

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

+ **LPA 458/2019 and CM APPL. 32054-55/2019**

Reserved on: 19.07.2019

Date of decision: 19.08.2019

IN THE MATTER OF:

MANOJ KUMAR & ANR

..... Appellants

Through: Mr. Puneet Taneja and Ms. Laxmi
Kumari, Advocates

versus

GOVT OF NCT DELHI & ORS

..... Respondents

Through: Mr. Rizwan, Advocate for R-1/GNCTD.
Ms. Jyoti Tyagi, Advocate for R-2/LAC.
Mr. Arjun Pant, Advocate for R-3/DDA.

+ **LPA 459/2019 and CM APPL. 32056-57/2019**

BHUSHAN LAL RAJPAL

..... Appellant

Through: Mr. Puneet Taneja and Ms. Laxmi
Kumari, Advocates

versus

GOVT OF NCT DELHI & ORS

..... Respondents

Through: Mr. Rizwan, Advocate for R-1/GNCTD.
Ms. Jyoti Tyagi, Advocate for R-2/LAC.
Mr. Arjun Pant, Advocate for R-3/DDA.

+ **LPA 460/2019 and CM APPL.32058-59/2019**

RAMESH KUMAR GOEL & ORS

..... Appellants

Through: Mr. Puneet Taneja and Ms. Laxmi
Kumari, Advocates

versus

GOVT OF NCT DELHI & ORS

..... Respondents

Through: Mr. Rizwan, Advocate for R-1/GNCTD.

Ms. Jyoti Tyagi, Advocate for R-2/LAC.

Mr. Arjun Pant, Advocate for R-3/DDA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

HIMA KOHLI, J.

1. The present appeals have been filed by the appellants assailing a common judgment dated 03.04.2019 passed by the learned Single Judge, dismissing their writ petitions for quashing the order dated 07.05.2014 issued by a Committee constituted by the High Court vide order dated 21.08.2013, passed in W.P. (C) No.79/2012, whereunder their case for allotment of alternative shops on acquisition of land at Purani Lakdi Market, opposite Shyam Lal College, GT Road, Shahdara, stood rejected.

2. As the facts noticed in the impugned judgment relate to the appellants in LPA 458/2019 and the other appellants are similarly situated, we shall refer to the said facts here. The undisputed facts of the case are that the appellants were tenants under Smt. Angoori Devi, wife of late Shri Chandgi Ram in respect of shops No.10, 11 and 13 situated in Purani Lakdi Market, opposite Shyam Lal College, G.T. Road, Shahdara, from where they were conducting the business of selling bamboos, *ballis*, wooden logs etc. In the process of undertaking construction of the Mass Rapid Transport System (in short 'MRTS') Project (Shahdara Phase), in the year 1999, respondent No.4/Delhi Metro Rail Corporation (in short 'DMRC') took over 29 shops including shops No.10 and 11 under the tenancy of the appellants at Purani

Lakdi Market. Two separate certificates dated 15.09.1999 and 15.07.1999 were issued by the respondent No.4/DMRC, certifying that the appellants were in possession of shops No.10 and 11 and that the said shops had been handed over for the MRTS Project.

3. On 31.01.2002, respondent No.1/GNCTD issued a Circular containing the guidelines on relocation and rehabilitation of persons affected by the implementation of Phase-I of the Delhi MRTS Project and carved out categories of project affected persons and the manner in which they would be relocated/rehabilitated. In the year 2002 itself, the respondent No.4/DMRC decided to take over the remaining 47 shops at Lakdi Market including shop No.13 in the occupation of the appellants. Aggrieved by the said decision, all the 47 shopkeepers at Lakdi Market jointly approached the High Court for relief by filing CW No.4734/2002 entitled Ansar Ahmed and Ors. vs. UOI and Ors., claiming *inter alia* that the DMRC had not explained the requirement for taking over their shops for the Delhi MRTS Project. Vide order dated 11.12.2002, the said petition was dismissed on the ground that it was not for the Court to evaluate or determine whether the requirements of the DMRC for the said project, were valid or not. Noting that the Project was of public interest and national importance, the Court declined to interfere but clarified that the claim of the petitioners for alternative allotment ought to be agitated and established before the competent authorities in terms of the scheme/policy.

