

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

Date of decision: 23rd NOVEMBER, 2022

IN THE MATTER OF:

+ **LPA 314/2021 & CM APPL. 30501/2021**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Ramesh Singh, Sr. Advocate with
Ms. Prabhsahay Kaur, Standing
Counsel for DDA with Mr. Nakul
Ahuja, Panel Counsel for DDA.

versus

PUSHPA WANTI & ORS. Respondents

Through: Mr. J. K. Bhola and Mr. Siddharth
Khurana, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Pushpa Wanti who is Respondent No. 1 in the instant case is the widow of one Late Shri Madan Lal. Her father-in-law was Late Shri Ram Dass.
2. Sometime around the partition, Late Shri Ram Dass, along with his son migrated from Multan, Pakistan. Due to this, it appears that their family lost their house and were supposedly squatting at a particular hutment at 8-A Block, Karol Bagh, Delhi. Due to their refugee status, a refugee card was issued in favor of the head of the family i.e. Late Shri Ram Dass from the Government of India.

3. In November 1951, as a largesse, the then Minister for Works, Production and Supply assured that if any person displaced on account of the partition, would not be evicted from their temporary residence, nor would any construction be removed unless certain conditions such as sector-wise plan or alternative accommodation was provided to them.

4. In furtherance of this assurance, the Gadgil Assurance Scheme ('**Scheme**') was floated by the Delhi Development Authority for certain areas in New Delhi. This Scheme was aimed at rehabilitating such displaced persons by providing them alternate houses or plots in the same area where they had been squatting. Considering the narrow purpose of the Scheme, it was targeted towards individuals who occupied the land prior to 15th August 1950. Under the Scheme, the following were recognized as beneficiaries: -

- a. **Category A:** Those who have occupied before 15th August 1950 would be allotted plots measuring 85.6 Sq. yds in the same area at pre-determined rate.
- b. **Category B:** Those who have occupied from 1950 to 1960 they will be provided plot measuring 25 Sq.yds in the same locality at a pre-determined rate.
- c. **Category C:** Those who have come between 1960 to 1980 will be provided plots measuring 25 Sq. yds. Plot at market rate.

5. The following were the documents which had to be furnished to get the benefit of the Scheme: -

1. Refugee Registration Certificate (Essential).
2. Old Ration card of 1950.
3. Voter list of 1951.

4. Receipt of payment of damages assessed by Authority on the basis of rates levied for the first time in 1952.
5. Census Slip issued by the MCD in 1960.
6. Present Ration Card.
7. Electric/Water/Telephone bills, if any dated back to 1950.
8. Any other letter addressed to squatter at his place of occupation prior to 15.8.1950 by any Government Agency.
9. An affidavit duly attested by the 1st Class Magistrate to the effect that no plot/land has been allotted to him/them prior to this and he/they has/have not taken any benefit under the Gadgil Assurance Scheme.
10. Proper identity-proof duly attested by Gazetted Officer or 1st Class Magistrate.

6. It appears that both, Ram Dass and his son Madal Lal applied for the allocation of a plot under the Scheme. Neither a perusal of the facts nor documents placed on record conclusively indicate when Ram Dass had applied under the Scheme. Furthermore, nothing has been placed on record to indicate whether father and son i.e Ram Dass Madal Lal were living together or separately.

7. In 1968, Late Shri Madan Lal submitted a form to the DDA giving material particulars such as his ration card details, and his address. Pertinently, in this form, his Ration Card was recorded as 'AJ-341450'. Further, Madan Lal had stated that he had paid damages of Rs. 212 which had accrued from 1952 onwards.

8. Between 1970 and 1980, the Respondent No. 1's husband i.e Late Shri Madan Lal made several applications and representations to the Appellant claiming benefit under the Scheme against a certain hutment No. T-5335/2 in Block 8A, Karol Bagh ('said site'). This hutment was supposedly a sub-division of hutment No. T-5335 in Block 8A, Karol Bagh where Ram Dass, and his wife resided. He also filed various affidavits during this period stating that he had in fact not received any rehabilitative benefit from the State.

