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

+ W.P.(C) 5594/2020 & CM APPL. 20211/2020 (stay)

SARWAN KUMAR & ORS. Petitioners

Through: Mr. Mimansak Bhardwaj, Advocate.

versus

STATE GOVT OF NCT & ANR. Respondents

Through: Mr. Anjum Javed, ASC for GNCTD.
Ms. Biji Rajesh, Advocate for Mr.
Gaurang Kanth, SC for R-2/SDMC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **24.08.2020**

The hearing was conducted through video conferencing.

CM APPL. 20212/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

W.P.(C) 5594/2020 & CM APPL. 20211/2020 (stay)

3. Issue notice. The learned counsel named above accept notice on behalf of respondents no. 1 and 2 respectively. At request the petition is taken up for hearing.
4. The petitioners impugn the 'speaking order' dated 10.08.2020 passed by respondent no. 2, rejecting their representation (i.e. the earlier writ petition W.P.(C).11732/2019 which was to be so treated). They had sought allotment of an alternate plot of land in lieu of their *jhuggi jhopris* at Tirtarpur, Rajouri Garden, New Delhi. According to the

South Delhi Municipal Corporation ('SDMC'), the petitioners are squatters on municipal land and have to be evicted therefrom. Reference is made to two orders of this Court; i) order dated 04.02.2020 in W.P.(C) No.11732/2019 and ii) order dated 11.08.2020 in CONT (CAS). 407/2020.

5. The order dated 04.02.2020 in W.P. (C) No. 11732/2019 had directed, *inter alia*, as under:

“9. Let the concerned Deputy Commissioner treat the present writ petition as a representation of the petitioners for implementation of the policy as contained in the communication dated 18.4.2007. Same shall be disposed of by a speaking order. Needful will be done within eight weeks.”

6. The order in the aforementioned contempt petition reads as under:

“

ORDER
11.08.2020

1. The hearing was conducted through video conferencing.

2. Learned counsel appearing for the respondents on advance notice submits that a speaking order has been passed on 10.08.2020 and as per the decision, the case of the petitioners is not covered by the scheme and they are not entitled to alternative accommodation.

3. He submits that in terms of the speaking order steps would be taken to evict the petitioners from the respective jhuggi jhopris. He submits that prior to any physical

eviction taking place a notice to vacate, granting at least one week's time, would be issued to the petitioners. The statement is taken on record.

4. In view of the above, respondents are directed to communicate order dated 10.08.2020 to the petitioners and also to the counsel for the petitioner. It is further directed that for a period of two weeks from the date of communication of the order dated 10.08.2020 to the petitioner, no coercive steps shall be taken against the petitioner.

5. In view of the above statement and assurance given by the respondents, learned counsel for the petitioner seeks leave to withdraw the petition reserving the right of the petitioners to challenge the order dated 10.08.2020.

6: The petition is accordingly dismissed as withdrawn. All rights and contentions of the parties are reserved.

7. Copy of the order be-uploaded on the High Court website and be also forwarded to learned counsels through email....”

7. In purported in compliance of the aforesaid directions, a ‘speaking order’ was passed by the Corporation on 10.08.2020. It is reproduced hereunder:



**SOUTH DELHI MUNICIPAL CORPORATION
OFFICE OF THE DY. COMMISSIONER
WEST ZONE**

Dr. Sahib Singh Verma Nigam Bhawan
Near Shivaji College, Shivaji Park, Rajouri Garden, New Delhi-110027
(Email ID: dmcc@delhi.gov.in)



10/11/20

No.D-36/DC/WZ/2020

Dated: 10/11/2020 95

Subject: Representation as appeal submitted before the Hon'ble High Court of Delhi in WP(C) 11732/2019 in the matter of Sh. Sarwan Kumar and Others Vs GNCTD and another.

SPEAKING ORDER

In compliance of order of Hon'ble High Court of Delhi dated 04.02.2020 in the matter of Sh. Sarwan Kumar and Others Vs GNCTD and another in WP(C) 11732/2019, speaking order is to be passed treating the writ petition filed in the above mentioned matter as representation of the petitioners for the implementation of the policy of GNCTD as contained in the communication dated 19.04.2007 in case the same is applicable to the petitioners.

The Chairman, PGC vide order No. PGC/2019/MCD/06/14286 dated 28.10.2019 directed to take necessary action in the matter of complainant of Sh. Manish Rawat in Grievance No.PGC/2019/MCD/06 regarding unauthorized and illegal encroachment at permanent/temporary in nature on the Govt. land in Titarpur Village, Rajouri Garden.

During the course of hearing before the PGC, it was established that the khasra No. 33/1 Village Titarpur was acquired by the Govt. vide award No. 47/19/1-72 and the huggies have been constructed in the shape of permanent/temporary encroachment on

the mentioned khasra. Also the same was verified during the joint inspection on 21/10/2019 by the SDMC officials along with Tahsildar, Patwan and survey team members from the office of SDM, Rajouri Garden. Accordingly AE, SDMC issued the notices to the unauthorized occupants vide letter dated 31.10.2019 to remove the encroachment by themselves from the Govt. land within 7 days of receipt of the notice.

Aggrieved by the said notice dated 31.10.2019, the appellant filed a petition before the Hon'ble High Court of Delhi vide No. WP(C) 11732/2019 and CM No. 48183-48195/2019 titled Sh. Sarwan Kumar and others and Govt. of GNCTD and Others. In the matter Hon'ble High Court of Delhi vide order dated 08.11.2019 accepted the prayer of the petitioners for granting 3 months time to enable them to relocate themselves inter-alia it is ordered that *"in the interest of justice, the above stand of petitioners is accepted and the petitioners may take steps in terms of the submission made in Court within 3 months from today. Till then, now coercive steps shall be taken against the petitioners"*.