4. Not satisfied with the aforesaid order dated 11.12.2002, the petitioners in CW No.4734/2002 filed an *intra-court* appeal, registered as LPA No.984/2002. Vide order dated 30.12.2002, the said appeal was disposed of

on the statement made by the counsel for the respondent No.4/DMRC that the survey had been conducted on 28.12.2002 and as the appellants were found to be in possession of the site in question, they would be issued possession slips. Vide letter dated 12.08.2003, the respondent No.4/DMRC wrote to the respondent No.3/DDA stating *inter alia* that the DMRC had issued certificates in the name of possession holders as existing on 28.12.2002 and recommended rehabilitation of 47 timber shopkeepers for sympathetic consideration for alternate allotment.

5. Vide Circular dated 25.10.2006 issued by the Land & Building Department of the respondents No.1 and 2/GNCTD, guidelines were laid down for relocation and rehabilitation of the project affected persons due to implementation of the Delhi MTRS Project. The appellants have pegged their case on the said Circular dated 25.10.2006 to claim allotment of alternative shops. When no concrete steps were taken by the multiple agencies involved, though there was a lot of correspondence exchanged between them in this regard, the appellants approached the High Court once again and filed W.P.(C) 79/2012 praying *inter alia* for directions to the respondents to allot them alternate shops.

6. Taking note of the possession slips issued by the respondent No.4/DMRC in favour of the appellants and finding that they had rested their case on the Relocation and Rehabilitation Circulars dated 31.01.2002 and 25.10.2006 and furthermore, observing that there was a complete logjam between the government agencies with regard to allotment of alternative sites, vide order dated 21.08.2013, the High Court directed that a Committee be constituted comprising of officers from the DDA, Govt. of NCT of Delhi

and DMRC that would process the applications for allotment of alternative shops. The said Committee was directed to publish a public notice, grant a hearing to the project affected persons and dispose of the applications by passing a speaking order within a fixed timeline.

7. Vide letter dated 29.05.2014, the respondent No.4/DMRC informed the appellants that their applications for allotment of alternative shops had been examined by the Committee constituted by the High Court and as per the extant policy of the Government of NCT of Delhi, they were declared ineligible. Claiming that the letter dated 29.05.2014 did not give any reasons for declining to recommend their case, the appellants filed a contempt petition against the respondents [CONT.CAS(C) 536/2014]. In the course of the said proceedings, on the respondent No.4/DMRC producing a speaking order dated 07.05.2014 passed by the Committee constituted by the High Court, the contempt petition was withdrawn by the appellants. The relevant considerations that weighed with the Committee for declining to recommend the case of the appellants for alternate allotment are as follows:-

"The Committee met on 23rd Sept. 2013, 01st Oct. 2013, 9th April 2014, 25th April, 2014, 30th April, 2014 and 7th May, 2014. The Committee further noted that as per the eligibility conditions prescribed in the said circulars, any of the persons whose pucca structures are acquired for a MRTS Project are entitled to relocation and rehabilitation by allotment of an alternative shop/plot/flat. The policy does not envisage allotment of alternative shop to those persons whose temporary or kutchra structures are acquired.

The Committee also noted that in the instant case, no pucca structures were acquired. All the claimants were working in purely temporary structures made of bamboo sticks/ballies and

cloth/tin shed. Structures of the claimants were made of ballis and bamboo mating or bamboo-balli with tin sheet roof as per certificates issued by DMRC to occupants at the time of taking over possession of the land. As such the petitioners/claimants were not entitled for allotment of alternative plots under relocation and rehabilitation policy of Govt. of NCT of Delhi. The Committee further noted that the petitioners were encroachers on govt. land on purely temporary basis forming part or right of way. The nature of encroachment by the petitioners was purely temporary. The Relocation & Rehabilitation policy of Govt. of NCT of Delhi does not envisage allotment of alternative shop/plot to encroachers of govt. land on purely temporary basis forming part of right of way. As such also the petitioners are not eligible for allotment of alternative shops under said Relocation & Rehabilitation Policy."

