

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

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**Date of Decision: 17.09.2013**

+ W.P.(C) 5468/2011

MUNICIPAL CORPORATION OF DELHI ..... Petitioner  
Through: Mr Sudhir Nandrajog, Sr. Adv with Mrs Biji  
Rajesh, Adv.

versus

LAL CHAND AND ORS. .... Respondents  
Through: Mr Praven Chaturvedi, Adv for R-1  
Mr Javed M. Rao, Adv for R-2  
Mr Ajay Verma, Adv for DDA

**CORAM:**  
**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J. (ORAL)**

There is a dispute between the petitioner-MCD and respondent No.1-Lal Chand with respect to title of plot No. 286-287, Lajwanti Garden, New Delhi. According to the petitioner, the said plot, which was a park, was handed over to it by the Horticulture Department of DDA on 06.06.1988, for being maintained as a park. The case of respondent No.1-Lal Chand, on the other hand, is that the aforesaid property was purchased by him from one Mr Ajit Singh, attorney of four persons, namely, Rohtash Singh, Surender Kumar, Rajender Singh and Lachho Devi, by way of a sale deed executed in the year 2006.

2. A complaint dated 22.10.2010 was made by respondent No. 1 to the Chairman of respondent No.2-National Commission for Scheduled Castes (hereinafter referred to as the Commission), alleging therein that the petitioner-MCD had encroached upon the said plot and developed into a children park. Vide summons dated 14.12.2010, the said Commission informed the petitioner that it had decided to investigate into the representation made by respondent No. 1 and required it to bring the details/documents on the subject. On hearing the Commissioner of the petitioner-MCD, the Chairman of the Commission in a meeting held on 27.12.2010, directed MCD to handover the aforesaid plots to respondent No.1 and submit a compliance report within 15 days. The minutes of the aforesaid meeting were forwarded to MCD vide Commission's letter dated 03.01.2011. In its Action Taken Report submitted to the Commission, MCD maintained that the aforesaid property was a park which could not be handed over to respondent No. 1. The matter was discussed by the Commission in a meeting held on 10.01.2011, which was also attended by Commissioner and other officers of MCD. It appears that MCD, in support of its case, placed reliance upon a letter dated 29.12.2010 from DDA, confirming that the aforesaid property was developed by it as a park and handed over to MCD on 06.06.1988 as one of the five parks. The Commission observed that the said letter from DDA was tailor-made as against its earlier letter dated 09.04.2003, mentioning therein that no such land has

been transferred by DDA and asked MCD to examine the issues raised by respondent No. 1. MCD vide its communication dated 17.02.2011 forwarded its comments and action in the matter to the Commission. This was followed by further discussion by the Chairman of the Commission with MCD officers and in its meeting held on 16.05.2011, the Commission was of the view that it was unacquired land area which comprised plot No. 286-287 and directed consideration of the case of respondent No.1 in the light of findings of the Demarcation Committee, constituted by DDA on the directions of the Commission. During the discussion held on 20.06.2011, the Chairman of the Commission observed that there was a clear proposal in the file, to handover the aforesaid plots to respondent No. 1 and that if the officers with mala fide intentions tried to grab the land of respondent No.1, who belonged to a Scheduled Castes, they would be booked under POA Act, 1989. Being aggrieved from the various communications received from the Commission, the MCD is before this Court, seeking the following reliefs:

“a) issue a writ of mandamus or any other writ or like nature thereby quashing the impugned inquiry initiated by the Respondent no. 2 against the Petitioner based upon a frivolous complaint dated 21.10.2010 filed by Respondent no.1;

b) issue a writ of Mandamus or any other writ of like nature thereby directing that the Complaint dated 21.10.2010 filed by Respondent No. 1 is not maintainable and the Respondent no.2 has no jurisdiction in accordance with Article 338 of the Constitution of India and the said Rules to entertain, investigate and pass final

orders thereby directing the Petitioner to hand over the property bearing Plot no. 286-287, Lajwanti Garden, New Delhi to Respondent No.1;

c) issue a writ of Certiorari or any other writ of like nature thereby quashing the directing issued by Respondent no. 2 on meetings held on 27.12.2010, 10.01.2011, 04.04.2011, 16.05.2011 and 20.06.2011”

