

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.04.2019

+ **W.P.(C) 2409/2015**

MANOJ KUMAR AND ANR.

..... Petitioners

Versus

GOVT. OF NCT DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners :Mr Puneet Taneja, Ms Laxmi Kumari,
Advocates.

For the Respondents :Mr Sanjay Kumar Pathak, Mrs K.K.
Kiran, Mr Sunil Kumar Jha, Mr M.S.
Akhter, Advocates for R-2/ADM/LAC/
GNCTD.
Mr Rajeshwar Singh, Advocate with
Mr Shushant Tripathi, ALO of R-4/DMRC.
Ms Manika Tripathy Pandey, Mr Ashutosh
Kaushik, Advocates for DDA.

AND

+ **W.P.(C) 5767/2015**

RAMESH KUMAR GOEL & ORS.

..... Petitioners

Versus

GOVT. OF NCT DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners :Mr Puneet Taneja, Ms Laxmi Kumari,
Advocates.

For the Respondents :Mr Sanjay Kumar Pathak, Mrs K.K.
Kiran, Mr Sunil Kumar Jha, Mr M.S.
Akhter, Advocates for R2/ADM/LAC/
GNCTD.
Ms Manika Tripathy Pandey, Mr Ashutosh
Kaushik, Advocates for DDA.
Mr Rajeshwar Singh, Advocate with
Mr Shushant Tripathi, ALO of R-4/DMRC.

AND

+ **W.P.(C) 5779/2015**

BHUSHAN LAL RAJPAL

..... Petitioner

Versus

GOVT. OF NCT DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners :Mr Puneet Taneja, Ms Laxmi Kumari,
Advocates.

For the Respondents :Mr Sanjay Kumar Pathak, Mrs K.K.
Kiran, Mr Sunil Kumar Jha, Mr M.S.
Akhter, Advocates for R2/ADM/LAC/
GNCTD.
Ms Manika Tripathy Pandey, Mr Ashutosh
Kaushik, Advocates for DDA.
Mr Rajeshwar Singh, Advocate with
Mr Shushant Tripathi, ALO of R-4/DMRC.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the petition impugning the order dated 07.05.2014 passed by the Committee constituted pursuant to the judgment of this Court in *Manoj Kumar and Ors. v. Govt. of NCT and Anr.: W.P.(C) 79/2012, rendered on 21.08.2013.*

2. The petitioners claim that they are entitled to alternative shops in lieu of their shops located at Purani Lakdi Market opposite Shyam Lal College, GT Road, Shahdara, Delhi-110032. The said shops were removed by Delhi Metro Rail Corporation (DMRC) for construction of Mass Rapid Transport System (MRTS). By the impugned order, the Committee has rejected the aforesaid claim on the ground that petitioners' case does not fall within the "Relocation and Rehabilitation policy in respect of project affected persons of all categories due to implementation of Delhi MRTS Project".

Factual Background

3. The material facts and the issues involved in these petitions are similar, and hence the same were heard together. The facts as relevant to W.P.(C) 2409/2015 are noticed for addressing the controversy involved in these petitions. The petitioners in the said petition are hereafter referred to as "the petitioners".

4. The petitioners claim that they were tenants of three shops (Shop No. 10, 11 and 13) located in Purani Lakdi Market, Opposite Shyam Lal College, GT Road, Shahdara and were carrying on the

business of selling of *ballis*, bamboos, and wooden logs from the said shops.

5. DMRC commenced the construction of MRTS Project (Shahdara Phase) and, in the year 1999, took over portion of Purani Lakdi Market. It is stated that all 29 shops were taken over which included two shops of the petitioners (Shop No. 10 and 11). DMRC issued two separate certificates dated 15.09.1999 and 15.07.1999 certifying that the petitioners were in possession of the Shop No. 10 and 11 respectively and the same had been handed over for carrying out the work relating to the MRTS Project.

6. On 31.01.2002, Govt. of NCT of Delhi issued a Circular containing the policy for relocation and rehabilitation of project affected person due to implementation of phase of Delhi MRTS Project. In the same year, DMRC also expressed its intention of taking over the remaining shops at Lakdi Market – in all 47 shops. The same also included Shop No. 13, which was in occupation of petitionerno.1.

7. The petitioners and certain other persons filed a writ petition, ***W.P.(C) 734/2002*** captioned ***Ansar Ahmed and Ors. V. UOI and Ors., inter alia***, challenging the decision of DMRC to take over the shops at Purani Lakdi Market. It was contended that the same was not necessary for DMRC to implement the MRTS Project. This Court did not accept the aforesaid contention and the said writ petition was disposed of. However, the Court also directed the competent authority

to consider the petitioners' case for allotment of alternate shops on the basis of its policy.

