

IN THE HIGH COURT OF DELHI

Writ Petition (Civil) No.819/2009

Date of decision: 22nd December, 2009

MOHD. ISMAIL ... Petitioner
through: Mr. Apurb Lal, Advocate with Mr. Dalip
Singh, Advocate

VERSUS

SLUM & JJ DEPARTMENT (MCD) Respondent
through: Mr. O.P. Saxena, Advocate with
Ms. Shradha Saxena, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see
the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the
Digest? Yes

GITA MITTAL, J (Oral)

1. The present case is yet another instance of the difficulties faced by a victim of forcible eviction by demolition of property. The petitioner was in occupation of property bearing no.3339, in Ward No.XIV, Sarai Khalil, Sadar Bazar, New Delhi which underwent demolition in the year 1975-76.
2. As per the report of details of persons and properties which were demolished prepared by the CID of the Delhi Police, the petitioner was identified at serial no.521. The details in respect of the occupancy of the petitioner were noted as follows:-

"Sl.No.	:	521
House No.	:	3339/XIV
Area in Sq.ft. Covered or Open	:	22'x12' 22'x12 FF

No. of Rooms	:	4
Name of Head of family rooms with particulars	:	Mohd. Ismail, S/o Mohd. Ishaq
Total No. of families	:	1
Authorised/Un-authorised	:	A
Industry if any	:	Residence & factory
Whether capable to purchase or not	:	P
Rent receipt No.	:	RR No.741071
Ration Card No.	:	R.C.3542
	:	Lic. No.31083"

3. The respondents have placed before me the copy of the receipts of the rent which was paid by the petitioner towards the said occupation to the office of the Regional Settlement Commissioner (Management Wing) of the Ministry of Rehabilitation for different periods towards residential and commercial occupation.

4. The petitioner was also issued a demolition slip no.3743 dated 16th May, 1976 towards the demolition of the property. An allotment letter dated 27th November, 1976, was issued allotting a flat bearing no.A-7/53-C at Inderlok to the petitioner. This allotment was substituted by the allotment of the flat bearing no.A-2/1, MIG Flats, Sarai Khalil, Sadar Bazar, Delhi on 24th July, 1985 which was constructed at the site of the demolition by the respondent.

5. It appears that the entitlement of the petitioner was being considered for allotment of an industrial plot as well as a tenement. In

this behalf, the petitioner places reliance on a letter dated 26th July, 1976 from the office of the commissioner, Slum & JJ Department (which was then under the DDA) requiring the petitioner to produce his ration card against the demolished property. It appears that the respondents was making allotment of the residential premises at Inderlok while commercial property was being allotted at Shahzada Bagh. This communication informed the petitioner that upon failure to appear, his allotment for Inderlok and Shahzada Bagh shall be cancelled and possession shall be taken by the Department.

6. The admitted position is that the petitioner was unable to appear before the respondent. However, while the matter progressed for allotment of the residential property as noted above, no industrial or commercial property was allotted to the petitioner.

7. In this background, the petitioner relies on repeated representations made to the respondent including those dated 18th June, 1986, 4th January, 1988, 25th February, 1991, 26th June, 1998, 29th December, 1998, 31st August, 2005 & 27th March, 2006. Perusal of these representations would show that the petitioner has disclosed the following reasons for his inability to appear before the respondents, actively pursue and monitor the matter:-

- (i) Demolition of his earlier property;
- (ii) The petitioner had large and young family consisting of his wife, four daughters and two sons;
- (iii) No source of income and resultant financial constraints and crisis;
- (iv) The petitioner claims to have met with an accident resulting in a major injury. As a result, he was unable to appear before the

respondent despite receipt of the letter dated 26th July, 1976;

(v) The petitioner was confined to bed and could not provide for the family resulting in his children having to abandon studies and to somehow look for sources of livelihood for the family by way of labour;

(vi) On account of inability to earn, all assets of the family had been disposed of and the family was living hand to mouth.