9. In 1980, the DDA finally responded to Madan Lal stating that his request to be placed in Category-A of the Scheme could not be acceded to since his occupation of the land was post 1950.

10. This was reaffirmed by the letter addressed to Madan Lal in 1981, whereby the Deputy Director of the DDA stated that his request to be upgraded to category-A could not be acceded due to the lack of proof that he had been squatting there prior to 1950. On the contrary, supposedly the Committee had concluded that the land was occupied only in 1952.

11. It appears that sometime around 1990, a Committee was constituted to evaluate the claims of squatters of Block 8-A, Karol Bagh, New Delhi. This Committee went through the claims of various individuals to decide whether the documentary evidence adduced by them sufficed to be placed under Category-A of the Scheme. The case of Lajwanti, i.e the wife of Ram Dass, was placed before this Committee. She appeared before it and furnished documents such as copy of payment receipt in support of the refugee status, DIT Notice issued in favor of issued in the name of her husband, which proved her refugee status. The Committee adopted a lenient approach in certain cases, including that of Lajwanti, and recorded a finding in favor of

Lajwanti. Hence, at this point, Madan Lal's mother had already been awarded the benefit of the scheme.

12. Individuals who found their claims to be rejected by the Committee filed suits before various District Courts across Delhi. Due to the volume of cases, this Court passed an Order, the details of which have not been placed on record and are not borne out from the documents as well, constituting another committee under the Chairmanship of K. Ramamurothy to evaluate the claims of these Petitioners in one go. Neither Pushpawanti nor Madan Lal were before this Committee.

13. In 1999, Late Shri Madan Lal passed away. Pertinently, the death certificate noted that his address was E-2/129A, Shastri Nagar, New Delhi.

14. In 2006, after the demise of Late Shri Madan Lal, Respondent No. 1 herein, filed a Civil Suit bearing No. 1202/2006 titled Pushpawanti v. DDA. This was the first round of litigation initiated by the Respondent No. 1 herein to claim a benefit under Category A. However, this was subsequently withdrawn.

15. Thereafter, the Respondent No. 1 herein came to file WP(C) No. 9024/07 with the same relief, as that made in Civil Suit bearing No. 1202/2006. *Vide* Order dated 04.07.2012, the Ld. Single Judge remanded the matter back to the Director (Lands) of the Appellant herein directing the Director to decide the matter expeditiously.

16. At the first instance, Director (Lands) of the Appellant declined to place Respondent No. 1 in Category A of the said Scheme due to deficiencies in the documentary evidence adduced. The primary reasons were as follows: a) that the claim of Madan Lal was considered previously and placed in Category 'B'; b) the refugee registration certificate in the

name of Madal Lal was not placed on record; *c*) Voter list of 1951 was not placed on record; *d*) Census slip produced was unsigned and undated; *e*) that the Scheme had already benefitted his mother.

17. Being aggrieved, the Respondent No. 1 filed another WP(C) No. 5533/2013, seeking a direction setting aside the Order dated 17.04.2013 passed by the Director (Lands) of the Appellant.

18. On this instance as well, the Ld. Single Judge found it prudent to remand the matter back to consider the representation of the Petitioner as certain documentary evidence i.e the ration card dated 20.07.1950, and census of squatters which indicated that the Respondent No. 1 had been residing there since before 1950, was not considered by the Director (Lands). Pertinently, the Ld. Single Judge categorically held that the case be decided only on the basis of whether Late Shri Madan Lal was in occupation of the site before August 1950, as per the criteria under Category-A of the Scheme.