8. Enclosed with the aforesaid recommendations was a tabulated statement prepared by the Committee furnishing the names of all the applicants, the documents submitted by them and the findings with regard to their eligibility for alternate allotment. Insofar as the appellants herein were concerned, the statement reveals that their claims were rejected on the ground that the structure occupied by them was temporary in nature, comprising of *ballis* and bamboo matting with tin sheet roof. Aggrieved by the order dated 07.05.2014, issued by the Committee, the appellants once again approached the High Court for relief.

9. By the impugned judgment dated 03.04.2019, the learned Single Judge has dismissed the writ petitions filed by the appellants on the ground that the land underneath the premises occupied by them belongs to the government and the shops in question were not *pucca* units but only

temporary structures and therefore, the Committee had rightly declined to recommend their case as they were encroachers on public land. It was also observed that the alternate allotment contemplated in the Circular dated 31.01.2002 issued by the respondent No.1/GNCTD did not include temporary structures and the eligibility criteria laid down by the Land & Building Department, GNCTD vide Circular dated 25.10.2006 also did not cover their case inasmuch as there was nothing brought forward by them to establish that Smt. Angoori Devi to whom they claim they had been paying the rent, was actually the owner of the subject land. It is the said decision that has brought the appellants before us.

10. Mr. Puneet Taneja, learned counsel for the appellants submitted that the learned Single Judge has erred in upholding the order dated 07.05.2014 issued by the Committee, declaring the appellants as ineligible for alternative shops by ignoring the order dated 21.08.2013 passed in W.P.(C) 79/2012; that the judgment dated 11.12.2002 passed in CW No.4734/2002 had directed the respondents to consider the case of the project affected shopkeepers for alternate allotment of shops as per the relocation and rehabilitation policy but the same has not been considered while passing the impugned order; that there is a patent error in the impugned judgment as also the findings of the Committee to the effect that the shops of the appellants being temporary structures made of bambo sticks/*ballis* with tin/cloth roof, made them ineligible for alternate allotment. It was urged by learned counsel for the appellants that there was no eligibility criteria in the two Circulars dated 31.01.2002 and 25.10.2006 that presupposes a shop to be a *pucca* structure for the shopkeepers to be eligible for an alternate

allotment and therefore, the said criteria could not have been adopted by the Committee for declaring the appellants as ineligible. Reference was also made to the copy of the revenue records in the shape of the *jamabandi* for the years 1965-66, in respect of the area in question to claim that the status of the landlord of the shopkeepers was reflected therein as that of a tenant under the Delhi Improvement Trust. Thus, it was contended that the learned Single Judge has erroneously observed that there was no document to show that Smt. Angoori Devi was a tenant of the respondents No.1 and 2/GNCTD, at the relevant point in time.

11. To test the argument advanced by learned counsel for the appellants to the effect that the order dated 21.08.2013, passed in W.P.(C) 79/2012 had appreciated the facts of the case and once the appellants were eligible for alternative shops in terms of the Circulars dated 31.01.2002 and 25.10.2006, the Committee constituted by the High Court could not have gone into the said question, we have carefully examined the order dated 21.08.2013 as also the Circulars dated 31.01.2002 and 25.10.2006.

12. The order dated 21.08.2013, passed by learned Single Judge in W.P. (C) 79/2012 was a brief one that noted the prayers made in the writ petition and the claim of the appellants that they were covered by the Relocation and Rehabilitation Circulars dated 31.01.2002 and 25.10.2006, making them eligible for allotment of alternative shops. However, taking note of the impasse between the DDA and the Land & Building Department on making recommendations of eligible applicants for alternative allotment, the Court directed that a Committee be constituted comprising of officers from DDA, GNCTD and DMRC for processing the relevant applications and making

necessary recommendations. While disposing of the petition, no observations were made on the relative merits/demerits of the claims raised by the appellants. Instead, the Committee so constituted, was directed to consider their applications and those of other similarly placed shopkeepers and pass a speaking order, which as noticed above, was duly complied with.

