

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5201/2013**

SHRI HOTI LAL

..... Petitioner

Through

Mr. Rajendra Dutt, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through

Mr. Rajiv Bansal, Standing Counsel
with Ms. Meenal Kashyap and
Ms. Tanvi Garg, Advocates

%

Reserved on : 30th August, 2013

Date of Decision: 12th September, 2013

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

CM APPL. 11684/2013 in W.P.(C) 5201/2013

Allowed, subject to just exceptions.

W.P.(C) 5201/2013 & CM APPL. 11683/2013

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a direction to respondent-DDA to allot residential plots in terms of allotment-cum-demand letter dated 12th September, 1998 in Wazirpur, Phase-IV, Delhi as well as for quashing of rejection letter dated 14th January, 2013 issued by respondent-DDA.

2. The relevant facts of the present case are that in 1985, respondent-DDA floated a resettlement scheme for jhuggi dwellers of Sawan Park.

Under the scheme, residents of Jhuggis of Sawan Park were directed to appear before Deputy Director (Indl.), DDA from 28th April, 1986 onwards with their ration cards in original with attested photocopies thereof.

3. On 12th September, 1988, petitioner was issued a demand-cum-allotment letter by respondent-DDA calling him to deposit the premium and other amounts in instalments. Between September, 1988 and March, 1989, the petitioner deposited the full amount as per the demand-cum-allotment letter. Between October, 1990 and March, 1991 the respondent-DDA made inquiries to verify the particulars of the residents including that of the petitioner and the same were found to be in order.

4. On 25th November, 1991, the respondent-DDA took out a draw of lots of 482 persons including the petitioner, allotting him plot no. 39 in Block A Wazirpur, Phase IV, Delhi. However, the aforesaid draw of lots was challenged by various residents of Sawan Park by way of writ petitions in this Court. On 30th July, 1993, by way of a common order passed by this Court in ***Raj Singh Vs. Delhi Development Authority, 1993 (3) AD (Delhi) 563*** the draw of lots held on 25th November, 1991 was quashed. The relevant portion of the said judgment is reproduced hereinbelow:-

"14. Thus, our conclusion is that the project for resettlement of weavers in Sawan Park was not confined to those weavers whose jhuggis were affected on account of construction of storm water drain/road passing through their jhuggis. As we have seen above, even we accept this contention of the DDA to be correct, those jhuggi dwellers whose jhuggis were also affected by the construction of storm water drain/road were not included in the list of 482 persons. As a matter of fact that project report and the whole correspondence clearly show that all bona fide weavers residing in jhuggi jhonpris in Sawan Park prior to 1985 were to be resettled. The names of the petitioners to whom allotment-

cum-demand letters had been issued and who made payment in terms thereof could not have been deleted without due notice to them, and as a matter of fact the respondents have failed to point out as to why the petitioners were not entitled to the allotment as per the scheme and the allotment-cum-demand letters issued to them.

15. We will, Therefore, allow the writ petition and will quash the draw of lots held on 25 November 1991 for allotment of plots in Wazirpur Phase IV confined to 482 persons. A mandamus is issued to the first respondent to make allotment in the first instance to 650 persons who had been issued allotment-cum-demand letters and who had made payment in terms thereof. However, liberty is granted to the first respondent to recheck that list after due notice to all those persons falling in that list of 650 persons on the basis of the scheme that it was for resettlement of all the weavers living in jhuggi-jhopris in Sawan Park earlier to 1985 and that those weavers had not been allotted any plot by the D.D.A., Municipal Corporation of Delhi, or any other local authority in the Union Territory of Delhi."

5. On 4th June, 1999, respondent-DDA issued a letter to petitioner calling upon him to submit various documents to consider his case for allotment of an alternative plot. As it was the petitioner's case that despite his complying with all directions, respondent-DDA did not take any action, he filed W.P.(C) 15122/2006 in this Court.

6. On 2nd April, 2009, this Court disposed of the aforesaid W.P.(C) 15122/2006 with a direction to petitioner to approach the Director (Land), DDA with all relevant documents in support of his case. The relevant portion of the judgment passed in W.P.(C) 15122/2006 is as under:-

"8. Counsel for the petitioner is right to the extent that as per the policy, each occupant of the jhuggies was entitled to an alternative plot and the absence of ration card would not nullify the allotment of the petitioner. The same has been held in the

aforesaid judgments as well. Though the respondent/DDA by virtue of its letter dated 21.12.1999 had called upon the petitioner to produce documentary evidence in support of his case that he was residing in the jhuggi mentioned in the said notice, there is no document placed on the record by the respondent/DDA to show that it took into consideration the reply of the petitioner, rejected his case and duly intimated its decision to the petitioner. The stand of the respondent/DDA has come on the record only in the counter affidavit. The petitioner is, therefore, justified in submitting that he is entitled to an opportunity to appear before the competent authority with all the relevant documents, to establish his claim that he was residing in Sawan Park prior to the year 1984 in Jhuggi No. 646/480A separately."

(emphasis supplied)

7. On 9th June, 2009, respondent-DDA rejected the petitioner's representation. Thus, the petitioner filed another writ petition being W.P.(C) 11523/2009 before this Court. On 10th March, 2011, this Court set aside the order dated 9th June, 2009 and directed the petitioner to appear before Director (Land), DDA with all relevant documents. The relevant portion of the order dated 10th March, 2011 reads as under:-

"6. It appears to this Court that the mention of the Petitioner's claimed address as 646/480A, Sawan Park in the earlier judgment dated 2nd April 2009 of this Court was an error. This may have been on account of the letter dated 21st December 1999 from the DDA to the Petitioner where the said address figures. However, the fact remains that the Petitioner's claim was that he resided even as of 1984, in a separate Jhuggi at N-77B/411, Sawan Park.

