

IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: November 16 , 2009**

+ W.P.(C) 10659/2009

SHAMIM

..... Petitioner

Through Mr. Sarfaraz Khan, Adv.

versus

ADDL. COMM. SLUM & J.J. MCD

..... Respondent

Through Ms. Usha Saxena, Adv.

CORAM:**HON'BLE MS. JUSTICE GITA MITTAL**

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

GITA MITTAL, J (Oral)

1. Counter affidavit has been filed. Having regard to the nature of controversy, at request counsels have been orally heard.
2. This writ petition has been filed by the petitioner who was having jhuggi in the JJ Cluster at Nai Basti, Nangal Dairy, IGI Airport which was demolished on a policy of the respondent for allotment of plots to jhuggi dwellers which was assailed by way of WP (C) No.4441/1994. Pursuant to the scheme of the respondent, a slip bearing no.267 dated 10th April, 2007 allotting a plot bearing no.O-114 in the re-settlement colony at Savda Ghewra was issued to the petitioner by the Slum & J.J. Department of the MCD. This allotment slip records that the share money has been received vide G-8 No.47772 dated 9th April,

2007 by the respondent. The petitioner has placed before this court copy of the allotment letter as well as the form G-8 A dated 9th April, 2007 issued by the respondent.

3. The petitioner has submitted that a period of 30 days was given to to complete the allotment procedure and that he approached the respondents by way of the communication dated 24th April, 2007. The original receipt dated 24th April, 2007 on the petitioner's representation has been placed on record. The petitioner has placed on record the original receipt on his representations enclosing copy of the voter identity card and children school certificate etc. This document was also received on 1st May, 2007 by the Central Dairy, Slum & J.J. Department, MCD at A-4, Vikas Kutir, New Delhi.

4. The petitioner also appears to have appeared in a public hearing held by the respondent on the 15th of May, 2007 and the original endorsement in respect thereof has been placed on record. The petitioner states that he has run from pillar to post seeking possession of the plot allotted to him but has failed in his efforts. He further states that this petition is filed after obtaining legal aid. By way of the present writ petition, a direction is sought to the respondents to deliver possession of the allotted plot.

5. By orders passed on 13th April, 2009 and 8th September, 2009, the respondents were directed to verify the receipts dated 24th April, 2007 and 15th May, 2007 which have been placed on record by the petitioner. No instructions are available in this behalf with learned counsel for the respondents till date.

6. The petitioner states that he has not received any communication of

cancellation of the allotment nor repayment of the security. It is noteworthy that the petitioner has also contended that the amount of Rs.7,000/- which was deposited by him in April, 2007 remains with the respondent.

7. As per the counter affidavit, it is confirmed that the name of the petitioner exists in the joint survey at serial no.313 and he was issued a provisional identification slip of allotment no.O-114 dated 10th April, 2007.

8. The respondent has also explained that the identification slip was issued to the petitioner after receipt of the amount of Rs.7,000/- which consisted of an amount of Rs.5,000/- as security and Rs.2,000/- as licence fee for ten years at the rate of Rs.200/- per month. Receipt No.A 47772 dated 9th April, 2007 was issued in this behalf. No plea or document evidencing possession of the plot ever being handed over to the petitioner has been placed is on record.

9. The respondents submit that a report was received from the Engineering Division of the Slum & J.J. Department that the allottee did not occupy the plot and it was found vacant. On this basis, the allotment was cancelled and the licence fee and security deposit of the petitioner forfeited vide orders dated 3rd of September, 2007. It is further stated that the petitioner failed to perform his part of the contract and did not turn up for resettlement in the above plot and therefore it was cancelled.

10. The respondent has not cared to place copy of any order of a competent authority by which the allotment was cancelled other than these bald allegations in the counter affidavit. Neither the particulars nor legal competency or jurisdiction of the authority who ordered the cancellation has

been mentioned. Certainly, it was not open to the respondent to proceed in the matter in this manner especially having regard to the nature of rights which were involved.

11. The petitioner was a person whose home - a jhuggi, stood demolished and his entitlement to relocation and resettlement stood ascertained and confirmed by the respondents. Based thereon, an allotment stood effected in favour of the petitioner. The demanded payment stood admittedly received. The petitioner has submitted the requisite documents to the respondents also.