13. Coming next to the Circular dated 31.01.2002, the same is being extracted hereinbelow for ready reference:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI TRANSPORT DEPARTMENT (M.R.T.S. BRANCH) 5/9, UNDER HILL ROAD, DELHI-110054.

No. MRTS/64/TPT/2000-PT File/291-305 Dated: 31.1.02

CIRCULAR

The basic guidelines on Relocation and Rehabilitation Policy in respect of project affected persons of all categories due to implementation of Phase-I of Delhi MRTS Project as decided by the Cabinet on dated 10th December, 2001.

There was no policy with regard to relocation and rehabilitation of project affected persons due to implementation of Phase-I of MRTS project except for the jhuggi Jhopri Clusters which are covered under their location policy of the Slum & J.J. Department, M.C Dand GNCTD. In order to provide a comprehensive relocation and rehabilitation policy for other categories of project affected persons the following decisions were taken by the Cabinet vide its decision No. 670 dated 10.12.2001.

(i) In case of Pucca structures at government land, removed due to implementation of Phase-I project of Delhi MRTS, their owners will be allotted the plot of maximum size of 18 sq. m. in case of persons having valid food card as on 31.01.1990 and 12.5 sq. m. having valid food card as on 31.12.1998 under the existing Relocation Policy of J.J. Clusters.

(ii) In the case of the pucca residential unit on Private land in unauthorized colonies their W.P.(C) Nos. 2409/2015 & Other connected matters Page 10 of 15 cases will be recommended by the concerned DM/LAC to Land & Building Department which would in turn recommended the cases as per the Government Policy to DDA for allotment of developed plots at "Predetermined Price", "Which should be lower than the market prices".

(iii) In cases of pucca residential unit on private land on authorised colonies or on land leased for 99 years, the cases of Project Affected persons will be recommended for allotment of alternate plot by the concerned ADM/LAC to Land & Building Department, which will in turn recommend the case as per the Govt. Policy, to DDA for allotment of alternate plot at "pre-determined price".

(iv) Cases of Project affected Shop keepers as verified by the concerned ADM/LAC will be recommended to DDA for making alternative allotment of shops at "predetermined price" depending upon the availability.

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*Sd/- (ARUN KUMAR MISHRA)
DEPUTY DIRECTOR (MRTS)"*

14. Following are the observations made in the impugned judgment while dealing with the claim of the appellants that the aforesaid Circular dated 31.01.2002, would cover them:-

"22. It is apparent from the above that alternate premises were contemplated in respect of (a) pucca structures on Government land; (b) pucca residential units on private land in unauthorised colonies; and (c) project affected shopkeepers as verified by the concerned ADM/LAC. In the present case, the

Committee concluded that the shops in question were not pucca structures but only temporary structures made of bamboo, ballis with roofs made of tin/cloth. The certificates issued by DMRC (which are relied upon by the petitioners) also clearly indicate that the shops in question were only temporary structures consisting of bamboo, ballis, bamboo matting with tin/cloth. In this view, the Court does not find any infirmity with the decision that the petitioners' case does not fall within the Circular dated 31.01.2002."

15. We are in agreement with the aforesaid view expressed in the impugned judgment that the case of the appellants does not fall under the captioned Circular as the same extends the benefit of alternative allotment only to those persons who fulfilled any of the four conditions stipulated therein, i.e., where there existed *pucca* structures on government land, or where there existed *pucca* residential units on private land in unauthorised colonies, or where *puccas* residential units existed on private land in authorised colonies or on land leased out for 99 years and lastly, where the project affected shopkeepers had been verified by the concerned ADM/LAC and recommended to the DDA for alternative allotment.

16. In the instant case, admittedly, the shops under the occupation of the appellants were not *pucca* structures on Govt. land. As noticed by the Committee in its order dated 07.05.2014, the structures occupied by the appellants were made of bamboo sticks/*ballies* with a roof of tin sheet. The possession slips issued by the respondent No.4/DMRC in favour of the appellants also records the same position. In our view, given the nature of the temporary structures occupied by the appellants on Govt. land, they were not entitled to the benefit of the Circular dated 31.01.2002.