3. In its counter-affidavit, respondent No.3-DDA has supported the petitioner and stated that plot No. 286, shown as residential plot in the layout plan, measures 434 square yards and there is no plot No. 287 carved out in the regularization plan, which is an unauthorized colony that has come up on Government/private land, without sanction from of any Authority and which was later regularized by DDA vide Resolution dated 02.04.1979. The said land, according to DDA, was lying abandoned/unoccupied and was developed into green, so as to protect it from unauthorized encroachment. The area was then transferred to MCD for maintenance of the civic services on 06.01.1988. It is further stated that respondent No.1 claims to have purchased land out of Khasra Nos. 216/2 and 217/3, but the land comprised in Khasra No. 216/2 already stands acquired vide Award No. 1885 though the land comprised in Khasra No. 217/3 has not been acquired. It is further stated that on receipt of representation from respondent No.1, the matter was examined and the site was demarcated by the field staff of DDA. It was found that out of 434 square yards of the disputed land, 387 square yards falls in Khasra No. 216/2 and 217/2 which already stands acquired, whereas the remaining 47 square

yards falls in Khasra No. 217/3, which was not acquired by the Government. But the Competent Authority decided to acquire that portion of the land as well and a requisition to the Government was sent to the Government in this regard. Another demarcation was carried out on the request of respondent No. 1 and in the said demarcation it was found that only 305 square yards of land in question falls in Khasra No. 216/2 and 217/2 which stand acquired by the Government, whereas remaining 129 square yards of land has not been acquired. A requisition was then sent to the Government for acquisition of the said land on 30.05.2011.

4. In his counter-affidavit, respondent No. 1-Lal Chand has maintained that Shri Khimman etc. were owners of Khasra No. 216/2, whereas Lachho Devi and etc. were the owners of Khasra No 217/3 and he has purchased land in question from Ajit Singh, GPA holder of Smt. Lachho Devi and Khimman. He has also denied the alleged transfer of the said land by DDA to MCD and has claimed that no park exist on the site. According to respondent No. 1, this is a clear case of deprivation of his rights and safeguards.

5. In its counter-affidavit, respondent No. 2-Commission has stated that it never intended to pass an order or direction qua the petitioner, in the nature of finality or temporary or permanent injunction and the observations made by it were only recommendatory in nature. The Commission has placed reliance upon Article 338(5) of the Constitution in support of the action taken by it in the matter.

6. The Commission was set up in view of Article 338(1). Clause (5) of the said Article, to the extent it is relevant, reads as under:-

“(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes”

It would thus be seen that sub-clause (a) enjoins upon the Commission to investigate and monitor matters relating to safeguards provided for the Scheduled Castes, irrespective of whether such safeguards have been provided under the Constitution or under any other Statute, whereas sub-clause (b) casts a duty on the Commission to inquire into specific complaints, where such complaints relate to deprivation of rights and safeguards of the Scheduled Castes. Since in the case before this Court the Commission was looking into a specific complaint relating to a particular piece of land, the power of the Commission, if any, in this regard needs to be found only in sub-clause (b) of clause (5) of Article 338 of the Constitution.

7. It would be noticed that sub-clause (a) empowers the Commission to undertake an investigation and sub-clause (b) empowers it only to make an enquiry and not an investigation. Investigation and enquiry are altogether different

connotations, envisaging application of different procedures. Therefore, no investigation can be carried out by the Commission into matters which can be subject matter only of an enquiry. However, a perusal of the communication dated 14.12.2012 would show that on receipt of a complaint from respondent No. 1, the Commission decided to 'investigate' into the matter. This, however, was beyond jurisdiction of the Commission since it can make only an enquiry and not investigation into specific complaints of deprivation of rights and safeguards of the Scheduled Castes.

