

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

% Date of Decision: 21.11.2013

+ **W.P.(C) 7621/2005**

JAI KARAN

..... Petitioner

Through: Mr.S.N.Gupta with Mr.S.S.Shukla,
Advocates

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr.Prabhat Kumar with Ms.Perna
Kumari and Ms.Poonam Kumari, Advocates.

+ **W.P.(C) 7627/2005**

VINOD KUMAR

..... Petitioner

Through: Mr.S.N.Gupta with Mr.S.S.Shukla,
Advocates

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr.Prabhat Kumar with Ms.Perna
Kumari and Ms.Poonam Kumari, Advocates.

+ **W.P.(C) 7635/2005**

ASHOK KUMAR GUPTA

..... Petitioner

Through: Mr.S.N.Gupta with Mr.S.S.Shukla,
Advocates

versus

NCVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr.Prabhat Kumar with Ms.Perna
Kumari and Ms.Poonam Kumari, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

WP(C) No.1353/2012 was filed by Kavinder Kaushik and two others, seeking removal of certain alleged unauthorized occupants from the premises of Nehru Memorial Middle School, Mandoli Road, Delhi. Only the Lt.Governor of Delhi, Secretary, Delhi Administration, Director of Education, Deputy Director of Education and Administrator/Authorized Officer of Nehru Memorial Co-Ed. Middle School were impleaded as parties to the writ petition. The alleged encroachers were not impleaded in the aforesaid writ petition filed by Kavinder Kaushik and two others. The said writ petition came to be decided on 12.1.2004. The following order was passed by the Court in the aforesaid writ petition:-

“Learned counsel for the respondent states that the respondent would examine the matter and in case the property vests in the respondent, they shall initiate necessary action in accordance with law for removal of the encroachers within two months from today. In case, it is the petitioner who is to initiate action for removal of encroachers based on ownership of the land, then the respondent would take necessary steps to support the petitioner for removal of such unauthorized occupants.”

2. Pursuant to the aforesaid order of this Court, separate show cause notices dated 3.8.2004 were issued to the petitioners. The notices are identical and read as under:-

“ Whereas, Nehru Memorial Co-Educational Middle School, Mandoli Road, Shahdara, Delhi – 110093 was taken over by the Directorate of Education on 07.04.1984.

Whereas, the Hon’ble High Court has passed orders dated 12-01-2004 in WP(C) No:1353/2002 directing for removal of encroachments within two months from the date of order.

Whereas, you are hereby directed to show cause why legal action both civil and criminal cannot be initiated against you for non-compliance of the order of the Hon’ble High Court dated 12-01-2004. The reply to show cause should reach the undersigned within 15 days of receipt of this notice.”

3. The petitioners responded to the aforesaid show cause notice on different dates. Vide impugned order dated 13.4.2005, Deputy Director of Education (District - North East) directed as under:-

“ Show cause notices in pursuance of the Hon’ble High Court dated 12-01-2004 in the matter of Kavinder Kaushik vs DE & ors. case were issued to the following unauthorized occupants of Nehru Memorial Middle School property and there was found nothing substantial in their replies.

The following unauthorized occupants of the NMM School, Mandoli Road are hereby directed to vacate the premises respectively occupied by them latest by 20-04-2005 failing which legal action as deemed fit shall be taken to comply with the orders of Hon’ble H.C.”

Being aggrieved from the aforesaid order passed by the Deputy Director of Education, the petitioners are before this Court seeking the following reliefs:-

“a) Issue a Writ of Certiorary/Mandamus/Order quashing the order dated 13.04.2005 whereby eviction

order has been passed against the Petitioner by the Respondent ;

b) Issue a Writ of Mandamus staying the operation of the order dated 13.04.2005 during the pendency of Writ Petition ;”

4. It appears from the above narrated facts that according to the respondents, the petitioners have encroached upon the property of Nehru Memorial Middle School and are unauthorisedly occupying the same. However, in the show cause notice dated 3.8.2004, there is absolutely no averment that the petitioners were in an authorized occupation of the property belonging to the aforesaid school. The show cause notice only refers to the order passed by this Court on 12.1.2004 in WP(C) No.1353/2002 and requires the noticee to show cause why legal action be not initiated for non-compliance of the order of this Court dated 12.1.2004. I fail to appreciate how the respondents could have sought to take action against the petitioners for non-compliance of the order of this Court dated 12.1.2004 when neither they were party to the WP(C) No.1352/2002 nor had this Court given any direction to them in the order dated 12.1.2004.

5. In their reply, the petitioners claimed to be old occupants of the premises occupied by them and also enclosed certain documents with their respective reply. However, there is absolutely no reference either to the reply or to the documents submitted by the petitioners along with their reply, in the impugned order dated 13.4.2005. It is, thus, evident that the officer who passed the aforesaid order did not take the reply submitted by the petitioner

and the documents annexed to the reply into consideration, before passing the impugned order. The impugned order does not disclose as to what was the basis of Deputy Director of Education concluding that the occupation of the petitioner was unauthorized. In the Additional Affidavit filed by the respondents, it is stated that on 20.6.1972, Narayan Sharma, Ram Narayan Sharma, Ram Mehar Sharma, Ram Chander Sharma and Daya Nand Sharam each donated 400 sq. yards to the Nehal Educational Welfare Society to run a school in the name and style of Nehru Memorial Co-Ed. Middle School and the petitioners had encroached 1/3rd of the school land in connivance with the donors of the land and their heirs, but, no such averment is made in the impugned order dated 13.4.2005 passed by the Deputy Director of Education. Along with the Additional Affidavit, the respondents have placed on record certain documents, such as affidavit of the land owner, including the affidavit of the land owners but neither these documents were made available to the petitioners nor were they given an opportunity to place their case with respect to the said document, before the Deputy Director of Education. In fact, there is no reference at all to any of these documents in the impugned order dated 13.4.2005.

6. For the reasons stated hereinabove, the impugned order dated 13.4.2005 cannot be sustained and is, hereby set aside. The respondents are directed to pass an appropriate speaking order after giving an opportunity of hearing to the petitioners and considering the replies which they had

submitted earlier as well as the averments made by them in the writ petitions. The documents filed by the petitioners with the writ petition shall also be considered by the Deputy Director of Education while passing a fresh order in terms of this direction. Of course, he will also take into consideration the documents which the respondents have filed along with the counter affidavit. For the purpose of personal hearing, the petitioners shall appear before the Deputy Director of Education at 11.00 AM on 16.12.2013 in his Office in B Block, Yamuna Vihar, Delhi. A fresh order, in terms of this direction shall be passed by him within eight weeks of hearing the petitioners. If the petitioners are aggrieved from the fresh order which the respondent shall pass in compliance with this direction, it shall be open to them to avail such remedy as may be open to them in law.

The petitions stand disposed of. No order as to costs.

NOVEMBER 21, 2013
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V.K. JAIN, J.