(2010) 03 DEL CK 0206

In the Delhi High Court

Case No : Writ Petition (C) No. 8053 of 2003

Vinod Kumar Gujral APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Delhi Development Act, 1957 — Section 11
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9

Citation : (2010) 03 DEL CK 0206

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : P.P. Ahuja, in W.P. C No. 8053 of 2003, Rajat Aneja, in W.P. C No. 13219 of 2004 and Sunil Lalwani, in W.P. C No. 13860 of 200, for the Appellant; R.V. Sinha and R.N. Singh for R- 1 to R-3 and Himanshu Upadhyay and Nitin Kumar for MCD in W.P. (C) No. 8053 of 2003, Sachin Datta, for UOI, Nikhil Goel, for DDA and Paromita Mukherjee, for Shyel Trehan, for MCD in W.P. (C) No. 13219 of 2004, Atul Nanda and Sugandha for UOI and Mukesh Gupta, for MCD in W.P. (C) No. 13860 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

CM No. 15722 of 2009 (for delay) in W.P.(C) No. 13860 of 2009

For the reasons stated in the application, the delay in filing the petition is condoned.

The application is disposed of.

W.P.(C) Nos. 8053 of 2003 & CM No. 11425 of 2004

W.P.(C) No. 13219 of 2004 & CM No. 6531 of 2005 (for impleadment)

W.P.(C) No. 13860 of 2009

1. The facts of these three petitions are similar and are accordingly being

disposed of by this common judgment.

2. The Petitioner in Writ Petition (Civil) No. 8053 of 2003, Mr. Vinod Kumar Gujral is aggrieved by an order dated 18th June 2001 issued by the / EQ30El0'' IMeIRSP IQt02 MEe0("/ El'' 2), Ministry of Urban Development and Poverty Alleviation, Government of Delhi raising a demand in the sum of Rs. 41,48,108/- towards the past arrears of damages and ground rent together with interest in relation to the unauthorised occupation of the property at Poorvi Marg (now known as Sir Ganga Ram Hospital Marg). The said damages became payable consequent upon the allotment, in the name of the father of the Petitioner, Plot No. 6 Site No. 7, New Rajendra Nagar on 12th December 1983.

3. The Petitioner in Writ Petition (Civil) No. 13219 of 2004, Shri Narender Kumar Abbott, has challenged a demand dated 23rd August 2001 raised by the L&DO in the sum of Rs. 37,04,565/- payable on the ground of arrears of damages and ground rent together with interest in respect of the unauthorised occupation of government land at Poorvi Marg which became payable consequent upon the allotment on 12th December 1983 of an alternative plot at Site No. 3 New Rajendra Nagar.

4. Writ Petition (Civil) No. 13860 of 2009 is by Shri Rajender Pal Singh seeking a direction to the L&DO to refund the amount of Rs. 8 1,07,669/- stated to have been paid by the Petitioner under protest towards the arrears of damages and ground rent together with interest raised by the L&DO in respect of unauthorised occupation of a plot in Poorvi Marg. The said amount became payable consequent upon the allotment to the Petitioner''s father late Shri Jaswant Singh on 12th December 1983 a 200 sq. yard plot at New Rajendra Nagar. The admitted case is that Shri Rajender Pal Singh has further sold the property to a third party pursuant to a sale permission granted by the L&DO on 30th June 2008.

5. What is common to the three petitions is that the L&DO has raised the demand for unauthorised occupation of lands on Poorvi Marg pursuant to the allotments made either to the Petitioners or their predecessors-in interest of a 200 sq. yards plot in New Rajendra Nagar way back in December 1983 pursuant to the Gadgil Assurance.

6. Recently, this Court has by a judgment dated 8th March 2010, dismissed Writ Petition (Civil) No. 5645 of 2001 (K.C. Jain v. Union of India) where a similar challenge to the demand raised by the L&DO for unauthorised occupation of land on Poorvi Marg was negatived. The facts in these cases are more or less similar. Persons who had to migrate to India during partition had come to occupy lands in different areas in Delhi and subsequently also raised construction thereon.

7. On the floor of the Parliament the then Minister of Works Production Shri M.V. Gadgil gave certain assurances during the debate on the Delhi Premises (Requisition and Eviction) Amendment Bill, 1950 in line with the recommendations contained with the report of the Select Committee on Government Assurance. The said assurances (known as ''Gadgil Assurance'')

were to the effect that the value of the land on which a refugee was squatting was to be computed on a no profit and no loss basis and the displaced person was to be given an option of purchasing the site occupied by him against payment in easy instalments of the value of the land assessed and on condition of paying the ground rent. Where the displaced person was unable to purchase the site he was not to be evicted unless alternative accommodation was provided on the developed plan and a rehabilitation grant was made.