8. The Commission, vide communication dated 03.01.2011, thereby enclosing minutes of the meeting/hearing on 27.12.2010, directed the Commissioner, MCD to handover plots in question to respondent No. 1, who was stated to be its rightful owner and also submit a compliance report. It is an undisputed legal proposition that the Commission, while acting under Article 338(5) of the Constitution, can only make recommendations, but cannot issue any direction to the Government or any other person or Authority. A reference in this regard may be made to the following view taken by a Division Bench of this Court in **Professor Ramesh Chandra vs. University of Delhi and Anr.**, LPA No. 280/2007, decided on 04.05.2007:-

“6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the

Constitution of India is an adjudicatory body which can issue binding directions or injunction orders. ....

.....While conferring limited powers of a civil court for some purposes, Article 338 has not given the Commission, the power to adjudicate and pass binding and executable decrees like a civil court.

...It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are alternative to the hierarchical judicial system envisaged under the Constitution of India.”

In *All India Indian Overseas Bank SC and ST Employees' Welfare Association and Ors. Union of India (UOI) and Ors.* (1996)6SCC606, the Commission issued a direction to a bank stopping a promotion process pending further investigation and final verdict by the Commission. The Apex Court, however, held that the Commission having not been specifically granted any power to issue interim injunctions, a power vesting in a safeguard, had no authority to issue an order of this nature.

9. It is thus quite clear that the Commission clearly exceeded its jurisdiction by taking upon itself adjudicatory role of deciding the title of the land subject matter of the complaint made by respondent No. 1, constituting a Demarcation Committee and directing MCD to handover possession of the said land to respondent No. 1. No such power, in my view, could have been exercised by the Commission which

even if it is presumed that the complaint made by respondent No. 1 comes within the purview of sub-clause (b) of clause (5) of Article 338 could only have forwarded it to MCD with appropriate recommendations. Neither the Commission could have taken an adjudicatory role which law assigns only to a Court of competent jurisdiction nor could it have directed MCD to hand over a disputed piece of land to respondent No.1. Even thereafter, the Commission in its meeting held on 04.04.2011 directed demarcation of the area by a Committee which was to include three persons named by the petitioner and minutes dated 16.05.2011, requiring that the claim of the petitioner should be considered in the light of the findings of the Demarcation Committee constituted by DDA on the directions of the Commission. The Commission went to the extent of observing in the meeting held on 20.06.2011 if the officers of MCD tried to grab the land of a Scheduled Caste, they would be booked under POA Act, 1989. This clearly was beyond the power of the Commission.

10. In my view, even an inquiry in terms of sub-clause (b) of clause (5) can be initiated by the Commission only where the complaint relates to a specific incident of depriving a person of the rights conferred upon and safeguards provided for the persons, who as a class belong to Scheduled Castes. It is only such deprivation and not deprivation of any civil right of a person belonging to a Scheduled Castes which can be subject matter of such an inquiry. To take a view that the

Commission can inquire into any specific complaint made by a person belonging to a Scheduled Castes irrespective of the nature of the complaint, would render the words “with respect to deprivation of the rights and safeguards of the Scheduled Castes” wholly redundant which certainly could not have been the legislative intent. Had the intention of the Legislature been to entrust the Commission with duty to inquire into any complaint made by a person belonging to a Scheduled Castes, the wording of sub-clause (b) would have been altogether different. The Legislature in that case would have said without any qualification, that it shall be the duty of the Commission to inquire into specific complaints made by Scheduled Castes or a person belonging to a Scheduled Castes. There are many rights granted to and safeguards provided only for the persons belonging to Scheduled Castes, the reservation in public appointments and admissions to educational institutions being such instances. To take a few other examples, if there is a welfare scheme of the State or an instrumentality of the State for the benefit of the members of Scheduled Castes alone, any complaint alleging deprivation of benefit of the said scheme can certainly be inquired into by the Commission. Then, there are reservations made by some instrumentalities of the State in making various allotments such as allotments of plots/flats by Delhi Development Authority and allotment of petrol pumps/LPG outlets by oil marketing companies. Specific complaints with respect to such matters can also be brought to the notice of the Commission and inquired