19. Even on this instance, the Director (Lands) of the Appellant rejected the claim of the Respondent No. 1. The Director (Lands) stated that the ration card was not legible. Further, the ration card No. registered with the department was recorded as AJ-341450, while the one submitted by the Respondent No. 1 here bore the No. 141590. Hence, due to this discrepancy in the number of the ration card, the genuineness of the same was in doubt. It was further observed that Respondent No. 1's husband's name did not appear in the relevant voter list, which would have indicated that he was staying there prior to 1950. Late Shri Madan Lal's death certificate coupled with the Survey lists also did not allude to the fact that Shri Madan Lal resided in 8A/T-5335, against which he was seeking benefit. On the basis of

this, the Director (Lands) vide Order dated 24.02.2014 held that it could not conclusively be shown that Late Shri Madan Lal was in occupation of the site before 1950. The Director (Lands) also recorded that Ram Dass had already availed of the benefit under the Scheme.

20. It was against the above-mentioned Order dated 24.02.2014, that WP(C) No. 925/2015 was filed before the Ld. Single Judge. The Ld. Single Judge disposed of the Writ Petition, *vide* Order dated 19.02.2020, with the following observations:-

- a) With regard to the ration card, the learned Single Judge observed that the said ration card was issued in the name of one Late Shri Madan Lal and the date of issuance is recorded as 20.07.1950. On the basis of this, the learned Single Judge observed that the observations made by the Director (Lands), DDA with regards to the illegibility of the ration card were inaccurate.
- b) Further, with regard to the purported unreliability of the ration cards, the learned Single Judge relied upon the form filled by Late Shri Madan Lal dated 15.11.1968 wherein at Serial No.7, the number of the ration card has been recorded as AJ-341450. The learned Single Judge observed that ration card numbers change after a period of time and as noted the original ration card was issued in the name of father of Late Shri Madan Lal, hence, the change is imminent. On the basis of this, the learned Single Judge did not find favour with the argument that the previous ration card could not be relied upon.

- c) With regards to the discrepancy in the hutment number which would go to prove that Pushpa Wanti had been living separately, the following was observed: *first*, the Ld. Single Judge stated that as per the affidavits of the DDA itself, neither deceased Madan Lal nor Pushpa Wanti had any plot or house in the urban limits of Delhi, and *secondly*, the survey list of 01.05.1981 also recorded the claims of families as living separately. In light of the foregoing, the Ld. Single Judge ruled on a preponderance of probabilities that Shri Madan Lal's claim was separate from that made by Late Shri Ram Dass, who had been found suitable to have a plot in Category 'A'. This was bolstered by the fact that the DDA has itself conceded that it had found Respondent No.1 suitable for a plot under Category 'B'.
- d) Further, the Ld. Single Judge has stated that nothing has turned on the fact that Late Shri Madan Lal had incorrectly indicated the hutment number.
- e) Furthermore, the learned Single Judge relied upon the fact that Late Shri Madan Lal had been paying damages since 01.01.1952.
- f) It was also observed that the DDA has not placed any document establishing that the application of Late Shri Madan Lal to show that he had occupied the hutment prior to 15.08.1950 had been rejected.

21. The LPA before this Court has been filed assailing the Impugned Judgment.

22. Mr. Ramesh Singh, Sr. Advocate for the Petitioner has, in sum and substance, argued that the Ld. Single Judge has adjudicated on disputed question of fact, which could only have been decided in a Civil Suit. Further, it has been argued that the Ld. Single Judge has reached the conclusion by relying upon documents, the genuineness of which is questionable. It has also been argued that the Ld. Single has wrongly applied the standard of preponderance of probabilities to decide the questions in the Writ Petition.

23. *Per contra*, the counsel for the Respondents, in defending the propriety of the Impugned Judgment, has placed reliance upon extensive documentary evidence to show that the Respondents had a claim under category-A of the Scheme.