In the meantime the representatives / petitioners filed a review petition in the Hon'ble High Court of Delhi seeking review of the order of Hon'ble High Court of Delhi dated 08.11.2019. Hon'ble Court in the matter vide orders dated 04.02.2020 has observed inter-alia that:-

- The writ petition was filed seeking quashing of notice of eviction dated 31.10.2019. On 08.11.2019 when the matter came up for hearing learned counsel for the petitioners stated that they need reasonable time to enable them to relocate themselves and in view of the said submission made, this court directed that no coercive action shall be taken against the petitioners for a period of three months. Petition was disposed of.
- Against the said order an appeal was filed before the Division Bench being LPA 784/2019. The same was withdrawn on 23.12.2019 with liberty to file a Review Petition. The present Review Petition has now been filed review the said order dated 08.11.2019. Reliance is placed on a communication issued by the Govt. of

5/10

Signature

NCT of Delhi dated 18.04.2007 by which it has been stated that as per rehabilitation policy of Delhi Government there is an arrangement to allow 18sq meter alternative plot to jhuggi dwellers residing upto 1990 and after January 1991 and before December 1998 a plot of 12.5sq meter as an alternative plot to the jhuggi dwellers for removal of jhuggi basti.

- I may note that petitioners were present when the learned counsel for petitioners had made the statement on 06.11.2019 seeking three months' time to relocate. I may also note that in the Writ Petition, petitioners have themselves mentioned in para 6 that they had urged the Assistant Engineer to give them additional time to relocate somewhere else because it was almost impossible to relocate whole house material and find out a proper place in Delhi and prayed for additional time to vacate the jhuggies.
- In the light of the above, I cannot help observing that the Review Petition is only an attempt to resist from the undertaking given to this court. In the Writ Petition when the order dated 06.11.2019 was passed, I may note that there are serious allegations being made by local residents that the jhuggies are being used for commercial purpose and not being used for residential purpose.
- Hence, there are no reasons to review the order of this court dated 06.11.2019.
- However, keeping in view the policy of the Government of NCT of Delhi as contained in the communication dated 18.04.2007 it is appropriate that the petitioners are given an opportunity to approach the SDMC to implement the said policy in case the same is applicable to the petitioners.

The AE-II (M-I) of the West Zone issued notice dated 31/10/19 on account of directions given by the Public Grievance Commission to take necessary action by the removal of temporary encroachment and permanent unauthorized construction from the Govt. land. The said notice was challenged by the petitioners before the Hon'ble Court where the petitioners stated that they need reasonable time to relocate themselves. The Petitioner's counsel prayed three months' time to enable them to relocate. The prayer of the petitioners was accepted by the Hon'ble Court.

However, as stated, a review petition was filed by the Petitioner i.e. R.P-51/2020 and CM Nos.4485-86/2020 which was disposed of by the Hon'ble Court vide direction dated 04/02/2020. The direction dated 04/02/2020 inter-alia makes it clear that keeping in view of the policy of the Govt. of NCT of Delhi as contained in communication dated 18/04/07, it is appropriate that the petitioners are given an opportunity to approach the SDMC to implement the said policy in case the same is applicable to the petitioners.

In the Writ Petition, the petitioners have not filed any document or record to show how they are entitled to be considered for relocation on the basis of policy relied upon by them before the Hon'ble Court. Even otherwise, since the encroachment is on Govt. land and the notice of removal of encroachment were issued on the direction of PGC, it will be appropriate that the representation of the petitioner regarding their entitlement, if any, under the policy, if any, is considered by the Competent Authority of the appropriate Govt.

In view of the foregoing discussion, the representation of the Petitioner is rejected.



Dy. Commissioner
West Zone

1. SARIWAN KUMAR S/o Sh. Ram Dutt Singh,
R/o WZ-97-A, Titarpur, Rajouri Garden, New Delhi
2. Shri Babloo S/o Ram Dulare
R/o WZ-97-A, Titarpur, Rajouri Garden, New Delhi
3. Shri Som Nath S/o Ram Fer
R/o WZ-97-A, Titarpur, Rajouri Garden, New Delhi
4. Shri Dava Kishan S/o Sh. Hanuman

V
T/L

8. According to the petitioners i) the said impugned order does not specify, as to how the petitioners would not be entitled to the benefits of the policy of relocation and ii) if the Corporation wanted to examine certain documents in support of the petitioners' claims, the same could have been sought from the claimants. Instead, the Corporation went ahead and rejected their claims, without asking for the papers and without even granting a hearing to the petitioners; iii) there has been denial of natural justice; iv) therefore, for all the aforesaid reasons the impugned order is erroneous, non-speaking, baseless and arbitrary.
9. According to the Corporation, the petitioners had 'not filed any document or record to show how the petitioners are entitled to be considered for relocation'. However, it is not in dispute, that the Corporation did not ask for these documents or records. To that extent the order is premature. The petitioner claim they have evidence in support of their claims. The same should be taken into consideration. In view of the above, this petition shall be treated as further representation of the petitioners to the SDMC. Additional documents, as may be sought by the Corporation or sought to be relied on by the petitioner, to establish their eligibility under the rehabilitation policy, as mentioned in the order dated 04.02.2020, may be supplied by the petitioners within 2 weeks from the date of receipt of the Corporation's communication in this regard. The petitioners shall be granted a hearing by the SDMC before the final decision is taken. Till then no coercive measures shall be taken against the petitioners.

- 10.If the petitioners are aggrieved by the order of the SDMC, it will be open to them to pursue their legal remedies.
- 11.The writ petition, along with the pending application, is disposed-off in terms of the above.
- 12.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

AUGUST 24, 2020

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