7. Consequently, the verification exercise undertaken by the Director (Land), DDA pursuant to the order dated 2nd April 2009 has also proceeded on the basis that the Petitioner claimed to be residing at Jhuggi No. 646/480A when in fact he did not.

Throughout he has stated that his address was N-77B/411.

8. The impugned order dated 9th June 2009 of the Director (Lands) acknowledges that the Petitioner figured at Serial No. 162 in the survey conducted by the DC in 1991. The relevant entry in the said survey refers to the Petitioner's ration card as well. A copy of the said ration card has been placed along with the writ petition at pages 73 to 77 of the paper book.

9. In the above circumstances, this Court considers it appropriate to set aside the order dated 9th June 2009 passed by the Director (Land), DDA. The Petitioner will now once again appear before the Director (Land), DDA on 20th April 2011 at 2.30 pm with all the relevant documents that he has produced earlier and photocopies of which are annexed in the present writ petition. The verification exercise should be undertaken on the basis of the Petitioner's claim that he was residing separately at Jhuggi No. N-77B/411, Sawan Park as of 1984. If the Petitioner's claim stands verified, then the consequential order granting him an alternative plot should be issued by the DDA within four weeks thereafter. The decision be communicated to the Petitioner within the same period.

10. The petition and the pending application are disposed of. Order be given dasti."

(emphasis supplied)

8. On 14th January, 2013, respondent-DDA rejected the petitioner's representation and, therefore, the present writ was filed.

9. Mr. Rajendra Dutt, learned counsel for petitioner submitted that respondent-DDA had arbitrarily rejected the claim of the petitioner. He stated that despite petitioner's submission of proof regarding separate residence of petitioner from that of his father, respondent-DDA rejected petitioner's representation without considering the proof submitted by him.

10. Mr. Rajendra Dutt further submitted that the action of the respondent-DDA was based upon non-application of mind inasmuch as respondent-DDA allotted separate plots to several residents of the jhuggi cluster on the basis of identical documents.

11. On the other hand, learned counsel for respondents stated that the case of the petitioner was duly scrutinized, and in the course of scrutiny of the documents of the petitioner, it was found that petitioner had failed to establish that he was residing separately in Jhuggi No. 77 B/411, Sawan Park as of 1984. He pointed out that the ration cards of Jhuggi No. 77 B/411, Sawan Park were issued in August, 2002 and June, 2008 which were much later than the cut off date in the Scheme, namely, 1984.

12. Learned counsel for respondents further submitted that petitioner had also incorrectly relied on the Ration Card issued in petitioner's name, in 1981, as it showed his address as 646, Sawan Park. Learned counsel for the respondents drew attention of this Court to the fact that though the name of the petitioner was appearing in the ration card bearing address 646, Sawan Park, but against the said address, alternative allotment had been issued to his father. Since allotment had been issued against this Ration Card to one member of the family, another member of the family could not seek fresh allotment of another plot.

13. Having heard learned counsel for parties, this Court is of the opinion that according to the policy of respondent-DDA, members of a single family can be allotted more than one rehabilitation plot, provided such applicants show that the family members were staying in separate jhuggis.

14. However, on the facts of the present case, this Court is of the opinion that petitioner has failed to prove that he was residing separately from his

father in Jhuggi No. 77 B/411, Sawan Park as of 1984. The documents relied upon by the petitioner, namely, (i) Voter I Card No. DL/04/053/153033 issued in 1995, (ii) Delhi Administration Card No. 166818 issued in 1990, (iii) Scheduled Casts Certificate issued on 24th October, 1986, (iv) Immunization Card of 1985, (v) ration card BPL No. 53070232 issued in June, 2008 and BPL No. 53330456 issued in August, 2002, (vi) Certificates issued by Mr. Hari Shankar Gupta, MLA and General Secretary, Bunkar Vikas and Sudhar Committee and (vii) Certificate of Inspector of Circle No. 17 issued on 25th July, 2011, are of no relevance as none of them have been issued prior to the cut off date, namely, 1984. Further, the Voter's list / electoral roll of 1983 does not show that petitioner was living separately from his father.

15. The only document which bears the date prior to 1984 is a ration card bearing No. 8351 issued on 27th February, 1981 in petitioner's favour. However, the said ration card bears the petitioner's address as 646, Sawan Park which was also the address of his father. It is pertinent to mention that in W.P.(C) 11523/2009 petitioner had specifically asserted that he was residing separately from his father at Jhuggi No. N 77B/41 as of 1984. But no ration card bearing the said address for the relevant period has been placed on record.

16. In fact, in the impugned order dated 14th January, 2013 the Director (CL), DDA has observed as under:-

"I have perused the documents filed by Sh. Hoti lal for allotment of alternative plot but the documents submitted by him for establishing his claim are related for the year 1990 and onwards and not as of 1984. He was failed to establish that he was residing separately in Jhuggi No. 77 B/411, Sawan Park as of

1984. Hence, his claim for allotment of alternative plot can not be considered and hence rejected.

It may be mentioned here that his father, Sh. Hari Singh was allotted plot No. A-306 at Wazirpur Phase-IV and the name of Sh. Hoti Lal was appearing in the Ration card of Hari Singh. As recommendations of the allotment Committee, two alternative plots can not be allotted to one family against one Ration Card."

17. In view of the aforesaid, this Court does not find any perversity or illegality in the impugned order. Consequently, present writ petition and application being bereft of merits are dismissed but with no order as to costs.

MANMOHAN, J

SEPTEMBER 12, 2013

rn/ro