8. Aggrieved by the aforesaid, the petitioners as well as other persons who had filed the writ petition, preferred an appeal before the Division Bench of this Court (LPA No. 984/2002), *inter alia*, praying that DMRC should issue a certificate to the respective shopkeepers to claim alternate allotment. The said appeal was disposed of by an order dated 13.12.2002, wherein the Division Bench recorded the statement of the learned counsel appearing for DMRC to the effect that a survey had been conducted on 28.12.2002 and the appellants therein had been found to be in possession of the site in question.

9. On 12.08.2003, DMRC sent a letter to DDA recommending that the petitioners' request for alternate premises be considered sympathetically.

10. On 25.10.2006, the Land and Building Department of Government of NCT of Delhi issued another Circular providing the guidelines for relocation and rehabilitation of project affected persons. The petitioners' claim that they are entitled to alternate shops in terms of the said policy.

11. The petitioners claim that they continue to pursue with the concerned authorities for allotment of alternate shops. Although various authorities had recommended the same, alternate shops were not allotted to the petitioners. On 11.10.2010, DDA issued a letter refusing to allot any shops on the ground that the recommendation

issued by LAC was not unconditional and the eligibility of the petitioners for allotment of an alternative shop was required to be examined.

12. The LAC did not make an unconditional recommendation, as it reasoned that shops in question had been acquired directly by DMRC and it was for DDA to verify the facts from DMRC. A letter to the said effect was sent by LAC (East) on 26.11.2009.

13. In view of the impasse, the petitioners filed another writ petition before this Court – being ***W.P.(C) 79/2012*** captioned ***Manoj Kumar and Ors. v. Government of NCT and Ors.***

14. The said writ petition was disposed of by an order dated 21.08.2013, whereby this Court directed that a Committee be constituted comprising of the specified officers of DDA and DMRC to process the applications for allotment of shops in lieu of shops acquired by DMRC at Purani Lakdi Market, Shahdara. The petitioners therein were directed to appear before the said Committee at the office of the Deputy Commissioner (Central), Government of NCT of Delhi. The Committee was also directed to issue a public notice at least two weeks prior to the said hearing and to dispose of the applications filed by the petitioners as well as all other applicants by a speaking order, within a period of twelve weeks.

15. The Committee issued an order dated 29.05.2014 holding that the petitioners were ineligible for allotment of alternate shops. Since the said order was passed without hearing the petitioners and was not

the speaking order, the petitioners have filed a contempt petition before this Court – Cont.Cas(C) 536/2014.

16. During the course of the proceedings, DMRC produced an order dated 07.05.2014 on the basis of which the letter dated 29.05.2014 was issued by DMRC. The order dated 07.05.2014 was a speaking order and, therefore, the petitioners withdrew the contempt petition and thereafter, filed the present petition assailing the said order.

Reasons and Conclusion

17. A plain reading of the impugned order indicates that the applications of the petitioners for allotment of alternate shops were declined for two reasons. First, that the shops in question were not *pucca* structures and were temporary structures made of Bambo sticks/*ballis* with tin/cloth roof. According to the Committee, such structures did not qualify for allotment of alternate shops. Second, that the petitioners were encroachers of Government land forming part of right of way and, therefore, the Committee held that the petitioners would not be eligible for allotment of alternate shops.

18. It is contended on behalf of the petitioners that they are not the encroachers but were tenants in the shops in question. In support of the same, the petitioners have produced a rent receipt dated 01.04.1997 issued by one Smt. Angoori Devi w/o Late Shri Chandgi Ram acknowledging a receipt of ₹1800/- as rent for the period 01.04.1997 to 31.03.1998 (at the rate of ₹150/- per month). The petitioners also produced other documents to establish their

occupation of the shops in question including registration under the Delhi Shops and Establishment Act, 1954, Telephone Bill, Income Tax Returns etc.

19. Mr Puneet Taneja, learned counsel appearing for the petitioners also placed much reliance on the extract of the land record (*Jamabandi*) for the year 1995-96. He had handed over a copy of the said *Jamabandi* and contended that the same related to the area in question. He contended that although the Government was reflected as the owner, the said *Jamabandi* also indicated the area was rented and rent was payable to Delhi Improvement Trust. He submitted that the said document established that the petitioners were not encroachers but were *bona fide* sub-tenants of the successors in interest of the original tenants.

