

CWP-15215-2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-15215-2013

Date of Decision: 14.10.2015

Krishan Pal

... Petitioner(s)

Versus

Union Territory, Chandigarh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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

Present: Mr. R.N.Maurya, Advocate,
for the petitioner.

Mr. Deepak Sharma, Advocate,
for respondent Nos.1 and 2.

Paramjeet Singh, J.

CD along with a print out of bio-metric survey produced in Court in pursuance of order dated 13.10.2015 is taken on record.

Instant writ petition has been filed under Article 226 of the Constitution of India for setting aside the order dated 08.03.2013 (Annexure P-9) whereby respondent No.3-Permanent Lok Adalat (Public Utility Services), Union Territory, Chandigarh has declined allotment of a tenement to the petitioner despite the fact that his name/particulars find mentioned in Bio-Metric Survey at Sr. No.24588. It is also prayed that

CWP-15215-2013

the petitioner is entitled to be considered for a tenement, as per the Scheme called the Chandigarh Small Flat Scheme, 2006 (for short, 'the 2006 Scheme').

In brief, the facts as averred in the petition are to the effect that in many *jhuggi* (slum) colonies in Chandigarh persons were living in unhygienic conditions. Some of the *jhuggi* dwellers whose *jhuggis* were demolished by the Chandigarh Administration due to some influential persons, approached this Court vide CWP No.20217 of 2001 which was disposed of vide order dated 23.05.2006 with a direction to the Union Territory, Chandigarh to treat the case of petitioners with sympathy and take steps to rehabilitate them as per law. The Chandigarh Administration identified 18 such *jhuggi* colonies where persons were living in unhygienic conditions and in unplanned accommodation and framed a policy called the 2006 Scheme. The aforesaid scheme was concerning persons who have unauthorizedly encroached upon public land and are living there in unhygienic conditions, lack of basic amenities and unsafe for inhabitants. In the bio-metric survey conducted in March 2006, the petitioner was found residing in *Jhuggi* No.28, Block C, Nehru Colony, Village Kajheri, Chandigarh which falls in one of the aforesaid 18 colonies. After the bio-metric survey was conducted and Biometric/Folio No.24588 was issued to the petitioner. The family photo of the petitioner as well as individual photo of the petitioner were also taken by respondent Nos.1 and 2 vide photo no.75 and 74, respectively,

CWP-15215-2013

which are attached herewith as Annexure P-6. Besides this, the petitioner has also annexed on record his voter identity card dated 22.09.1995 as Annexure P-1, copies of voter lists for the years 2005, 2009, 2010 and 2011 as Annexures P-2 to P-5 and copy of renewed ration-card issued on 21.02.2006 as Annexure P-7. However, the authorities have declined the claim of the petitioner only on the ground that his name does not appear in the bio-metric survey conducted by respondent Nos.1 and 2 as per the 2006 Scheme. Hence, this writ petition.

Upon notice, respondent Nos.1 and 2 filed reply with the averments that the 2006 Scheme was floated for rehabilitation of slum dwellers who were uprooted and in order to rehabilitate them, the survey was conducted in March 2006 and 18 colonies were identified for rehabilitation and those who were found eligible under the said Scheme, were allotted available constructed flats. During the bio-metric survey, the slum dwellers were given a specific form i.e. Form-A with a specific number (which was treated as Bio-metric/Folio No.) on it. The slum dwellers were required to submit those forms along with the requisite documents of residence proof with the private agency appointed by the Chandigarh Administration. As per the Estate Officer, Union Territory, Chandigarh, name of the petitioner does not figure in the list of Bio-metric survey of slum dwellers. When the rehabilitation process was started by the Administration, the slum dwellers were supplied the

CWP-15215-2013

application forms with the direction to attend the camp on a specific date. At the time of distribution of application form, the Folio number was filled by the official of the Chandigarh Administration after asking the same from the applicant. The screening committee constituted by the answering respondents rejected the claim of the petitioner on the ground that his name does not exist in the bio-metric survey list which is pre-requisite condition as per Clause 2 of the 2006 Scheme. Since the petitioner was not covered under the bio-metric survey conducted by the Chandigarh Administration under the 2006 Scheme, therefore, the petitioner is not eligible for allotment of any flat under the 2006 Scheme.

