

(2011) 05 DEL CK 0306

Delhi High Court

Case No: Writ Petition (C) 8070 of 2010 and CM 20812 of 2010

Harijan Samaj Sudhar Samiti and
Others

APPELLANT

Vs

New Delhi Municipal Council and
Another

RESPONDENT

Date of Decision: May 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

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

Bench: Single Bench

Advocate: K.C. Mittal, Tarunesh Kumar and Dushyant Singh, for the Appellant; Pinaki Misra Arjun Pant, for R-/NDMC and Shilpi Kaushik, for R-2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

The genesis of the present dispute has been set out in some detail in the order dated 2nd December 2010 passed by this Court which reads as under:

1. The Petitioner No. 1 Society and the Petitioners No. 2 to 6 being some of its members have filed this writ petition contending that the members of the Petitioner No. 1 Society are resident of the Colony known as Bapu Dham at Chanakya Puri, New Delhi. It is the case of the Petitioners that the said Colony is a resettlement Colony, quarters wherein were allotted for relocation of the eartwhile Jhuggi dwellers. It is thus claimed that the allottees have right to their respective quarters in the said Colony. It is further pleaded that the Respondent No. 1 NDMC is however claiming the said Colony to be its staff Colony, quarters wherein are allotted to the Safai Karamchari of the Respondent No. 1 NDMC. The Petitioners claims to have earlier filed W.P.(C) No. 12917/2009 seeking declaration of the status of the Colony. The said writ petition was however withdrawn on 10th February, 2010 with liberty to

make a representation to the Ministry of Urban Development as well as to the NDMC. It is the case of the Petitioners that no decision has been taken on the said representation till now but the Respondent No. 1 NDMC with a view to forcibly evict the Petitioners from the said Colony has started disconnecting the electricity and water supply to quarters and is also threatening to forcibly removed the Petitioners from their accommodation. The writ petition has been filed seeking to restrain the Respondent No. 1 NDMC and for mandamus to the Respondent No. 1 NDMC to restore the supplies already disconnected.

2. The counsel for the Respondent No. 1 NDMC appearing on advance notice states that the Petitioners No. 2 to 6 as on date also are the Safai Karamchari in employment of the Respondent No. 1 NDMC. It is further stated that the eviction notices were issued and the supplies were disconnected because the Civil Department of the NDMC has found the said quarters to be in a dangerous condition and requiring redevelopment. It is stated that those who are still in the employment of the Respondent No. 1 NDMC are being given alternative staff accommodation at various places. With respect to the representation of the Petitioner it is stated that the decision was to be taken by the Respondent No. 2 Union of India whether to controvert the said staff quarters into a relocation Colony or not.

3. The counsel for the Respondent No. 2 Union of India appearing on advance notice seeks time to obtain instructions.

4. The counsel for the Petitioners controverts that the quarters are in a dangerous condition and contends that excuse is being used to forcibly evict the Petitioners from the accommodation in their possession as a matter of right.

5. It has been put to the counsel for the Petitioners that if the Petitioners press for stay, it will be on condition that in the event any of the quarters falling down or causing any danger or loss to life or property to any occupant of the Colony, the Petitioners or any such other person will not make any claim against the Respondent No. 1 NDMC and Respondent No. 2 Union of India or any other authority whatsoever on account thereof. The counsel for the Petitioners under instructions states that the Petitioners are willing to make the said statement and will not make any claim whatsoever on account of loss of life or property on account of quarters being in a dangerous condition.

6. Issue notice. Notice is accepted by the counsel for the Respondent No. 1 NDMC and counsel for the Respondent No. 2 Union of India.

7. The counter affidavits be filed within two weeks together with the documents showing the status of the aforesaid Colony and the manner in which the same has been dealt with over the years as well as how the quarters were allotted and occupied in the first instance. Rejoinder, if any be filed before the next date of hearing.

8. Till the next date of hearing, the Respondents to neither take any forcible action of dispossession or disconnection of supplies with respect to the said Colony. The counsel for the Respondent No. 1 NDMC states that it is only the Petitioners No. 2 to 6 who are before the Court and action with respect to all the 228 quarters in the Colony should not be stopped. It is further stated that a number of occupants have already vacated and possession taken over by the Respondent No. 1 NDMC. The counsel for the Petitioners contends that the Petitioner No. 1 Society represents the other occupants also. However, the Petitioners have not filed any list of the members of the Petitioner No. 1 Society. The counsel for the Petitioners to within two days file a list of members of Petitioner No. 1 Society with advance copy to the counsel for the Respondents. The aforesaid order is subject to the Petitioners not parting with possession or otherwise alienating, encumbering any quarters or entering and occupying the quarters which have already got vacated and possession whereof is with the Respondent No. 1 NDMC.

List on 6th January, 2011.

