

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

Judgment reserved on : 24.03.2009
Judgment pronounced on : 31.03.2009

+ W.P.(C) 481-543/2005, C.M. No. 380/2005 & 7414/2008

R.M.YADAV & ORS.

..... Petitioners

Through : Mr. K.T.S. Tulsi, Sr. Advocate with Mr. Mohan. B. Agarwal, Advocate.

versus

UOI & ORS.

..... Respondents

Through : Mr. Rajesh Katyal, Advocate, for UOI.
Mrs. Anju Bhattacharya with Mr. Algin Matt John, Advocates, for NSCI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

S.RAVINDRA BHAT, J.

1. The writ petitioners in these common proceedings seek a direction to the respondents to quash a notice of demolition dated 06.01.2005, issued by the first respondent (hereafter called “L&DO”), to the second respondent.

2. The facts necessary for deciding the writ petition are that the second respondent (hereafter called “NSCI”) was allotted land measuring about 8.6 acres in 1951. It constructed buildings, including a club house and residential quarters for its employees, on the allotted land. The petitioners claim to have been allotted residential quarters constructed on the land in question at different points in time, by the NSCI, which, they state has been charging License fee

or rent. The petitioners contend that the NSCI wanted to evict them sometime in 1996-97. It is alleged that there was connivance of the respondents so that the residential quarters could be demolished to make space for the NSCI's commercial activities. The petitioners claim to have agreed to vacate the premises after they were furnished with alternative accommodation. They advert to the filing of a writ petition, W.P. 4537/1997, by the NSCI for restoration of water supply, disconnected by the authorities. During the course of the proceedings, this Court, on 08.08.2003, made an order directing Union of India to proceed against unauthorized constructions of the property, which was non compoundable, within NSCI. The said order is in the following terms:

"08.08.2003

*Present: Mr. Vinay Bhasin, Senior Advocate with Mr. H.L. Raina, Advocate for the petitioner.
Mr. U. Hazarika, Advocate for the respondent/UOI.*

CWP 4537/1997.

Learned counsel for the respondent states that he will file an affidavit during the course of the day in terms thereof a letter dated 29.07.2003 has been sent to the petitioner setting out the charges to be paid by the petitioner for withdrawal of re-entry and the petitioner giving necessary undertakings not to carry on any misuse in future.

Learned senior counsel for the petitioner, however, submits that the letter has been issued recently and the petitioner has had no opportunity to put forth its stand on the quantification and correctness of the damages. The petitioner is granted leave to file reply affidavit to the same within 4 weeks.

The petitioner shall appear before L&DO on 01.09.2003 at 3.00 p.m. and shall be permitted to make a representation in respect of the letter dated 29.07.2003. The L&DO shall consider the representation and take a decision on the same within a maximum period of 6 weeks thereafter. The decision be placed on record.

Learned senior counsel for the petitioner has also invited by attention to the order dated 07.03.2003 wherein it was pointed out that

the petitioner had already addressed letters to the L&DO to take action against the unauthorized construction and misuse of the property, which is non-compoundable. In view thereof, the L&DO is directed to proceed against the same within a maximum period of 8 weeks from today. The concerned police authorities will render police assistance on a request being made by the L&DO one week in advance. The assistance will also be rendered by the local authorities as may be required by the L&DO. Learned senior counsel offers that the cost shall be borne by the petitioner.

List on 28.10.2003.

Dasti to learned counsel for the parties.

*Sd/-
[SANJAY KISHAN KAUL, J.]*

3. The petitioners submit to not being parties to the above writ proceedings. They also allege that the Court was not made aware of all the facts pertaining to their lawful occupation of premises. According to them, the L&DO wrote a letter on 26.08.2003, stating that the demolition would be carried out. In respect of that order, a writ petition, being W.P. 5504/2003 was filed. The Union of India, they submit, stated in the hearing on 29.08.2003 that the programme for demolition had been postponed in view of the directions of the Election Commission. The writ petition was, therefore, disposed of on 29.08.2003.

4. The petitioners advert to letter dated 19.09.2003 written by the office of L&DO indicating a phased demolition of unauthorized construction in NSCI, stating that in the first phase, demolition of unauthorized construction in the premises, which do not require relocation of the occupants, would take place and that in the second phase on depositing of relocation charges with the Slum and J.J. Department by the NSCI, such demolition could take place. Similar letter was written on 22.09.2003.