into by it. To take yet another instance if a person belonging to a Scheduled Caste is refused caste certificate by the State, he can make a complaint in this regard to the Commission since such certificates are sought to avail the rights conferred only upon the members of Scheduled Castes. If the State comes out with a scheme to grant financial assistance to the members of the Scheduled Castes, any complaint alleging denial of such benefit can also be brought to the notice of the Commission and enquired into by it. But the disputed issues such as claims of title to a property which, by their nature, involve adjudication by an adjudicatory body cannot be subject matter of an inquiry in terms of sub-clause (b) even if the complainant belongs to a Scheduled Caste. The legal right to a property claimed can be by every citizen, irrespective of whether he belongs to a Scheduled Castes or not and a complaint alleging deprivation of property by State or one of its instrumentalities would certainly not be a matter with respect to deprivation of rights and safeguards of Scheduled Castes alone. Some support in this regard is available from the decision of Supreme Court in **Collector, Bilaspur vs. Ajit P.K. Jogi and Ors.** AIR2012SC44. In the aforesaid case, the sixth respondent before the Apex Court filed a complaint before the Commission alleging that the first respondent did not belong to a Scheduled Tribe and had obtained false caste certificate. The Commission issued a show-cause notice to the first respondent, proposing to verify his caste certificate and also referred the complaint to the Government of

Chhatisgarh, which constituted a Committee for verification of the caste certificate. The Commission later called upon the State Government to conduct verification of genuineness of the caste certificate and initiate urgent necessary action for its cancellation and also for taking criminal action. The said order was challenged by the first respondent before Chhatisgarh High Court which allowed the writ petition filed by him. Being aggrieved from the said decision of the High Court, the State of Chhatisgarh filed an appeal before the Apex Court. Upholding the order of High Court to the extent it quashed the order passed by the Commission, the Apex Court inter alia held as under:-

“12. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to scheduled castes and scheduled tribes by ensuring: (i) anti-discrimination, (ii) affirmative action by way reservation and empowerment, and (iii) redressal of grievances. The duties under Clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to the Sub-clause (b) of Clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development

of scheduled tribes. This power to enquire into 'deprivation of rights and safeguards of the scheduled castes and scheduled tribes' did not include the power to enquire into and decide the caste/tribe status of any particular individual.”

11. The following is the State of Objects and Reasons, appended to the Constitution (Sixty-eight Amendment) Bill, 1990, whereby Article 338 was amended:

“Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It is felt that a high level five-member Commission under article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer as at present. It is also felt that it is necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It is also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States.

2. The Bill seeks to achieve the aforesaid objects.”

It would thus be seen that the legislative intent behind even the Amended Article was to address the grievance of the members of Scheduled Castes, through the

Commission, only with respect to such rights and safeguards, which the Constitution or any other statute grants only to the members of such castes.

12. The Rules of Procedure of the Commission, to the extent they are relevant, read as under:

“7.4 The following aspect may kept in mind while filing complaints before the Commission.

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(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OM's, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules or Reservation.

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(g) The cases of Administrative nature like transfer/ posting/ grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.

(h) No action will be taken on the matters where there is no mention of violation of Reservation policy, DOPT OM's, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation of Rules of Reservation. Hence the matters where there is no mention of violation of above Rules need not be referred to the Commission as complaints.”

It would thus be seen that even as per the Rules framed for the Commission, the matters which do not involve violation of reservation policy and allied matters are not expected to be inquired into by the Commission, and the emphasis is on inquiring into his complaints which relate to deprivation of rights and safeguards made available only to the members of the Scheduled Castes.

13. For the reasons stated hereinabove, the impugned orders and communications issued by the Commission are hereby quashed. It is, however, made clear that dismissal of the writ petition shall not come in the way of respondent No. 1, establishing its claim before a Court of competent jurisdiction.

**V.K. JAIN, J**

**SEPTEMBER 17, 2013**

**BG**