8. It appears that there were 11 persons, including the Petitioners who had been occupying land on Poorvi Marg which is part of the ridge area. In a public interest litigation being Writ Petition No. 4677 of 1985 titled M.C. Mehta v. Union of India in the Supreme Court, three applications being IA Nos. 18, 22 and 32 were filed for removal of encroachments on the ridge area.

9. It appears that on 3rd April 1996 the Supreme Court passed the following order in the IAs:

There are large number of persons who are unauthorisedly in occupation of the Ridge area since earlier to 1950. They are occupying till date on the basis of some sort of "Gadgil Assurances". It is admitted by the learned Counsel appearing for private persons and Lt. Col. Sharma that there are no allotment and licences in their favour by any authority of Government. Be that as it may, since they are occupying the area for last nearly five decades, the Government of India is under an obligation to provide them an alternative accommodation. Mr. Venu Gopal, learned Counsel appearing for L&DO states that he would examine the case of each of these persons and indicate their status viz-a-viz, their right of accommodation. He may do so and file an affidavit within two weeks.

10. Following the above order, the L&DO held a draw of lots on 26th June 1996 and each of these Petitioners (or their predecessors-in-interest) were allotted identifiable plots in New Rajendra Nagar. They were asked to take physical possession of the land so allotted on 8th August 1996.

11. The 11 persons, including the Petitioners herein filed an application which was disposed of in the Supreme Court on 4th September 1996 by the following order:

We have heard learned Counsel for the parties regarding shifting of 11 occupants who are residing in ridge area on the basis of "Gadgil Assurance". DDA has already handed over the possession of the plots to L&DO. The 11 plots are further being allotted to 11 persons. The objection was raised by the residents of the area that these 11 plots have been carved out from the green area and not from the residential area. Mr. KK Bandyopadhyay, Additional Commissioner (Plg.), DDA has filed affidavit where under it is stated that as per the MPD-2001 the area under plot/site No. 7 falls under residential zone. The 11 plots have been carved out from the said plot/site No. 7 which falls under the residential zone. It is further stated in the affidavit that as per draft of zonal plan of zone B approved by DDA as per resolution No. 174/92 dated December 17, 1995 for inviting objections u/s 11 of the DD Act 1957 the land use is shown as residential, it is further stated that after processing objection/suggestion, the area has been retrained as residential.

In view of the categoric affidavit of the DDA, we reject the contention of the residents of the area. We directed the L&DO to hand over the possession of the 11 plots to the 11 allottees within two weeks. These allottees who refuse to take the plots, shall be immediately dispossessed from the ridge area. The allottees after taking possession of the land shall move the MCD within one month for sanction of the plan. The MCD within six weeks thereafter shall sanction the plans. We give time to the 11 allottees to move from the ridge area before May 31, 1976. These occupants shall not be permitted to live in the ridge area beyond May 31, 1997 irrespective of the fact whether they are in a position to build their houses or the allotted plots or not. We further direct that none of the tress which are in existence on these 11 plots shall be cut or removed without the sanction of the authority under law while constructing the residential houses by the 11 persons. We further direct the Ridge Management Board to take over the possession of the Ridge area from the eleven persons on June 1, 1997 and thereafter do the necessary plantation and fencing.

I.A. in respect of 11 persons is disposed off.

12. Demands were thereafter raised for unauthorised occupation of the lands on Poorvi Marg in terms of Condition No. 2(iv) of the allotment letters dated 12th December 1983. A copy of one such demand letter in the case of Shri M.L. Gujral dated 17th/18th November 1997 reads as under:

To

Shri M.L. Gujral,

Poorvi Marg, B-4, Ganga Ram Hospital,

Pusa Road,

New Delhi.

Sub: Payment of damage for unauthorised occupation of Govt. land at Pusa Road, Poorvi Marg, New Delhi.

Sir,

I am directed to invite your attention to this office letter No. L-III/8/12(38)/83 dt. 6.5.96 on the above subject and to any that you have been given physical possession of plot measuring 200 sq. yds. at New Rajinder Nagar. According to condition No. 2(IV) of the allotment vide letter No. I-III/8/12(38)/ dt. 12.12.83. You are liable to pay the damages for the unauthorised use and occupation of Govt. land at Pusa Road, Poorvi Marg, New Delhli. You are, therefore, required to pay damages as per details below:

1. From 1.1.52 to 31.3.81 Rs. 57,915.00 @ Rs. 165.00 P.M.

2. From 1.4.81 to 31.3.92 Rs. 43, 560.00 @ Rs. 330/- P.M.

3. From 1.4.92 to 3 1.5.97 Rs. 2,04,600.00 @ Rs. 3,300/- P.M.

Furnishing an undertaking on non-judicial stamp paper of Rs. 2/- that you will pay difference of damages charges if the land rates are revised w.e.f. 1.4.96.