5. The petitioners claim to have approached the Court on 26.09.2003 voicing their apprehensions. The writ petition was disposed on the basis of statement made by the

respondents, in the following terms:

“The petitioners claimed to be employees of respondent no.2 and are stated to be in occupation of certain premises made available to them by respondent No.2 club for residence during the course of employment. There is however, a dispute about the fact whether the petitioners are paying any rent or not since the same is contended by learned counsel for the petitioners, but no document has been placed on record and learned senior counsel for respondent No. 2 on instructions disputes this position.

The stated reason for the petitioners approaching this Court is a letter dated 19.09.2003 issued by the Office of the L&DO. The letter states that directions were passed by this Court on 08.08.2003 in CWP no. 4537/1997 to take action against the unauthorized construction and that respondent No.3, the Election Commission has in fact given its no objection to the action. The letter further goes on to state that, in the first phase, these shall be demolition of unauthorized construction in the premises which do not require any relocation to be carried out on 27.09.2003 and the second phase would be on relocation charges being deposited with the Slum & I.T. Department to be carried out with the rehabilitation plan.

Learned counsel for respondent No. 1 states that apprehension of the petitioner is without any basis since in the first on 27.09.2003 the (sic) learned counsel both the respondents state that the action is against the unauthorized structures and no against the occupied quarters which may be unauthorized. It is further apparent that as yet L&DO is not contemplating any action in respect of the portion which would require relocation.

In view of the aforesaid statement made by learned counsel for the respondents there does not seem to be any reason for the apprehension expressed by the petitioners in the writ petition and the writ petition stands disposed of.

C.M. 11102/2003

No further orders are called for in the application in view of the disposal of the writ petition.

Application stands disposed of.

Dasti to learned counsel for the parties.

September 26, 2003

*Sd/-
Sanjay Kishan Kaul J.”*

It is now contended that by the impugned order dated 06.01.2005, a programme was chalked-out

to remove unauthorized construction and the NSCI was intimated on this score.

6. The NSCI refers to various orders of Court; it also states that the building was constructed in 1952-1953. It is claimed that the club had not constructed any quarters and 28 quarters were existing when the land was leased. It was contended that some unauthorized construction had taken place, on the land. NSCI relies upon certain letters to the NDMC stating that since it is not in a position to remove the unauthorized construction, the intervention of government agencies was necessary. The copies of letters and communications addressed to the Lieutenant Governor and the NDMC are relied upon. The respondents deny having deducted rent or License Fee charges and submit that a sum of Rs. 1 lakh was deposited as cost for demolition of the unauthorized construction. It is further submitted that by letter dated 25.02.2004, the NSCI was informed by L&DO that J.J. clusters existing in the premises of club are not recovered under any identifiable category.

7. Learned counsel for the petitioners rely upon an interim order of the Court dated 14.01.2005 and letter of the L&DO on 10.09.2003 as well as the order of this Court in W.P. 6335/2003. It was submitted that without taking any action towards relocation of the occupants who have been in the premises for long periods of time, it is not open to the respondents to take coercive action and demolish the premises. It is contended that the respondents have been depositing rent or license fee; electricity has been supplied, ration cards issued by the concerned authorities, NSCI has even been deducting License Fee from the petitioners' salaries. In these circumstances, they cannot be characterized as encroachers or unauthorized occupants or occupants of unauthorized structures. Learned senior counsel contended that in any event, the respondents cannot take law into their own hands since the premises were given on lease to NSCI. It was submitted that unless the Court grants the relief claimed, grave injustice would be

caused as the petitioners' peaceful possession would be threatened and they would be dispossessed.

8. The NSCI submits through its counsel that even though originally 28 quarters were allotted to these employees, later other unauthorized constructions were put up, which are presently under occupation. Many of the occupants could be employees of NSCI; yet that did not condone their wrongful action in putting up unauthorized constructions. Learned counsel submitted that apart from these, there are several other encroachers and trespassers who have set up structures, which cannot be permitted to exist. Learned counsel contended that these structures resulted in the L&DO issuing misuse charges and reentering the property. Learned counsel for the NSCI relied upon letters written to the Enforcement Department of the NDMC, on 12.02.2007, 14.06.2007 and 06.08.2007, towards demolition of structures and relocation.

9. Learned counsel for the Union of India submitted that the premises in question were leased to NSCI and the latter was under duty to primarily have the unauthorized construction removed. It is submitted that unless the J.J. clusters existing in the premises are not covered in any identified category, encroachers are ineligible for relocation in terms of existing policy. The NSCI was, it was submitted, directed to get such encroachers removed in view of the directions of the Court in C.W.P. 4537/1997. The L&DO relies upon letter dated 25.02.2004.

