

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 240/2009

% Judgment delivered on: 23rd May, 2011

Jugal Kishore Khurana Petitioner

Through: Mr. Anish Kumar Magga, Mr. Jitender
Yadav and Mr. Saurabh Mehra, Advs.

versus

Ministry of Urban Development & Poverty
Alleviation & Ors. Respondents

Through: Mr.B.V.Niren, CGSC for respondent
No.1.

Mr. Rajesh Manchanda and Mr. Rajat
Manchanda, Advocates for the
respondent-DDA.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

KAILASH GAMBHIR, J. Oral

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents to provide an alternative site to the petitioner in compliance with the policy dated 17.9.1969.

2. Brief facts of the case relevant for deciding the present petition are that Pishorilal Khurana, father of the petitioner herein, was a displaced person and a refugee who after the partition of the country in 1947 migrated from Pakistan and settled in Delhi. Like various refugees and displaced persons the father of the petitioner occupied a residential site in Lodhi Road and thereafter settled at K-65, Kalkaji, New Delhi. During that period, as per the petitioner, his father occupied a site between shop No.31 and 60 Kalkaji, New Delhi for running the business of coal and fuel depot in the year 1951. The case of the petitioner is that in the year 1964, for the first time, a notice was issued by the respondents under Section 7(2) of the Public Premises

(Eviction of Unauthorized Occupants) Act, 1958 whereby the father of the petitioner was asked to show cause as to why the damages amounting to Rs.10,195.92 for the period from 1.1.1959 to 31.3.1964 @ 56 paisa per sq.yds. per month be not recovered from him. The petitioner has further stated that the said notice was duly replied by his father vide letter dated 28.12.1964. It has been further stated that subsequently the respondent No.1 had formulated a scheme which was circulated vide memorandum dated 17.9.1969 whereby the Government had declared to grant alternative site to such eligible squatters in lieu of the site which was in the unauthorized occupation of such squatters, but on the furnishing of an affidavit to the effect that they were in unauthorized occupation of the site before 1.7.1960 and no alternative site has been allotted by them. Pursuant to the said policy, as per the petitioner, his father filed an affidavit with the covering letter dated 16.10.1969 and the same was duly received by the officers of respondent No.1. After filing of the said affidavit, father of the petitioner had been

regularly approaching the office of respondent No.1 for the allotment for an alternative site but no decision has been taken by the respondents. It is also the case of the petitioner that he had filed a suit for permanent injunction to seek restraint order against the respondents not to interfere in the peaceful possession of the said shop by the petitioner. It is also the case of the petitioner that the said shop was sealed by the order dated 17.9.2007 passed by the Monitoring Committee which was constituted by the Hon'ble Supreme Court in the case of M.C.Mehta v. Union of India & Ors. WPC No. 4677/1985. After passing of the said order, the petitioner has approached this Court seeking direction for the grant of an alternative site.

3. In the counter affidavit filed by the respondent No.1 and the stand taken with regard to the controversy in hand is that this petition is not maintainable as the petitioner never paid the damages in terms of the memorandum dated 17.9.1969. It is also the case of the respondents that the petitioner kept on occupying the said land unauthorisedly

and it is only when an order dated 24.8.1964 was passed by the learned Estate Officer for the first time then the petitioner came forward to pay Rs.1,000/- towards damages. Respondents have also submitted that to avail benefit of the said policy dated 17.9.1969, the father of the petitioner was required to clear all damage charges levied on him for unauthorized occupation of the said premises. Yet, another requirement of the policy was that the encroachment should be prior to 1.7.1960 and such persons seeking alternative plot were not allotted any alternative site by any Government agency like NDMC or DDA. The case of the respondents is that since the petitioner failed to pay the amount of damages, therefore he was not entitled to claim any alternative site.

4. Arguing for the petitioner, counsel submits that the petitioner in fact had paid an amount of Rs.1,000/- on 18.7.1973 and then an amount of Rs.1731.40 on 21.10.1973 and therefore it cannot be said that the petitioner had not paid the amount of damages for unauthorized occupation of the said premises. Counsel also submits that an affidavit in

compliance of the said policy was duly filed by the petitioner and this fact has not been disputed by the respondent No.1 in their counter affidavit. Counsel has also produced before this Court, a copy of the memorandum dated 14.8.1972 issued by respondent No.1 in favour of father of the petitioner stating that the matter regarding transfer of site for running of fuel depot at Kalkaji is under consideration of the Department of Rehabilitation, New Delhi. Based on the said payment made by the father of the petitioner and filing of an affidavit by the father of the petitioner, the counsel for the petitioner states that the petitioner is entitled for an alternative site.

5. Respondent No.1 and respondent No.2 on the other hand submit that the petitioner never came forward to pay the amount of damages based on the said policy and it is only when the steps were taken by the respondents under Section 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 the petitioner came forward to pay amount of Rs.1,000/- in compliance of the order of the Estate Officer dated 24.8.1964. Counsel further submits that

another show cause notice dated 23.2.1974 was issued to the father of the petitioner thereby calling upon him to pay Rs.14,619.18 Paisa towards damages. Counsel further submits that the petitioner cannot claim any benefit of the said payment which was made by him only when order was passed by the Estate Officer and not pursuant to the said policy of the Government dated 17.9.1969.