8. The original record of the respondents has been placed before me which has been examined. Perusal thereof would show that the misery of the petitioner has only aggravated with every passing moment and communication. Nothing is placed before this court to disbelieve the above condition of the petitioner.

9. Alongwith the representations which have been placed before the respondent, the petitioner submitted copies of the requisite and supporting documents which include not only a copy of the ration card but also the receipt issued by the Office of the Regional Settlement Commissioner towards the payments of rent. The record of the respondent also contains a copy of the Registration Certificate of Establishment bearing no.3/6720/II dated 11th February, 1973 issued under the Delhi Shops & Establishment Act, 1954 to the petitioner towards his business being run under the name and style of Modern Cabinet Manufacturing at the subject premises. This authority has thereby certified that the petitioner was maintaining a commercial estate which was duly registered under the provisions of Delhi Shops & Establishment Act at the demolished premises. Certain receipts issued by the petitioner towards the business activities are also available in the

files. The petitioner had also submitted a letter dated 9th February, 1970 issued by the New Bank of India to him confirming the balance standing in the current account maintained by the Modern Cabinet Manufacturing at No.3339, Sarai Khalil, Sadar Bazar, Delhi.

10. The contention of the petitioner to the effect that he had suffered injuries and was confined to bed is manifested from certain reports from the Holy Family Hospital, New Delhi which confirm serious fractures suffered by the petitioner in the right femur bone as well as the knee joint. The record placed before the respondent relates to the period 1976 to 1983.

11. So far as the consideration of the petitioner's entitlement for grant of a commercial plot is concerned, the respondent addressed a communication dated 12th June, 2003 to the petitioner requiring him to produce the documents relating to the claim for allotment of commercial plot in lieu of the demolished property so that the case could be put up before the competent authority for necessary orders. The petitioner contends that when he approached the respondent pursuant to this communication, the concerned official of the respondent recorded that no original allotment file pursuant to allotment of commercial plot to the petitioner was available in the office and orders were sought from the competent authority if the case was to be processed before the allotment committee.

12. In this background, the petitioner contends that he had approached the Public Grievances Commission. In the proceedings held on 5th August, 2004 before the Public Grievances Commission, the respondent had stated that the file with regard to allotment of the flat to the petitioner

was available in the record which can be produced whenever required to process his case for allotment of the alternative plot.

13. From the above facts, it is evident that the petitioner's case had not been placed before the Land Allotment Committee and had not been considered for allotment of the commercial property.

14. Mr. O.P. Saxena, learned standing counsel for the respondent has contended that the very fact that only a residential property was allotted to the petitioner in 1976 would show that there was deemed rejection of the petitioner's request for a commercial property. This submission has to be noted only for the sake of rejection. As noticed above, as late as on the 12th of June, 2003, the respondents themselves had written to the petitioner to produce original documents for processing of his case. In any case, the original records produced do not show that the entitlement of the petitioner had been rejected by the respondents by any order till date.

15. A noting dated 30th May, 2003 stands recorded which is to the effect that *"no original allotment file pertaining to allotment to Shri Mohd. Ismail is available in the office. If the case is to be processed in allotment committee, the CA (Competent Authority) may pass an order. As at present, no Allotment Committee is functioning, as and when Allotment Committee is constituted, the case of Shri Mohd. Ismail shall also be put up to Allotment Committee with prior orders of the competent authority"*.

The officer recommended calling the petitioner to produce the original documents. Based on this noting, the matter was processed and resulted in issuance of the said letter dated 12th June, 2003.

16. Coupled with the respondents response to the Public Grievance

Committee would show that the respondents had not processed the petitioner's case as they had misplaced his file for some time.

17. The record reflects that in response to the letter dated 12th June, 2003, the petitioner submitted a representation with documents before the respondent which included the registration under the Delhi Shops & Establishment Act, communication from the New Bank of India and ration card, rent receipts etc.

