(2002) 12 DEL CK 0100

Delhi High Court

Case No: CW No. 1709 of 1990

Residents Lok Nayak Camp Association (Regd.)		APPELLANT
	Vs	
Delhi Development Authority and Another		RESPONDENT

Date of Decision: Dec. 9, 2002

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: P. Chakraborty, for the Appellant; Neelima Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul

1. The petitioner association consists of members who had occupied public land at Lok Nayak Camp near Chanakya Puri Railway Station. It is stated in the petition that the DDA carried out a survey of the said quarters in May 1986 and 254 families were shifted from the said camp to Raghubir Nagar in September 1986 at the request of the Taj Palace Hotel and given alternative plots. The remaining families are stated to have been evicted by the respondent N. 1/DDA in July 1988. The association claims that representatives met the Lt. Governor in August 1988 and were assured of allotment of alternative plot of 32 sq. yds. and that they were even informed by letter dated 21st July 1989 by the DDA that they would be charged Rs. 13,500/- as premium for the alternative land. The members of the petitioner society were asked to submit affidavits and agreements in prescribed form for allotment of alternative plots in Pocket IV, Pappankalan on 21st August 1989 but despite all efforts, no allotment was made. The writ petition has thus been filed seeking a writ of mandamus to the respondent No. 1/DDA to direct it to allot the alternative plots of 32 sq. yds. to each of the petitioners mentioned in List-A which is annexure to the writ petition and consists of a list of 476 persons. A further direction has been sought to allot plots at the cost of Rs. 10,000/- per plot.

2. In the counter-affidavit filed by the DDA, it is stated that the petitioner were squatters on public land owned by the Northern Railway behind Taj Mahal Palace Hotel in Chanakya Puri and the Railway authorities wanted to evict the petitioner from the land in question. It is stated that the DDA only made available the demolition squad and trucks to assist the Department of Railways in removal action of squatters. It is further stated that no survey list was prepared by DDA and that alternative sites have been provided to eligible person only in those cases where DDA itself has undertaken the demolition action and the land owning agencies pay for the rehabilitation of those evicted. The Department of Railways has refused to accept the liability for settlement arising out f demolition action undertaken by them and thus the DDA was not in a position to accommodate the petitioners. The counter-affidavit also states that since the petitioners put a lot of pressure and met the Commissioner (Lands) of the DDA, a decision was taken that if the petitioners are entitled to alternative accommodation as per policy, the same should be made available to them and the file was sent to the Vice Chairman, DDA for approval. On examination of the policy, it was found that these squatters were not eligible.

3. In the further counter-affidavit filed by the respondent No. 1/DDA, it is also stated that the Jhuggi Jhopri Scheme which case into being in the year 1959 to rehabilitate the evacuees from public land continued up to the Sixth Plan Period and thereafter has been discontinued by the Government of India.

4. Learned counsel for the petitioner contends that in terms of the letter dated 21st March 1983 dealing with the scheme of resettlement of squatters, plots had to be allotted to the squatters including the petitioner since the said letter was issued by the Government of India, Ministry of Works and Housing to the Lt. Governor of Delhi. The cost was to be recovered as premium from the allottees and the DDA was to execute the scheme. A reference is also made to one of the slips issued by the DDA to a person evicted from the said camp, as also to a remark stated to have been made by the Northern Railways on the application of Delhi Pradesh Jhuggi Jhopri Mustier Sangharsh Committee Congress (I) in respect of the removal of encroachments from Tughlakabad Station stating that the same was carried out by the DDA and that no residential accommodations were given by the Railways. Great stress has been laid on the letter dated 21st August 1989 issued by the DDA requesting for residential plots in Pappankalan to be made available for making allotment in respect of the petitioners.

5. Learned counsel for the petitioner contended that the DDA is an instrument of the Union of India for implementation of the JJ Scheme and for this purpose considerable Nazrul land had been placed at the disposal of the DDA for rehabilitation of eligible squatters. It is further stated that there has been no change in the policy and that the plea of the DDA not to allot the plots is in violation of the spirit of the letter dated 21st August 1989. The claim of the DDA that the Railways had to bear the cost has also been disputed by learned counsel for the petitioner.

6. I have considered the submissions advanced by learned counsel for the parties.

7. It is not disputed that the petitioners were encroachers on the land in question and as such had no legal right to occupy the land. Thus, the only question would be whether the petitioners would be eligible for alternative allotment under the scheme for resettlement of squatters. In this behalf, in the counter-affidavit, it had been categorically stated that the JJ Scheme continued only up to the Sixth Plan Period and was no more in operation. The fact that some other scheme was in existence to rehabilitate encroachers would be of no assistant to the petitioners.

8. The important aspect to be considered is that the land in question belonged to the Railway Department. It is stated in the counter-affidavit that the Railways refused to share the burden of the cost of rehabilitation of the petitioners. The DDA only assisted the Railways in removal of the petitioners from the land in question. It has not been shown by the learned counsel for the petitioners as to how the Railways were bound to provide the monetary assistance for rehabilitation of the petitioners.

9. A reference may be also made to the note dated 5th August 1988 filed with the petition on an application by Sangharsh Committee stating that in so far as the removal of encroachments in 1975 from the Tughlakabad Station were concerned, the same was carried out by DDA and no residential accommodation was made available by the Railways.

10. An important development which has taken place subsequently arises as a consequence of Division Bench of this court in CW 4441/94 Okhla Factory owners'' Association (Regd.) and Anr. v. The Govt. of NCT of Delhi and Ors. , decided on 29th November 2002 in terms whereof the policy of making available land to rehabilitate the encroachers on public land has been quashed and it has been held that encroachment on public land cannot be the basis of such allotment. It has been left open to the respondent authorities to frame a proper policy with reference to the economic and social criteria but not with reference to the occupation of public land. It may also be noticed that even in he said writ petition, the Railways had taken a stand that it was not their policy and nor were they willing to make available land or money to rehabilitate persons who had occupied the land of the Railways.

11. In view of the afore said, I am of the considered view that the petitioners would not be entitled to the relief as claimed for in the writ petition seeking rehabilitation and allotment of plots of land by reason of their being in occupation of public land at the time when they were so removed.

12. The writ petition is dismissed. Interim orders are vacated.