6. I have heard learned counsel for the parties and given my anxious consideration to the arguments advanced by them.

7. It is not in dispute between the parties that the petitioner was unauthorisedly occupying shop No. K-65 at Kalkaji, New Delhi after his father had shifted to Delhi as a displaced person on account of the partition of the country. The Government of India vide memorandum dated 17.9.1969 had announced a policy to allot alternative shops to all the eligible fuel depot holders who were running fuel depots unauthorisedly on Government land for some time. The said policy is reproduced as under:-

"GOVERNMENT OF INDIA

MIN.OF HEALTH AND FAMILY PLANNING
WORKS HOUSING & URBAN DEVELOPMENT
LAND & DEVELOPMENT OFFICE
VITH FLOOR: NIRMAN BHAWAN

No.LIII/8/2(12)/67 NEW DELHI DATED THE 17/9/69

SUB: ALLOTMENT OF FUEL DEPOTS TO ELIGIBLE SQUATTERS.

The question of allotment of sites to the eligible fuel depot holders who are/were running fuel depots unauthorisedly on Govt. land had been under consideration of the Government for some time past and it has now been decided that alternative sites to such of the eligible squatters may be allotted subject to payment of damages in respect of the site which is/was in their unauthorized occupation and on their furnishing an affidavit to the effect that they were in unauthorized occupation of the site before first July 1960 and that no alternative site in lieu of the site which is/was in their unauthorized occupation has/had been allotted to them by any other authorities vis. Delhi Development Authority/Delhi Admn./New Delhi Municipal Committee/and Municipal Corporation of Delhi.

It is requested that the affidavit as stipulated above may please be furnished within one month from the date of issue of this memo to enable this office to determine finally your eligibility for allotment of alternative site and to allot an alternative site. In case the requisite affidavit is not received within the period stipulated above it shall be assumed that you are not interested in allotment of an alternative fuel depot site.

In that event action shall be taken for your removal from the site in your unauthorized occupation and recovery of damages.

sd/-
(SHITAL PRASAI)
LAND & DEVELOPMENT.....
THE PRESIDENT OF INDIA

A perusal of the said policy would clearly show that to claim allotment of an alternative site the following conditions were required to be fulfilled by the person to seek such allotment:-

i. The applicant should have been running fuel depot unauthorisedly on a Government land.

ii. That the alternative site would be allotted in favour of such a person subject to payment of the entire damages in respect of such a site which was under the unauthorized occupation of the applicant.

iii. That such an unauthorised occupation should be prior to 1.7.1960.

iv. No such alternative site was allotted by any of the Government authorities at the DDA, MCD or NDMC in favour of such an applicant.

8. Under the said policy, the applicant was required to file an affidavit to be furnished by the person within a period of one month from the date of the said memo so as to

see whether he was eligible for the allotment of an alternative site or not. Despite many directions given by this Court, the petitioner has failed to place on record any document to show that his father had made any payment towards damages for the unauthorised occupation of the Government land so as to fulfill one of the basic requirements laid down under the said policy. During the course of the hearing also no such plea was taken by the counsel for the petitioner that any such payment in response to the said policy was made by the father of the petitioner. The only plea taken by the counsel for the petitioner is that a payment of Rs.1,000/- was made by the petitioner on 18.7.1973 and then a sum of Rs.7340/- was paid by the father of the petitioner on 29.10.1973. On the other hand, the defence taken by the respondents is that such payments were made by the petitioner when a show cause notice was served on the father of the petitioner under Section 7(2) of Public Premises (Eviction of Unauthorized Occupants) Act, 1958 and also when an order dated 24.8.1964 was passed by the learned

Estate Officer against the petitioner. The date of the payment claimed by the petitioner no doubt shows that such payment was made by the petitioner after the Estate Officer had passed an order against him. Not only that, the respondents had issued another notice dated 23.2.1974 calling upon the petitioner to pay the sum of Rs.14,619.18.

9. The subsequent payment of damages pursuant to the orders of the Estate Officer or even in response to the show cause notice of the respondents would not have made the father of the petitioner or the petitioner eligible for the grant of an alternative site so far his entitlement in terms of the policy dated 17.9.1969 is concerned. The petitioner thus clearly has failed to satisfy this Court that he had any legal right to claim an alternative site once his father had failed to pay the amount of damages in terms of the said policy. Entitlement of the site according to the said policy could be tested, even ignoring the fact that he had approached this Court after a lapse of 40 years, had he been able to satisfy

this Court that his father or he himself had fulfilled all the requirements laid down by the respondents in the said policy.

10. In the face of the admitted facts and in the light of the aforesaid discussion, there is no merit in the petition and the same is hereby dismissed.

May 23, 2011

KAILASH GAMBHIR, J