24. Heard the counsel for the Petitioner and Respondents and perused the material on record.

25. It is evident that before the filing of WP(C) No. 925/2015, the claim of the Respondent No. 1 was adjudged by the Director (Lands) twice. On these occasions, the Director (Lands) did not find the documents provided by Respondent No. 1 and her late husband to conclusively establish their claim over a plot under Category-A of the Scheme. Further, the second Order dated 24.01.2014 passed by the Director (Lands) affirmed the findings contained in the first insofar as it categorically states that the Respondent No. 1's husband did not have a separate claim under the Scheme.

26. On a previous occasion, the Appellant herein had also written to Late Shri Madan Lal stating that he did not have a claim under Category-A of the Scheme. Hence, it appears that the Appellant herein has, while deciding the claim of the Respondents, reached the same conclusion thrice.

27. It was in this backdrop that the Impugned Judgment was passed wherein, the Ld. Single Judge allowed the Petition, and decided factors such as the genuineness of the ration card, and discrepancy in the hutment on the basis of a preponderance of probabilities.

28. It is a fact that there exists a discrepancy in hutment number as Late Shri Madan Lal had stated that the hutment in lieu of which he was seeking allotment was T-5335/2. However, in the affidavits submitted to the Appellant, the number of the hutment was recorded as T-5335. Further, the Survey list generated by the Appellant also indicated someone else's name, and not the name of Late Shri Madan Lal for hutment No. T-5335. Whether Late Shri Madan Lal in fact resided at the hutment T-5335/2 or not is purely a question of fact. Any court while deciding such a question of fact would have to sift through extensive documentation provided by both, the Respondent No. 1 and the Appellant herein. Furthermore, even doubts regarding the genuineness of the ration card can only be adjudged conclusively by leading extensive documentary and oral evidence. The other issues before the Ld. Single Judge are also disputed questions of fact. However, to give claims of the Respondent No. 1 credence, and resolve these questions of fact, the Ld. Single Judge has applied the standard of 'preponderance of probabilities' to conclude that Late Shri Madan Lal may have resided at the relevant site and is entitled to benefit under Category-A of the Scheme.

29. It is trite law that this Court ought not to go into questions of fact while exercising its jurisdiction under Article 226 of the Constitution of India. Further, as these are muddled questions of fact, the Ld. Single Judge ought not to have revisited them, especially after concurrent findings had

been rendered by the statutory authority, i.e the Director (Lands). Considering the expanse of the questions of fact, this Court is of the opinion that the claims of the Respondents were best adjudged by leading detailed evidence before an appropriate Civil Court.

30. In this regard, the Hon'ble Supreme Court in Swetambar Sthanakwasi Jain Samiti v. Alleged Committee of Management Sri R.J.I. College, Agra, (1996) 3 SCC 11, has observed as under: -

*“We are of the view that the High Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution of India. **Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil court under the ordinary law...Where the civil court has the jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional court and interfere with the interim/miscellaneous orders of the civil court. The writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.**”*

31. Furthermore, the Apex Court in GhanShyamDas Gupta v. Anant Kumar Sinha, (1991) 4 SCC 379, held as under: -

*“8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. **The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions...The High Court, in the present***

case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court.”

32. Recently, the Hon'ble Apex Court, in Radha Krishan Industries v. State of Himachal Pradesh & Ors., **2021 SCC OnLine SC 334**, has stated that in cases with hotly disputed questions of fact, the High Court may not interfere under Article 226, in case an equitable efficacious alternate remedy exists. From the cases canvassed above, it is evident that this Court ought not to interfere when the Petitioner can pursue an alternate remedy, such as a civil suit. In the instant case, considering the length and breadth of the documentary evidence that needs to be considered by the adjudicating authority, this Court is of the opinion that it ought not to have been entertained under the jurisdiction of this Court under Article 226 of the Constitution of India.

33. Further, it is apposite to note that the said Scheme qualifies as a State largesse and categorically provided on the basis of certain fixed criteria. The Scheme is directed towards individuals affected on account of the partition, who could conclusively prove their refugee status, and that they had been squatting on sites, such as the said site since before particular cutoffs. Only individuals who satisfied the said criteria were given benefit under it. This Court ought only to interfere with such decisions if the State largesse is marred by arbitrariness.