The payment should be made through a Bank Draft Drawn in favour of Land & Development Officer, New Delhi and should reach this office within 30 days from the date of issue of this letter. In case of your failure to pay damages as demanded within the prescribed period of 30 days. You will be liable to pay compound interest @ 18% from the date of this demand for the period of delay on your part.

Yours faithfully,

(D.K. Bazzaz)

Dy. Land & Development Officer.

13. Similar demands were raised in the other cases as well.

14. In the meanwhile the Supreme Court was again approached by the Petitioners for grant of further time to continue in the ridge area on the ground that the Municipal Corporation of Delhi (''MCD'') had not discharged its obligation in the matter of sanction of plan. While dismissing the said applications on 23rd September 1999, the Supreme Court passed the following order:

These applications have been filed to grant further time to the applicants to continue in the Ridge area on the ground that the Municipal Corporation of Delhi (''MCD'') has not discharged is obligations in the matter of sanction of plan as it has put forth unreasonable conditions in sanctioning plan and giving alternative lands. The MCD is not before us. The Counsel earlier appearing for the MCD is also not available.

Issue notice to Mr. V.K. Duggal, Commissioner, Municipal Corporation of Delhi to appear in person before this Court on 29th September, 1999 to show cause why appropriate action be not taken against him for conniving with the Ridge occupants in one way or the other thereby preventing the implementation of the orders of this Court.

Notwithstanding the aforesaid order, we do not see any justification for granting any further extension of time to those 11 Ridge occupants. The learned Counsel, however, prays that some time may be given within which the occupants will vacate the premises occupied by them. We grant a month''s time from today to vacate the premises in question. We are constrained to observe that even though the order of this Court was passed as early as in the year 1996 and more than three years have elapsed, yet the occupants have not vacated the premises in question. The Ridge Management Board is directed to furnish a report in this regard within one month from today. These applications stand dismissed accordingly. Report be placed before the Court after one month.

15. The demand as raised by the L&DO was still not paid thereafter. This led to issuance of further demand letters which have been challenged in these proceedings.

16. Three principal contentions have been raised by the learned Counsel for the Petitioners in these cases. The first is that in terms of the Gadgil Assurance each of them has a vested right for allotment of an alternative plot. It is further submitted that unless proceedings are initiated u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (''PP Act'') for assessment of damages the impugned demands could not have been raised. It is stated that Public Relation Officer (''PRO'') of the L&DO was not authorised to raise such demands. Thirdly, the manner of calculation of the amounts demanded is questioned particularly since damages have been claimed even after the surrender of the land which was unauthorisedly occupied. Lastly, it is contended that the interest charged at 18% per annum is excessive and ought not to be permitted. Reliance is placed on the decisions in B.B. Asthana Vs. Union of India and Others, ; Capt. Jai Singh Jakhar Vs. The Director (Estate), NDMC, ; Ms. Rachna Dogra Vs. Directorate of Estates, Ministry of Urban Affairs and Employment and Another, ; New Delhi Municipal Committee v. Kaluram 12 (1976) DLT 325; Rachna Dora v. Directorate of Estate etc. 2004 RLR 162; Shiv Sagar Tiwari Vs. Union of India and others, and M.S. Oberoi Vs. Union of India (UOI), .

17. In reply it is contended by learned Counsel for the Respondents that after the orders passed by the Supreme Court in the matter on more than one occasion, there was no question of the Petitioners now challenging the demands raised. They had surrendered plots, unauthorisedly occupied by them, pursuant to the orders of the Supreme Court and no objection was raised by any of the Petitioners with reference to the PP Act at that stage. As regards the damages claimed, it is pointed out that for the period up to 31st May 1997 damages have been charged at concessional rates although in terms of the allotment letter dated 12th December 1983 concessional rates were applicable only for a period of 2 years and thereafter damages ought to have been levied on the basis of market value. The damages with effect from 1st June 1997 are based on the schedule of market rates fixed by the MoUD. Penalties have been levied at the rate of 10% per annum on the applicable land rate in the area.