2. Subsequent to the above order the Petitioners filed a list of 75 persons. Twenty-six allottees were in Block 14 to 19 in the Bapu Dham Complex.

3. On 8th April 2011, the following order was passed:

1. In response to the earlier order dated 4th April, 2011, the senior counsel for the Respondent NDMC has handed over in the Court documents under cover of index dated 8th April, 2011. The same are taken on record. The senior counsel for the Respondent NDMC on the basis of said documents states that the contract for the demolition and re-construction work of the existing accommodation in possession of the Petitioners was given in January, 2011 and the construction was expected to be completed in three years and six months. It is further stated under instructions from Mr. G. Sudhakar, Director (Municipal Housing), NDMC present in Court that the Block in possession of the Petitioners is the most dangerous and is to be demolished first and will be re-constructed first before the other of the total of 19 Blocks.

2. The senior counsel for the Respondent NDMC in the documents handed over has also disclosed the accommodation to which the Petitioners are proposed to be temporarily shifted and again on instructions states that the Respondent NDMC will be bound to deliver back to the Petitioners, the same covered area in the newly constructed multi storied flats as presently in the possession of the Petitioners.

3. A copy of the said documents has been handed over to the counsel for the Petitioners also. The arguing counsel for the Petitioners is not available and passover is sought. The matter is unlikely to reach again.

4. The Petitioners are at liberty to inspect the alternative accommodation proposed to be given to them as per the documents handed over.

5. The Respondent NDMC to, before the next date of hearing file an affidavit of the covered area presently in occupation of each of the Petitioners.

6. List on 21st April, 2011.

7. It is made clear that no further adjournment/passover shall be granted.

4. At the subsequent hearing on 21st April 2011 the following order was passed:

Pursuant to the order dated 8.4.2011, learned Senior Advocate appearing for Respondent/NDMC hands over an affidavit of the Director (Municipal Housing), NDMC dated 20.4.2011 with a copy to the counsel for the Petitioners. Enclosed with the affidavit, is a list of allottees stated to be residing at Bapu Dham, numbering twenty six in all. Mr. Mittal submits that as per the list of Petitioners submitted on behalf of the Petitioners, under an index dated 7.12.2010, the aforesaid list of twenty six allottees pertain to Blocks 14 to 19. As per the earlier list of the Petitioners submitted by the counsel for the Petitioners, under an index dated 7.12.2010, there are twenty Petitioners from S. Nos. 54 to 75 who are stated to be residing in Blocks No. 14 to 19. There seems to be an apparent mismatch in the numbers. Counsel for the Petitioners shall sit together with the counsel for the Respondent/NDMC and sort out the mismatch and indicate the exact number of Petitioners who are likely to be affected by the relocation suggested by the Respondent/ NDMC in the first tranche pertaining to Blocks No. 14 to 19 in the complex.

Vide order dated 8.4.2011, the Respondent/NDMC was required to file an affidavit indicating the covered area presently in occupation of each of the Petitioners. The same has now been furnished as an annexure to the affidavit of the Director(Municipal Housing), NDMC.

Learned Senior Advocate appearing for the Respondent/NDMC states that the Petitioners have also not complied with the order dated 8.4.2011, where under they were required to inspect the alternate accommodation supposed to be given to them as per the documents which were handed over to them on the said date.

Mr. Mittal, learned Counsel for the Petitioners assures the court that by the next date of hearing, he shall have the necessary instructions from his clients in this regard. He further states that to allay the apprehension of the Petitioners with regard to their relocation back to the same complex from where they are proposed to be removed for the purposes of fresh construction of the nineteen towers existing at present, it would be appropriate if the Respondent/NDMC is called upon to file an affidavit, indicating inter alia the details of the proposal of the project, the expected time span within which it is proposed to be completed in a block-wise manner and the area which will be ultimately available for occupation by the Petitioners, after the newly constructed multi-storeyed flats are ready.

Accordingly, the Respondent/NDMC is directed to file an affidavit indicating inter alia the following:

(a) The time required for construction of the different multi-storeyed blocks which are proposed to be constructed in the complex, after demolition of the existing nineteen towers.

(b) The time span required for block-wise construction.

(c) Whether the area of each flat which will be ultimately available, would be the same as being presently occupied by the Petitioners.

(d) Furnish an undertaking within one week that immediately upon completion of the construction of the multi-storeyed flats, the Petitioners shall be put back in possession thereof in a phase wise manner and on a block-wise basis, in the same capacity as they are occupying the flats currently.

It is further made clear that any temporary relocation of the Petitioners for them to be placed back in possession of the newly constructed multi-storeyed flats shall be without prejudice to the respective rights and contentions of the parties in the present petition.

The Respondent/UOI has not filed the counter affidavit till date. Last opportunity of one week is granted to the said Respondent to file a counter affidavit, with a copy to the counsels for the Petitioners and the Respondent/NDMC. Rejoinders, if any, be filed thereafter.