34. In the facts of this case, since the Respondents herein have not been able to conclusively prove the refugee status of Late Shri Madan Lal, and the factum of squatting at the said site, they cannot claim to have a right under the Scheme. The learned Single Judge has, in fact, cast a reverse

burden on the DDA to show how the Respondents are entitled to the benefit of the Scheme while the burden is on the Respondents to demonstrate that they are entitled to the benefit that has been given to the persons falling in Category A.

35. Furthermore, the DDA was benevolent enough to give a plot to the father-in-law of the Respondent No. 1, i.e Late Shri Ram Dass, under Category-A of the Scheme previously as well. This benevolence, under Category B, has also been extended to Madan Lal and the Respondents herein for the sole reason that the DDA had demanded 'damages', and that Madan Lal had paid such damages to the tune of Rs. 212.10 for occupying the said site. In fact, in the form submitted to the DDA back in 1968, Madan Lal had himself stated that he had started paying such damages from 1952. Hence, there exists nothing on record to indicate conclusively that Madan Lal had been residing on the site prior to 1950. The suggestion that Madan Lal ought to be granted the benefit under Category-B does not establish any right to claim benefit under Category-A, as suggested by the Ld. Single Judge, and is simply a benevolent act of the DDA.

36. This Court also does not agree with the Ld. Single Judge's observation that nothing turned on the discrepancy in the hutment number. In fact, this discrepancy was determinative in establishing the factum of Madan Lal's independent occupation of the hutment and his separate claim under the Scheme. In fact, there is nothing on record to show whether 8A/T-5335 was actually sub-divided into two plots or whether the sub-division of the plot was done prior to 1950; whether Madan Lal resided in a common unit or two different units so as to entitle him for a separate benefit of the Scheme. In order to claim the benefit of Category A plot, it was on Madan

Lal to prove that he was residing in a separate unit prior to 15.08.1950. As stated earlier, this was to be established by documentary evidence, which in the instant case is heavily disputed. On the contrary, the documentary evidence lends credence to the case of the DDA. Illustratively, the death certificate of Madan Lal shows that his residence was E-2/129A, Shastri Nagar, New Delhi. Further, in the survey conducted by the Scheme Branch in the year 1981 and 1998, the name of ShriMadan Lal was conspicuously missing. As per this list, one, Shri Nanak Chand was residing at this site.

37. In any event, DDA, in terms of the materials available before it, which are uncontroverted documents, has given the benefit of the Scheme to Madan Lal under Category B. The principle of preponderance of probabilities cannot be evoked in this case enabling the ancestors of Ram Dass to a plot under Category A. By applying the principle of preponderance of probabilities, the learned Single Judge has actually reversed the burden of proof on the DDA to establish that Madan Lal was not entitled to the benefit of Category A. In the considered opinion of this Court, this learned Single Judge ought to have remanded the matter back and it was on Madan Lal to establish that he was in occupation of a portion of T-5335 prior to 1950 in his own capacity in order to entitle him to the benefit of Category A.

38. Further, there were documents such as the census of squatters, and the Deputy Commissioner's certificate dated 14.08.1963, the veracity of which has been questioned by the DDA. In light of this as well, the Ld. Single Judge ought to have directed the parties to a suit, to determine the veracity of these documents, before reaching conclusions about the rights that accrue from these documents.

39. In light of the above, it is evident that the questions before the Ld. Single Judge were hotly disputed questions of fact, best adjudged before a civil forum. Furthermore, the Respondents do not have a right to be given the benefit under category A, as the Scheme is a largesse of our welfare State. Hence, the Impugned Judgment ought not to conclusively decide the rights of the Respondents.

40. In light of this, the instant Appeal is allowed, with pending applications if any, disposed of.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 23, 2022

S. Zakir/Sh