18. The petitioner was thereafter informed by a letter dated 23rd February, 2005 that the matter has been referred to the Allotment Committee (S&JJ) to examine his claim regarding allotment of commercial plot in lieu of his demolished property.

It is evident from this communication that till such date, the respondent had not considered the petitioner's case as having been rejected at any point of time.

19. Inasmuch as nothing further transpired so far as the allotment of the plot to the petitioner is concerned, despite several representations noticed hereinabove, the petitioner filed the present writ petition on 30th June, 2009 seeking the following prayer:-

“(i) Direct the respondent to consider the case of the Petitioner for allotment of commercial plot measuring 80 sq. mts. against the demolished property No.339/XIV, Sarai Khalil, Sadar Bazar, Delhi as per their Scheme and policy framed by them in the interest of justice; &

(ii) Call for the records of the case of the petitioner pertaining to demolished property No.3339/XIV, Sarai Khalil, Delhi for perusal”

20. Along with the writ petition, the petitioner has placed reliance on several note-sheets of the respondents which have been obtained by him in response to queries under the Rights to Information Act, 2005 ('RTI Act' hereafter for brevity) On consideration of these notings, this court passed an order on 9th February, 2009 requiring the respondents to inform the court with regard to the subject matter of the writ petition. On 26th February, 2009, learned counsel for the respondent had submitted that the case of the petitioner had been placed before the Allotment Committee for consideration. An adjournment was sought to enable the respondent to convey the decision of the Land Allotment Committee on record.

21. This was followed by an order dated 28th April, 2009 when the respondent sought time on the ground that the documents furnished by the petitioner are being verified by the respondents and that the verification could not be completed on account of pre-occupation of the officers in election duty.

22. It is only thereafter that the respondents filed an affidavit in July, 2009 contending that the meeting of the allotment committee was held on 9th April, 2009, 16th April, 2009 and 6th May, 2009. It has been stated that despite a notice dated 30th April, 2009 to the petitioner to attend the meeting with the record, he failed to do so on 6th May, 2009. So far as the photocopy which has been submitted by the petitioner as back as on 17th June, 2009 is concerned, it was contended that the same was not duly attested and consequently, it is not deemed necessary to verify the documents from the concerned departments/authorities. It is further stated that the petitioner also did not appear before the Land Allotment

Committee on 11th May, 2009 and that he did not respond to the notice requiring him to appear on 25th May, 2009, 8th June, 2009 or 3rd July, 2009. The submission is that the documents were more than thirty years old and that the petitioner had failed to submit attested copies of the documents. For this reason, the claim of the petitioner was rejected by the Land Allotment Committee and the communication dated 27th July, 2009 has been sent to the petitioner.

23. The petitioner has assailed on affidavit all contentions made by the respondent in the affidavit as well as the communication dated 27th July, 2009. It has been contended that in response to the letter dated 27th February, 2009, the petitioner had gone to appear before the Allotment Committee on 3rd March, 2009 when he was wrongly told to go away. Pursuant to the letter dated 30th April, 2009, the petitioner again went to appear in the proceedings before the Land Allotment Committee on the 5th of May, 2009. This time, for the reason, that he did not have the letter dated 30th April, 2009 with him, he was not permitted to attend the meeting. The petitioner places reliance on a detailed representation setting out all the foregoing facts including the documents which the respondents were requiring from him duly submitted on the 5th of May, 2009 by hand with the Deputy Commissioner/Chairman, Allotment Committee of the Slum & J.J. Department of the MCD. The petitioner assails the correctness of the statement made in the affidavit as well as the letter dated 27th July, 2009 in this background.

24. Perusal of the communication issued on 27th July, 2009 would show that the only reason for rejecting the petitioner's case was for the reason that "he did not turn up along with the original/attested copies of relevant

documents to substantiate his scheme for allotment of commercial plots”.

It has further been contended that so far as the CID survey is concerned, the same could not be verified by the Delhi Police on the ground that the same was old and the relevant records were not available after a lapse of thirty years. A submission has also been made by Mr. O.P. Saxena, learned standing counsel to the effect that the CID report was not prepared by the office of the respondents.