List for consideration on 6.5.2011.

Interim order to continue.

5. Pursuant to the above order, the NDMC has filed on 6th May 2011 an affidavit stating, inter alia, as under:

(i) The project has to be carried out in three phases. Blocks 14-19 being the most dangerous are to be developed in the first phase.

(ii) The construction of the different multi-storied blocks is expected to be completed within 42 months of the handing over the site to the agency after the demolition of the existing 19 towers.

(iii) The area of each flat which will ultimately be available after construction, will be more than the area being presently occupied by the Petitioner.

(iv) Subject to the Petitioners remaining municipal employees, they will be allotted "newly constructed quarters, as per their eligibility and municipal housing policy".

(v) The new quarters to which the Petitioners are sought to be shifted pending reconstruction of Bapu Dham, are in "Palika Ground, Peshwa Road, Lodi Colony, Ali Ganj, R.K. Puram, Sarojini Nagar, New Moti Bagh, Lakshmi Bai Nagar and Mandir

Marg.

6. The affidavit further states as under:

As per the list of employees furnished by the Petitioners, under index dated 07.12.2010, of the 75 Petitioners, 20 listed at Sl. Nos. 53-75 are residing in the most dangerous blocks which are to be demolished first in phase one, i.e. block Nos. 14 to 19. The list of Petitioners which was furnished by the Petitioners on 07.12.2010 is not complete or accurate. The list of 26 employees currently residing at Blocks 14 - 19, furnished under index dated 20.04.2011, is the correct and accurate list, the same is based on municipal record and site inspection.

The remaining Petitioners would not be disturbed in the first phase of construction.

7. It is also stated that "of the 92 allottees, who were residing in the most dangerous blocks, blocks 14 to 19, 66 have already shifted".

8. Mr. K.C. Mittal, learned Counsel appearing for the Petitioners refers to an affidavit dated 12th May 2011 filed by the Petitioners in reply to the aforementioned affidavit. According to him, the affidavit dated 6th May 2011 of the NDMC is not in accordance with the order dated 21st April 2011 passed by this Court. Mr. Mittal vehemently argued that the condition that the newly reconstructed flats will be allotted to only those Petitioners who remain municipal employees and as per the eligibility in the municipal housing policy was a new condition being introduced by the NDMC and was inconsistent with the earlier orders passed by this Court. Referring to the decision taken in 1981, he submitted that safai karamcharis and sweepers of the NDMC both currently in service and those who had retired, and who were earlier residing in jhuggis, were to be accommodated in the Bapu Dham complex. It is accordingly submitted that the occupants of the flats in Bapu Dham were doing so in their own right and not necessarily as employees of the NDMC.

9. The above pleas are opposed by Mr. Pinaki Misra, learned Senior counsel appearing for the NDMC who states that the Bapu Dham blocks were meant for the employees of NDMC. He pointed out that 92 allottees who were residing in the "most dangerous blocks", i.e. Blocks 14 to 19, "have already shifted". As on date, the 26 persons currently residing in blocks 14 to 19 are in fact employees of the NDMC. Only these 26 continue to remain in Bapu Dham. Despite the work of reconstruction of Bapu Dham being awarded to a contractor more than four months ago, it has not commenced on account of the interim order passed by this Court on 2nd December 2010.

10. Learned Counsel for the Union of India refers to the affidavit filed by it supporting the stand of the NDMC that the flats in Bapu Dham were meant only for the employees of the NDMC and that the reconstructed flats also would be allotted only to the employees of the NDMC.

11. From the affidavit filed by the NDMC on 6th May 2011, it is clear that there are at present only 26 employees currently residing in Blocks 14 to 19 of the Bapu Dham complex which has been assessed by the NDMC to be "most dangerous". This Court cannot possibly sit in appeal over that assessment. Further, in view of the fact that alternative accommodation has already been identified by the NDMC, and the work of reconstruction has been unable to commence for several months in view of the interim order dated 2nd December 2010 passed by this Court, it is considered appropriate to vacate the said interim order subject to the condition that the 26 employees currently residing in blocks 14 to 19 will be given a time period of four weeks to vacate the premises under their occupation and to occupy the alternative flats/accommodation which are proposed to be allotted to them. The 26 employees will be put in possession of the alternative accommodation simultaneous with their handing over vacant and peaceful possession of the flats currently under their occupation at Bapu Dham to the NDMC.

12. Given the limited scope of the powers of this Court in a petition under Article 226, the other contentions of the parties on merits are not being decided at this stage. In the event that any of the Petitioners is denied the alternative accommodation in the newly constructed flats, it will be open to such Petitioner to seek appropriate remedies in accordance with law.

13. With the above directions, the writ petition and application are disposed of.