18. In an affidavit dated 6th March 2010, filed in Writ Petition (Civil) No. 13219 of 2004 by the Respondents it is stated that the land rate of property in Rajendra Nagar area was Rs. 10,500/- sq. m. in the year 1997. It was revised to Rs. 1 1,550/- with effect from 1st April 1998. The present rate is, of course, much higher. On the basis of the above rates, penalty for unauthorised occupation was calculated as follows:

1st period from 1/6/1997 to 31/3/1 998 (304 days)

Land rate = Rs. 10,500/-

10,500 x 10% = Rs. 1050/-

Plot area =1276 sq. mtrs.

Penalty for u/a occupation for the period 304 days

=1276 x 1050 = Rs. 13,39,800/- p.a.

=13,39,800 x 304/365 = Rs. 11,15,889.00

(ii) IInd period from 1/4/1998 to 29/10/1999 (one year +

212 days)

Land rates = Rs. 11,550/-

11,550 x 10% = Rs. 1155/-

Plot area = 1276 sq. mtrs.

Penalty for u/a occupation for the period of one year and

212 days

= 1276 x 1155 = Rs. 14,73,780 p.a.

= 14,737,80 + 14,737,80 x 212/365 = Rs. 23,29,784.00

19. It is stated that the above value is a fraction of the value in terms of the recent auctions conducted by the Delhi Development Authority (''DDA'') whereas the reserve price itself was in excess of Rs. 1 lakh per sq. m.

20. As regards the simple interest levied at the rate of 18% per annum in terms of office order No. 9/19 issued by the MoUD which reads as follows:

No. 23(108)/91-CDW Date 16th Sep. 91

OFFICE ORDER No. 9/91

Subject:- Interest on damages for unauthorised occupation of Govt. land.

The Enforcement Section while demanding the damages has also been demanding the compound interest thereon. The matter, therefore came up for discussion in one of the Coordination meetings held in Land & Development Officer''s room where it was decided to adopt the procedure as is being adopted by Delhi Development Authority.

The Delhi Development Authority was therefore requested to intimate the procedure being adopted by them who have informed that they are charging interest on damages on simple rate of 18% per annum after squatters fails to pay the damages within the stipulated period.

It has, therefore, been decided that in future the Enforcement Section will not demand the compound interest or where ever it has not been paid or contested, the demand letters should be amended accordingly. The interest will become payable only the squatter fails to pay the damages within the prescribed period i.e. 45 days from the date of receipt of the notice for which it will be made clear in the demand letter.

21. It is accordingly submitted that the impugned demands do not call for any interference.

22. As regards the first objection that damages ought to have been assessed by initiating proceedings u/s 9 of the PP Act, this Court finds that no such objection was raised by any of these Petitioners when they approached the Supreme Court on more than one occasion. It is plain to this Court that this plea of the non initiation of proceedings under the PP Act is an afterthought. Such a plea cannot be countenanced particularly since each of these Petitioners has taken advantage of the scheme in terms of the Gadgil Assurance. Each of them has been allotted a 200 sq. yard plot in Rajendra Nagar which by today''s standards is worth several crores of rupees. For several years now they have not even paid damages for the unauthorised occupation of the plots by them in Poorvi Marg. Even in the case of Shri Rajender Pal Singh, he ultimately paid the damages under protest on 21st January 2008 clearly with a view to selling it soon thereafter on 2nd July 2008 to a third party.

23. Even after the order dated 4th September 1996 of the Supreme Court, these Petitioners despite getting an allotment of an alternative land way back in December 1983 continued occupying the unauthorised plots in Poorvi Marg. At least in two petitions no damages for unauthorised occupation have been paid. This Court, therefore, cannot countenance a plea by any of them about the non-initiation of proceedings for assessment of damages u/s 9 of the PP Act. The said contention is hereby rejected.

24. On the question of the period for which the damages are payable, this Court finds that calculations made by the Respondents does not call for interference. As pointed out by the Respondents, they need not have granted any concessional rate after the expiry of two years after 12th December 1983 when the alternative plots were first allotted to the Petitioners. This Court is unable to be persuaded to direct the Respondents to grant any further concession to the Petitioners for the purposes of the calculation of damages for unauthorised occupation. In the facts and circumstances of the case, it is held that there is no illegality committed by the Respondents in raising the impugned demands.

25. Even as regards the demand for interest at the rate of 18% simple interest per annum, the Circular produced by the Respondents justifies the raising of demand at that rate. Given the value of the property in the hands of each of these Petitioners, the demand raised is indeed a fraction thereof. No case has been made out by any of these Petitioners for any interference by this Court.

26. Each of these petitions are accordingly dismissed with costs of Rs. 10,000/-

which will be paid by the Petitioners to the Respondents within a period of four weeks.

27. The pending applications are also disposed of.