25. Mr. Apurb Lal, learned counsel for the petitioner has drawn my attention to a noting dated 13th March, 2009 in the records of the respondents wherein it is clearly recorded that the eligibility of the families were determined on the basis of the CID report which has been placed on the correspondence side at page 179 of the respondent's original records.

It has further been contended that there is nothing on record to support the petitioner's plea that he was using the demolished property for commercial user. In this behalf, Mr. Saxena has placed reliance on only the demolition slip.

26. On the other hand, I find that the commercial user of the demolished property by the petitioner is manifested from the registration certificate issued as back as in 1973 by the Registrar of the Shops & Establishment constituted under the provisions of Delhi Shops & Establishment Act. In addition thereto, the petitioner appears to have operated a bank account in respect of the business from the said premises. The CID report has been relied upon by the respondent for the purposes of allotments, also manifests the fact that the petitioner was using the property for both residential and commercial purposes.

I also find that the petitioner has placed reliance on the notings obtained in answer to RTI queries upon the respondents which establish the commercial user by the petitioner of the demolished property.

27. Even if the documents submitted by the petitioner to the respondents were to be disbelieved, I find that the respondents have themselves handed over in court copies of the such rent receipts issued by the Department of Rehabilitation which manifest that the petitioner had been paying rent for commercial user of the property. In addition thereto, in noting after noting the respondents have quantified the charges which the petitioner was liable to pay in respect of the demolished property. These charges include components for both residential as well as commercial user. The noting dated 4th August, 1986 (page 5/N) has quantified the liability of the petitioner to pay a sum of Rs.11,190/- as damages for commercial user and Rs.2,238/- for residential user for the period w.e.f. 1st January, 1969 to 16th May, 1976. The officer of the respondents has also noted that these damages should have been recovered prior to the issuance of 'No Objection Certificate' to the petitioner. This apportionment of the damages towards commercial and residential components has been repeatedly mentioned thereafter in several notings in the respondent's file upto 13th March, 2009. After these notings and the receipt of the damages, it certainly does not lie in the mouth of the respondents to contend that the petitioner was not having a commercial establishment in the demolished property.

28. I find that on 13th March, 2009, the respondents have recorded that demolition was effected as back as in the year 1976 and all eligible affected families were allotted the residential as well as commercial

property on the basis of the CID report. In the above background, certainly, there is no basis at all for submission made by learned counsel for the respondent to the effect that the petitioner had failed to establish that there was no commercial user in the subject premises.

29. So far as the reliance on the demolition slip which was issued to the petitioner as a sole basis for assessment of the eligibility and entitlement of the petitioner to the commercial plot is concerned, the same is also not sustainable. As noted by the respondents repeatedly, eligibility has been determined based on the CID report and not on the basis of the demolition slip. In any case, the respondents have confirmed the commercial user of the premises by the petitioner for which he has been required to pay damages as well.

30. Mr. Saxena, learned standing counsel for the MCD has urged that the writ petition is grossly belated and the petitioner is disentitled to any relief.

31. I find that the petitioner's case was never placed before the Land Allotment Committee till 2009 as is evident from the above narration of facts. The petitioner has adequately explained the circumstances for his inability to approach the respondents on account of the accident which he had suffered shortly after the demolition and also dire financial constraints. Undoubtedly, the entire effort of the petitioner would have gone towards looking after his family which included six children of young ages. Their pitiable condition is manifested from contention of the petitioner that he had to withdraw his children from schooling for want of funds and they are all illiterate today. The petitioner today is 70 years of age.

32. For more than 33 years, the petitioner is struggling to get allotment of a plot to which he was entitled as per the scheme in view of the forcible eviction in 1976. This allotment may have enabled the petitioner to eke out a living.

33. The foregoing facts clearly disclose a reasonable explanation as to why there was delay in approaching this court by the petitioner. The respondents are responsible for the same.