I have heard learned counsel for the parties at length and found that purpose of relying upon voter list is to corroborate the bio-metric survey to ensure that *jhuggi* dweller was, in fact, residing in one of the colonies and is required to be resettled. Though, the 2006 Scheme has been modified subsequently so as to permit a *jhuggi* dweller entitled for allotment of a flat even if his name appears in any of the voter list two years prior to 2006 or even two years later and that such condition cannot be said to be unjustified, as it is to advance the public cause so that only genuine *jhuggi* dweller is allotted flat, rather than a person, who was simply found present at the time of bio-metric survey. The twin conditions i.e. appearance of the name in the bio-metric survey corroborated by other proof of residence in the shape of voter list, are to advance the purpose of the scheme, thus cannot be said to be arbitrary.

CWP-15215-2013

In the present case, the petitioner has been able to show that he had been residing in *Jhuggi* No.28, Block -C, Village Kajheri, Nehru Colony, Chandigarh and was issued voter identity card (Annexure P-1) on 22.09.1995. The name of petitioner has also been found in the voter lists for the years 2005, 2009, 2010 and 2011 (Annexures P-2 to P-5). The bio-metric survey was conducted and Folio No.24588 was issued to the petitioner as is evident from Annexure P-6. In reply filed before the Permanent Lok Adalat (Public Utility Services) Union Territory, Chandigarh, respondent No.2-Estate Officer admitted that Application form No.31012 was issued to the petitioner, who was present and residing in the *jhuggi*. Respondent Nos.1 and 2 have taken a categorical stand that the petitioner has not submitted the requisite application form but the fact remains that at the relevant time, the petitioner was residing in *Jhuggi* No.28 Block-C, village Kajheri Nehru Colony, Chandigarh and the same colony has been included in 18 *jhuggi* colonies under the 2006 Scheme. The name of petitioner also appears in the voter lists (Annexures P-2 to P-5). The bio-metric survey/Folio number slip issued to the petitioner also proves the factum of residence of the petitioner in *Jhuggi* No.28 Block-C, village Kajheri Nehru Colony, Chandigarh. Otherwise also, case of the petitioner is squarely covered by the decision rendered by a Division Bench of this Court in CWP No.2317 of 2014, titled as '***Dinesh Kumar and others vs. Union Territory, Chandigarh and others***', decided on 22.12.2014 wherein it has been held as under:

CWP-15215-2013

“We have heard learned counsel for the parties at length and found that the purpose of relying upon voter list is to corroborate the biometric survey to ensure that jhuggi dweller was, in fact, residing in one of the colonies and is required to be resettled. Though 2006 Scheme has been modified subsequently so as to permit a jhuggi dweller entitled for allotment of a flat even if his name appear in any of the voter list two years prior to 2006 or even two years later and that such condition cannot be said to be unjustified, as it is to advance the public cause so that only genuine jhuggi dweller is allotted flat rather than a person, who was simply found at the time of bio-metric survey. The twin conditions i.e. appearance of the name in the bio-metric survey corroborated by other proof of residence in the shape of voter list, are to advance the purpose of the scheme, thus cannot be said to be arbitrary. But having said so, we find that simply relying upon the name in the voter list without proof of residence in other documents cannot be said to be justified.

Though the petitioners have contended that the ration card should also be relied upon to find the genuineness of the claim of the jhuggi , but we find that the ration card is not issued under any statute. In fact, in the ration cards relied upon by the petitioners, there is a disclaimer to the effect that “Ration Card shall not be used as document of identity. Ration Card is meant for drawl of rations and not for any other purpose”. Since the ration card is not issued under any statute and in view of the disclaimer on the ration card itself, we find that the ration card cannot be made reasonable basis to determine the eligibility of the jhuggi dweller for

CWP-15215-2013

allotment of a flat. However, there are other proofs of residence under other statutes such as Driving License issued under the Motor Vehicles Act, 1988 or Passport issued under the Passport Act, 1967. Therefore, not only the voter list, but the Driving License issued or valid between 2004 to 2008 or the Passport issued or valid between the said years, having residence address as that of any of the 18 colonies, would be sufficient compliance to examine the genuineness of the claim of the jhuggi dweller. Apart from the two statutory documents, which are pointed out, there can be any other proof of residence under any other statute as well. Therefore, we find that the proof of residence from the year 2004 to 2008 should not be restricted only to the voter list, but to any other document issued under any of the Statute as proof of residence of one of the 18 colonies.