20. The short controversy that requires to be addressed is whether the petitioners claim for alternate shops falls within the relevant policy. As observed above, the Government of NCT had issued a Circular dated 31.01.2002 setting out the guidelines for relocation and rehabilitation of project affected persons.

21. It was noticed in the said Circular that there was no prior policy for rehabilitation or project affected persons except for *jhuggi jhopri* clusters which were covered under the Relocation Policy of the Slum and JJ Department, MCD and GNCTD. In view of the above, the Cabinet had taken a decision on 10.12.2001 for providing alternate

accommodation. The relevant extract of the said Circular set out below:-

“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

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)”

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.

23. The eligibility conditions for being covered under the relocation/rehabilitation policy, issued by the Circular dated 25.10.2006, is set out below:-

“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
 - (a) The guidelines on Relocation & Rehabilitation Policy for project affected persons will be uniformly applicable for all phases of MRTS project.
 - (b) Those whose shops/residences or workshops/industrial, units got affected in such a manner that they have to leave the said premises. In case of premises where only small part, (less than 50%) has been taken and the occupant continues to

reside/work from there, will not be eligible for rehabilitation under this scheme.

- (c) In case of shops, the persons doing business, whether he is the owner of land or the tenant, will be eligible.
- (d) In case of premises being used as residential units the rehabilitation will take place only in case of owner residing there. The tenants will not be eligible under the scheme.
- (e) The treatment in respect of workshops/industrial units would be the same as those of industrial shops indicated above.
- (2) 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.

“The above mentioned yardsticks is as per existing policy of the Government regarding relocation of Slum & JJ Clusters, any change in the policy of government regarding relocation of JJ Clusters will apply to this category mutates and mutandis.”

- (3) In case of pucca residential unit on private land in unauthorized colonies, their cases will be recommended by the concerned ADM/LAC to Land & Building Department which would in turn recommend the case to DDA for allotment of built up EWS or equivalent category houses at pre-determined rates, depending on availability.
- (4) In case of pucca residential unit on private land on authorized colonies or land leased for 99 years, the

cases of project affected persons will be recommended by concerned ADM/LAC to Land & Building Department which will in turn recommend the case to DDA for offering them built up houses at pre-determined rates as per following criteria:

For residential plot of size less than 100 sq.mtrs. acquired for DMRC Project.	A flat in LIG
For residential plot of size above 100 sq.mtrs. acquired for DMRC project.	A flat of MIG category

The offer of built up flats as per above criteria will be at pre-determined rates depending upon availability in respective categories.

- (5) Cases of project affected shopkeepers (as per eligibility criteria proposed above) as verified by concerned ADM/LAC will be recommended for DDA for making alternative allotment of shop at pre-determined prices depending upon it availability with DDA.”

24. It is apparent from the above that, in terms of Clause 1(c) of the aforesaid policy, any person doing business, whether the owner of land or as a tenant, would be eligible for being covered under the Relocation/Rehabilitation Policy.

25. In the present case, there is little material to establish that the premises in question were under *bona fide* tenancy. Admittedly, the land belongs to the Government and there is no material to indicate that the same was leased out to the petitioners or the landlords (Mrs

Angoori Devi). Although, the learned counsel for the petitioners had handed over a copy of *Jamabandi* during the course of hearing for the year 1995-96, it is not clear whether the same relates to the land in question. However, even assuming that it does, the same does not carry the petitioners' case any further. This is so because there is no material to show that the cultivators named therein continue to be tenants and/or Mrs Angoori Devi (to whom rents were claimed to be paid by the petitioners) was the successor in interest of the said persons.

26. Apart from producing two rent receipts – one for the period 01.07.1993 to 30.09.1993 and one for the period 01.04.1997 to 31.03.1998 – there is no other material produced by the petitioners to establish that the premises in question were under *bonafide* tenancy and the petitioners were the tenants. Further, as stated above, there is no material to indicate that Smt Angoori Devi was the tenant of the Government of NCT of Delhi at the material time. In this view, the contention that the land in question was under unauthorised occupation / encroachment, cannot be faulted. Whereas the policy in question does cover owners as well as tenants, it, plainly, cannot be extended to rank encroachers. This Court is also of the view that the policy in question is also to be read in the meaningful manner and it cannot be read to cover temporary/make shifts structures of bamboo/*ballis* and mating, so as to enable persons operating from the same to be allotted *pucca* shops at alternate sites.

27. In view of the above, this Court finds no infirmity with the impugned order. The petitions are, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 3, 2019
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