34. The respondents have written to the petitioner in 2003 and 2006 that they are processing the petitioner's application. The petitioner's case has been considered by the Land Allotment Committee only in July, 2009. The petitioner has explained the circumstances which have been noticed hereinabove.

35. Delay and laches do not result in an absolute prohibition to maintainability of a writ petition. Such a prohibition and restraint in exercise of discretion is exercised as a rule of practice based on sound and proper exercise of discretion. In ***AIR 1974 SC 259 Ramchandra Shankar Deodhar and Ors. Vs. The State of Maharashtra and Ors.***, it was held that there is no inviolable rule that whenever there is a delay, the court must necessarily refuse to entertain the petitioner. The question of exercise of such discretion has to be premised on the facts of each case.

36. The above facts clearly manifest what has been observed on prior occasions by me. The petitioner over the entire period has been located at a distance of less than ten kilometers to reach this court. In WP (C) No.10659/2009 entitled Shamim Vs. Additional Commissioner, Slum & J.J, MCD decided on 16th November, 2008, I have observed as follows:-

“xxxxxx 17. The present case is a glaring instance of the hard reality that access to justice is not limited to access to courts. Undoubtedly, the constitutional mandate creates an ideal legal system that treats everyone equally. The legal system seeks to ensure protection of equality, liberty and justice. However, to those living on the fringes of society and are marginalised, the psychological ability and impetus to take the decision to approach the court would be lacking. There is neither the finance nor the necessary family or social support system to facilitate access to the formal justice dispensation mechanisms. Illiteracy and lack of awareness, fear and lack of trust in judicial authorities may also constitute tremendous barriers.

18. The very fact that the MCD has created the formal machinery by way of the Slum & J.J. Department concerned with housing of the urban poor, reflects the recognition of problem in Delhi. The rights which are involved are really all constituents of the right to life guaranteed under Article 21 and would include not only shelter but also education of the children, drinking water, toilets & sewage and implementation of the court directions of the Apex Court with regard to demolitions and relocations. The present case may be illustrative of a larger problem and deserves to be examined by the Delhi High Court Legal Services Committee and the Delhi Legal Services Authority who may explore the possibility of joining para clinicals and the officials of the Slum & J.J. Department to run formal legal aid clinics, if not already functioning, in the resettlement/relocation colonies and such places as may be considered appropriate.”

Directions have been issued to the Secretary of the Delhi High Court Legal Services Authority & Secretary, Delhi High Court Legal Services Committee to consider issues relating to the Slum & J.J. Department.

37. In the above facts, the objection that this writ petition is barred on grounds of delay and laches is wholly misconceived.

38. Yet another objection taken by learned counsel for the respondent to the effect that no substantive challenge to the order dated 27th July, 2009 has been made in the writ petition. Mr. Apurb Lal, learned counsel

for the petitioner submits that the petitioner has invoked the extraordinary jurisdiction of this court and grant of relief to the petitioner should not be impeded on this technical objection. He has made a prayer that in view of the above facts, the stand of the respondent before this court is contrary to the real facts borne out from the notings of the respondents. A prayer is made that this consideration would be covered in the prayers as framed. It is further contended that this court is adequately empowered to mould the relief even in view of the extreme hardship being faced by the petitioner by the delay. I find substance in these submissions made by learned counsel for the petitioner.

39. Even otherwise, the respondents have rejected the petitioner's claim on the sole ground that he did not place the attested copies of the documents before them and not on merits. This by itself shows that there has been no application of mind to the established facts. The record of the respondents extensively establishes that the petitioner was using the demolished property for commercial user and this position stands accepted and admitted by the respondents. The respondents have also accepted the petitioner's entitlement inasmuch as they have admittedly allotted the residential component of the petitioner's entitlement. No additional plea is required to be made or documents considered so far as the order dated 27th July, 2009 is concerned. The petitioner has already laid a challenge to the denial of the commercial component of his allotment in the writ petition.