We find that the clarifications issued are for effective implementation of the Scheme for rehabilitation, but restricting the corroborative document of voter list is not tenable. It can be any of the proof of residence issued under any Statute.

It is also pointed out that in some cases, the jhuggi dweller has voter card for a year prior to 2004, therefore, that voter card should be taken into consideration for determining the eligibility of the said jhuggi dweller. The name of a person, who stays in one of the colonies, is expected to appear in the voter list. It is a matter of policy that a proof of residence is required for how many years. The condition of proof of residence i.e. two years prior to bio-metric survey or two years later, per se cannot be said to be arbitrary or unreasonable. The

CWP-15215-2013

name of a dweller in a voters list prior to two years may not be justified, as he might have moved out in the intervening period. The period so fixed is in tune with the objective of the Scheme i.e. Of rehabilitation of genuine residents of the slums.

It was also pointed out that in the data of bio-metric survey, the finger print impressions of large number of claimants are not available, as is required in the procedure given in Annexure-A with the affidavit dated 01.12.2014. Therefore, if thumb impressions are not available either by the mistake of the survey team or the data being corrupt, the jhuggi dwellers should not be made to suffer.

We find the argument of learned counsel for the petitioners to this aspect to be meritorious. The quality and availability of finger prints impressions was a responsibility of the survey team. If the team has failed to obtain finger print impressions or the quality of such finger print impressions is not good or the data has been lost by the survey team, the jhuggi dweller cannot be blamed for such acts of omission and commission.

In view of the above, the present writ petition as well as the other connected writ petitions is allowed with the following observations:

- (i) That the condition in the Scheme in respect of name appearing in the bio-metric survey and in the voter list of two years prior to such survey and/or two years later cannot be said to be arbitrary, unjust & irrational.*
- (ii) However, in addition to the voter list, the Administration shall consider the documents towards proof of residence issued under any of the Statute such as the Motor Vehicles Act, 1988 and the Passport Act, 1967, as a proof of*

CWP-15215-2013

residence between the years 2004 to 2008.
(iii) *If the finger print impressions are not available or the quality of the same is poor, the jhuggi dweller shall not be deprived for the allotment of a flat only for that reason provided the Administration establishes the identity of the applicant on the basis of such other evidence, as the Committee may consider appropriate.*

The respondents are directed to complete the process of allotment in terms of the observations enumerated above.”

The petitioner has been deprived of his rights by some mischievous elements and govt. officials although evidence was available with him in the shape of Folio Number and other documents. The petitioner has all the relevant documents in support of his case but it appears that he has been debarred for the reasons best known to the officers/officials concerned. It is the duty of the administration to keep a vigil eye that an eligible person should not be left from taking benefit of the policy framed for the upliftment of the poor persons due to non-performance of duty by the officials/officers with due diligence and honestly. Otherwise also, the petitioner is a slum dweller, a rustic person and does not know the intricacies of law. Admittedly, the petitioner belongs to poor and disadvantageous section of the society. He has participated in every process including bio-metric survey and has other evidence to show that he was resident of *Jhuggi No.28 Block-C*, village Kajheri Nehru Colony, Chandigarh but the claim of the petitioner has been rejected on flimsy grounds that he had not submitted the application form with the authorities. The authorities, themselves, should

CWP-15215-2013

have collected the form at the spot.

In view of above, instant petition is allowed, the impugned order dated 08.03.2013 (Annexure P-9) is set aside and respondents are directed to consider the claim of the petitioner for allotment of flat/tenement in terms of the 2006 Scheme. The needful shall be done within three months from the date of receipt of certified copy of this order.

14.10.2015
parveen kumar

(Paramjeet Singh)
Judge