court, two meetings were held in the Ministry with all stakeholders/concerned agencies to resolve the matters regarding removal of encroachment. It was further affirmed in the said affidavit that in the meeting, it was informed by Chief Engineer, NDZ-V that the encroachment in the area is very old and is reported to be 40-45 years old, with pucca structures standing. It was contended on behalf of the appellants that the said affidavit also clearly establishes that the jhuggi jhopri basti existed on the

said land prior to January 01, 2006.

4. The respondents had relied upon certain satellite images of the area pertaining to the years 2004, 2006 and 2017. The learned Single Judge was of the view that the satellite image dated October 15, 2006 clearly indicates that no jhuggi jhopri cluster existed on the said land. He was also of the view that however, the satellite image of March 12, 2017 indicated that there was some encroachment on the said land. According to him, there has been a significant increase in the jhuggies surrounding the said land. He finally, concluded that the jhuggi jhopri basti in question did not exist on the said land as on January 01, 2006 and accordingly, dismissed the writ petition.

5. Mr. Rajat Aneja, learned counsel for the appellants would submit that the appellants have submitted documents like Ration Card, Driving License, Adhar Card, Pass Books issued by Public Sector Banks etc. of dates prior to January 01, 2006, which are clinching evidence to show occupation of the area by the appellants herein. The learned Single Judge has not even commented on the veracity of the said documents. In other words, it is his case that the order is totally a perverse order. He states that in terms of the Policy of the Government of NCT of Delhi, which is at page 172 of the paper book, to ascertain whether the appellants were in place before January 01, 2006, the respondents are required to carry out a survey. Unfortunately, even such a direction has not been given. He has relied upon the affidavit filed by the Union of India in the aforementioned contempt case and also the minutes of the meeting held on September 03, 2015 wherein Officers belonging to L&DO, Horticulture department, CPWD, DDA and DUSIB were present and wherein after detailed discussion, the following was decided:-

"i) DUSIB should take immediate necessary action to include JJ Clusters of Sunder Nursery in the list of JJ Clusters to be rehabilitated by DUSIB.

ii) DUSIB will take initiative to conduct a joint survey of the area to identify the actual number of illegal occupants for rehabilitation. While conducting the survey, DUSIB will include L&DO and Horticulture Deptt.

iii) DUSIB will intimate the share of the contribution from L&DO being the land owning agency to the DUSIB as has been fixed for relocating the JJ dwellers from the area near Sunder Nursery.

The meeting ended with a vote of thanks to the Chair."

6. According to him, in terms of the said minutes, DUSIB was to make a joint survey of the area to identify the actual number of illegal occupants for rehabilitation. Unfortunately the said survey has not been conducted for the reasons best known to the respondents.

That apart, he has also relied upon satellite images to contend that the jhuggi jhopri clusters were in place before January 01, 2006.

7. On the other hand, Mr. Dev P. Bhardwaj, learned counsel appearing for the respondent Nos. 1 and 3 has relied upon certain documents, which were part of the record of the learned Single Judge along with counter affidavit to show that the jhuggi jhopri cluster was not in existence before January 01, 2006. According to him, today unfortunately encroachment exists where the people are carrying out commercial activity like manufacturing of ice-cream and parking of vehicles etc. In fact, he has relied upon electricity bills issued by the BSES to show that electricity is being used for e- rickshaw charging etc. In other words, people are doing commercial activity on the plot in question, and no relief can be granted.

8. Ms. Mini Pushkarna also has drawn our attention to page 154 of the paper book to contend that in the writ petition filed by Jamia Arabia Nizamia Welfare Educational Society, a reference of which has already been given above, even this Court had noted the aspect of encroachment on the said land and gave direction to proceed against the persons, who have unauthorizedly constructed and encroached upon the land in question, in accordance with law. In view of such a direction, no further directions are called for, more specifically the relief as prayed for by the appellants herein.

9. Having heard the learned counsel for the parties, we do not find any infirmity in the order of the learned Single Judge. The orders passed by the Coordinate Bench of this Court in the writ petition filed by Jamia Arabia Nizamia Welfare Educational Society are also very clear, a reference of which is already made above. Be that as it may, the issue which fell for consideration before the learned Single Judge was, whether these jhuggi jhopri basti was in existence before January 01, 2006, which is a pre-requisite for the application of the Policy dated December 11, 2017. The answer to the question has been given in the negative by the learned Single Judge by relying upon a satellite image of October 15, 2006, which clearly indicates that no jhuggi jhopri cluster existed on the said land at that point of time. Reliance placed by Mr. Aneja on the minutes of the meeting dated September 03, 2015 would not be of any help to the appellants herein. The said meeting was of the year 2015. Surely, the deliberations that have taken place in the meeting and the minutes dated September 03, 2015 do not relate to an issue whether the jhuggi jhopri cluster was in existence as on January 01, 2006 or before that.

10. Even otherwise, it was intended that a joint survey be carried out for identifying the actual number of illegal occupants for rehabilitation, it may be stated here that the deliberation was before the Policy of December 11, 2017 was framed. Hence, the reliance placed by Mr. Aneja on the minutes of the meeting and also the affidavit filed in the contempt petition is totally misplaced. Suffice it to state, the conclusion of the Ld. Single Judge is a finding of fact based on satellite image, hence it is not a perverse finding. That apart, we agree with the submission of Mr. Bhardwaj that none of the appellants have annexed any document showing electricity connected to the dwelling. Surely, when they could get election card, Bank A/Cs, Aadhar Card etc, they could also take electricity

connection. Having not placed the same, the conclusion one must arrive at is, they were not residing at that place. Further, there is nothing indicated in the documents on which reliance was placed that, the addresses pertain to the land in question.

11. In view of our above discussion, we do not see any merit in the appeal. The same is dismissed. No costs.

CM No. 7642/2019 (for direction)

Dismissed as infructuous.