12. The right to housing stands codified as a human right in the Universal Declaration of Human Rights. It is included in several international legally binding norms including in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights.

13. In **AIR 1997 SC 152 Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors.**, the Apex Court reiterated that right to shelter is a fundamental right. Even while demolishing an illegal settlement on public property, the Apex Court mandated that principles of natural justice and fairness of procedure be followed. The court observed that notice of 21 days before such demolition is effected, would be required.

It was further observed that the directive principles of state policy charged the state to distribute its largesse to the weaker sections of the society as provided in Article 26 and to make socio-economic justice meaningful and fruitful. It was held that though no citizen has a right to engage and erect structure or otherwise on footpaths, pavements or public streets or any other

place reserved or earmarked for public purpose, however the state has a constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads, to make the right to life meaningful, effective and fruitful. In this regard, it was observed that a reasonable home, particularly for people in India, can even be a mud built, thatch built or mud built fire-proof accommodation.

14. In the instant case, the above narration shows that a scheme of resettlement was in existence in which the petitioner had been validly allotted a plot. The facts noticed above manifest the difficulties faced by the poor to access the justice dispensation system even in this city. Even though physical distance from the court may not impede a person from approaching the system, however, the barriers for doing so are too many, and more often than not, unsurmountable.

15. The fate of a family, whose only shelter, admittedly a jhuggi, is demolished does not need much imagination. The very survival of the family is imperiled and approaching the courts for relief and remedy, may be the last thing on the agenda as the family copes with the vagaries of nature, protecting meager belongings, putting together food and the semblance of a roof over their heads. Of course, at the same time, it is struggling against the might of the State to keep body and soul together. The amount of Rs.7,000/- which was required to be deposited is a huge amount to somebody who may not even be a daily wager.

16. It has taken the petitioner almost two years to approach this court through the legal aid machinery after the failure to get possession of the allotted plot by way of the present writ petition. No formal order with regard to cancellation of the provisional allotment to the petitioner has been brought on record. The only ground for cancellation is that the allottee did not construct on the plot on the basis of the report. In addition, the licence fee and security deposits of the petitioner are stated to have been forfeited vide the order dated 3rd September, 2007. Nothing is placed to show that the respondents ever gave possession of the plot to the petitioner. Obviously, the respondents are proceeding without application of mind. Such order could not have been taken without notice to the petitioner to show cause and without grant of an opportunity to the petitioner to do so in compliance with the well settled principles of natural justice. The principles laid down by the Apex Court have also been given a go bye. The action of the respondent cannot be sustained. The order of cancellation and forfeiture has also not been communicated to the petitioner who has thereby been deprived of an opportunity to seek legal redressal. The cancellation is admittedly not for the reason that the petitioner was not eligible.

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.

19. In view thereof, it is directed as follows:-

- (i) The order dated 3rd September, 2007 shall stand cancelled.
- (ii) The petitioner shall appear before the Director, Slum & J.J. Department of the MCD at Vikas Kutir, I.P. Estates, New Delhi on 1st December, 2009 at 2.30 p.m. when date and time for handing over possession of the

plot no.O-114 Savda Ghevra shall be fixed and communicated to him. In case the plot bearing No.O-114 which was earlier allotted to the petitioner in Savda Ghevra is not available for handing over to the petitioner, the respondent shall ensure that the petitioner is allotted a plot of the same size in Savda Ghevra; or, if not available there, then in the nearest available scheme on terms and conditions of the policy on which the allotment of April, 2007 was based.

- (iii) The allotment shall be conveyed and possession shall be handed over to the petitioner in writing by the respondent on or before 31st December, 2009. A status report shall be filed in this regard in this court within eight weeks.
- (iv) The petitioner shall be entitled to costs of Rs.5,000/- to be paid within the same period.
- (v) Copy of this order be sent to the Secretary, Delhi High Court Legal Services Committee, Delhi Legal Services Authority and the Director/Incharge, Slum & J.J. Department for necessary action.

This writ petition is allowed in the above terms.

List for reporting compliance on 28th January, 2010.

Dasti.

GITA MITTAL,J

NOVEMBER 16, 2009

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