17. As for the eligibility criteria laid down in the Circular dated 25.10.2006 issued by the Land and Building Department, GNCTD for relocation/rehabilitation of the project affected persons, Condition No.(1)(c) of the said Circular that is relevant in the instant case, is reproduced hereinbelow for ready reference:-

“LAND AND BUILDING DEPARTMENT GOVT. OF NCT OF DELHI VIKAS BHAWAN, NEW DELHI RELOCATION & REHABILITATION POLICY IN RESPECT OF PROJECT AFFECTED PERSONS OF ALL CATEGORIES DUE TO IMPLEMENTATION OF DELHI MRTS PROJECTS

(1) Eligibility conditions for being covered under Relocation/Rehabilitation Policy

XXX

XXX

XXX

(c) In case of shops, the persons doing business, whether he is the owner of land or the tenant, will be eligible."

18. The aforesaid Condition No.(1)(c) clarifies that in case of shops, a person carrying on business therein, would be eligible for relocation/rehabilitation irrespective of whether he was the owner of the land or a tenant. The appellants herein claim that they were tenants under Smt. Angoori Devi, wife of Shri Chandgi Ram and in support of the said submission, they have filed a couple of rent receipts issued for the period between 01.07.1993 to 30.09.1993 and 01.04.1997 to 31.03.1998. They have also placed reliance on the extract of the revenue records, comprising of the *jamabandi* for the years 1965-66 (erroneously typed out in para 25 of the impugned judgment as the years 1995-96). We have perused the English translation of the said document annexed with the appeal and marked as

Annexure A-2 where the name of the owner in column No.5 has been recorded as the 'Government' and the name of the cultivator in column No.6, has been recorded as 'Delhi Improvement Trust'.

19. It is the submission of the learned counsel for the appellants that besides Delhi Improvement Trust, the names of four other persons have been recorded in column 6 of the *jamabandi* including that of Shri Chandgi Ram, stated to have wrongly recorded as '*Chaudge*', who was the late husband of Smt. Angoori Devi, the landlady of the appellants. What is relevant is that all the four names mentioned in column No.6 of the *jamabandi*, have been described as '*Ghair Maroosi*', a Persian word used to describe a non-inheritable right. Assuming that "Chaudge" was none other than "Chandgi Ram", the deceased husband of Smt. Angoori Devi, the said document does not describe him as a tenant. Rather, it records that those persons whose names are mentioned in column 6 were not vested with any inheritable rights. The cultivatory possession mentioned in column No.6 of the *jamabandi* also does not mention the name of Smt. Angoori Devi, who the appellants state was receiving rent from them. Therefore, there is no question of giving any benefit to the appellants on the strength of the said *jamabandi* or the rent receipts filed by them in the writ proceedings.

20. The copy of the *jamabandi* for the years 1965-66 filed by the appellants, leaves no manner of doubt that the land in question, where temporary shops of the appellants were situated, was a government land. The status of the appellants on the government land cannot be better than that of the person through whom they were laying a claim. When Smt. Angoori Devi, the landlady of the appellants was herself an encroacher

on government land, any rent receipts issued by her in favour of the appellants, could not place them on a better footing than her. We are therefore of the opinion that the learned Single Judge has rightly held that the Committee could not be faulted in declining to recommend the case of the appellants for alternative allotment. Quite clearly, the policy of relocation/rehabilitation floated by the respondents/authorities was not meant for those who were encroachers on public land. There is no reason for us to differ with the view expressed in the impugned judgment that the relocation/rehabilitation policy did not contemplate accommodating persons, who were found encroaching upon public land and carrying on business in temporary structures made of bamboo/*balli* with tin sheet roof.

21. In view of the aforesaid facts and circumstances, the impugned judgment is upheld and the present appeals are dismissed as meritless alongwith the pending applications. No order as to costs.

HIMA KOHLI, J,

ASHA MENON, J

AUGUST 19, 2019

rkb/NA