40. This objection deserves to be rejected for yet another reason. In **(2007) 8 SCC 705 Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Ors.**, it was contended that the

better living conditions and the right of property of an individual which although is not a fundamental right but is a constitutional and human right. This principle has been reiterated in **(2008) 14 SCC 186 Aslam Mohammad Merchant Vs. Competent Authority & Others.**

41. Resettlement against forcible eviction is a human right violation. Such forcible eviction was without any notice. In this background, it has to be held that the right of the petitioner for allotment in terms of the resettlement certainly cannot be defeated on technical objections.

42. My attention is drawn to a judgment dated 13th October, 2003 passed in WP (C) No.4496/2001 entitled Abdul Qadar Vs. Slum & JJ Department of the MCD in similar circumstances. The petitioner in that case was also a victim of 1976 demolition. He was also forcibly evicted in Sarai Khalil who has been denied additional allotment in view of the disputes raised in view of certain disputes being raised between the legal heirs of the evictee. The respondents had rejected Abdul Khalil's case on the ground that it would result in opening of other cases. The court had observed that the rejection of Abdul Khalil's case was unwarranted especially having regard to the several detailed notes by the department to the contrary. Accordingly, the order of rejection was quashed by this court and the matter was remanded to the Land Allotment Committee to decide the case of the petitioner on merits.

43. It is not disputed that the respondent had allotted two residential plots as well as one plot to the family of Abdul Qadar. After the passing of this court order, an additional commercial plot stands allotted to him.

44. In WP (C) No.1094/2008 filed by Ms. Ashiya Begum Vs. Slum & JJ Department of the MCD, an order dated 9th January, 2009 was passed in

similar circumstances relating to an evictee from Sarai Rohilla and Turkman Gate. The petitioner had also assailed the failure of the respondent to grant an alternate commercial plot to the petitioner of the correct size. On a consideration of the record relating to Ashiya Begum, by the letter dated 9th January, 2009, this court directed the respondent to grant hearing to the petitioner before taking a decision on a representation for additional plot. The respondent was directed to pass a speaking order within a period of four weeks from the date of hearing.

45. Learned counsel for the petitioner has contended that the original certificate of the registration of the petitioner's establishment is available with him. The same has been produced before me. The only ground for denial of the plot to the petitioner is failure to file self attested copies of the documents. In the light of the above discussion and the notings in the record of the respondents, the demand for these documents was clearly unwarranted.

46. In view of the above, it is directed as follow:-

- (i) the petitioner or his authorised representative shall file duly attested copies of the photocopies whereof stand filed by him before the Direcotor (Allotment) of Slum & JJ Wing of the MCD on 29th December, 2009 at 11.00 a.m.
- (ii) the petitioner's case shall be considered and he shall be allotted a plot of 40 sq. meters for commercial user in terms of his entitlement.

47. This case again manifests the failure of the respondent to proceed in the matter expeditiously despite the crying urgency of the matter. Entitlement of a forcible evictee to an allotment based on a scheme for

resettlement when being operated by the respondent, has to be held to be infeasible. The plea of the petitioner and the facts and circumstances itself would show that the delay and laches would not normally defeat this right on the contrary. The respondents have not only a statutory duty and a public law obligation but are required by the mandate of the Constitution which requires that the fundamental rights of the citizens under Articles 19(1)(e) and 21 shall be ensured and protected by the respondent-Slum & JJ Department of the MCD, especially constituted to work the resettlement schemes which have been formulated by the Government in discharge of constitutional mandate. There is no warrant at all for not keeping track of such evictees of forcible demolition and allottees.

48. Let this matter be brought to the notice of the Additional Commissioner, Slum & JJ Department of the MCD who shall ensure that appropriate steps are taken to ensure that records are scrutinized so that other persons who may be similarly placed are not compelled to knock the doors of the courts for failure of the respondent to discharge constitutional mandate.

This writ petition is allowed in the above terms.

Dasti to parties under signatures of the Court Master/Private Secretary.

DECEMBER 23, 2009
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GITA MITTAL,J