10. In the preceding discussion of facts, what is revealed is that the petitioners claim to be in lawful possession of quarters given to them by the NSCI. The NSCI's position is that it did not build any quarters and that 28 such premises existed when the lease deed was signed. Both the parties advert to previous orders of this Court in other writ proceedings. W.P. 4537/1997 was a writ petition where the NSCI appears to have challenged the disconnection of electricity and similar facilities. The petition was disposed of on 08.08.2003. By then, L&DO had determined

the lease on the ground of misuse of the property. The L&DO was directed by the Court to proceed against unauthorized construction. It is nobody's case that the petitioners were parties to these proceedings. In the second writ petition, the Court recorded the statement of the authorities that action would not be taken in view of the impending elections. The subsequent correspondence between the NSCI and other agencies such as L&DO etc. reveal that the question of how demolition was to take place and whether relocation charges had to be deposited, was considered. In this background, W.P. 6335/2003 appears to have been filed by the petitioners as employees of the NSCI. While disposing of the writ petition, the Court recorded the following contention:

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“The stated reason for the petitioners approaching this Court is a letter dated 19.09.2003 issued by the Office of the L&DO. The letter states that directions were passed by this Court on 08.08.2003 in CWP no. 4537/1997 to take action against the unauthorized construction and that respondent No.3, the Election Commission has in fact given its no objection to the action. The letter further goes on to state that, in the first phase, these shall be demolition of unauthorized construction in the premises which do not require any relocation to be carried out on 27.09.2003 and the second phase would be on relocation charges being deposited with the Slum & I.T. Department to be carried out with the rehabilitation plan.”

11. No doubt, the NSCI and L&DO have placed subsequent letters largely to explain that there is no question of depositing any charges since the kind of constructions on the site do not qualify for relocation. It is in this background that the order dated 06.01.2005 has been challenged.

12. The NSCI has not seriously disputed that the petitioners are its employees. What, however, it contends is that unauthorized construction appears to have been undertaken by several of them. At the same time, it contends that a large number of outsiders, about 250, according to the letters written to the NDMC also exist on the site. Now, undeniably, the

property in question is leased by L&DO to the NSCI for the purpose of establishment and managing a club. The NSCI is concededly a private body. The L&DOs position is that NSCI's inaction in regard to clearing unauthorized construction disentitles it to the subsistence of the lease. The L&DO repeatedly said after 2004 that unauthorized constructions and encroachments cannot be dealt with by it under the relocation policy.

13. The orders of 08.08.2003 and 26.09.2003 of this Court, though made in separate proceedings have the clear effect of recording a difference between those who had no right to stay at all, and those like the petitioners. In W.P. 6335/2003, the Court had noted the petitioners' contention that they were occupying premises since long as licensees. In these circumstances, the petitioners' apprehension about their cases being clubbed with encroachers appears to be a valid and justifiable one. Although the lands in question were allotted to NSCI and in that sense are private property, yet the fact remains that lease was entered into with the Central Government, which sought to determine the same on the ground of encroachment and unauthorized construction.

14. During the hearing, neither of the respondents, i.e. L&DO nor the NSCI were able to shed light on whether the provisions of Public Premises Act can be invoked in such circumstances. In these circumstances, the respondents cannot, in the opinion of the Court, summarily dispossess the petitioners without first following some procedure known to law. It has been established since long that dispossession of someone from land or property or the occupation by an executive authority without recourse to any legal proceeding or without legal authority, is unsustainable under our Constitution (refer *Bishan Dass v. State of Punjab* AIR 1961 SC 1570; *State of West Bengal v. Vishnu Narain and Associates Private Limited* 2002 (4) SCC 134).

15. The above observations, however, cannot conclude the matter. As observed earlier, the lands were apparently resumed, after determination of the lease by the respondent L&DO. The L&DO as well as the Enforcement Wing of the NDMC whose orders are on record, speak of encroachment of these lands. In the circumstances, the respondents' determination to take some action on the basis of directions of the Court, as indicated in the impugned letter cannot be entirely faulted.

16. In view of the preceding discussion, the following directions are issued:

(a) The respondent L&DO shall survey the existing structures and determine which of them are being occupied by the petitioners in their capacity as employees of the NSCI. The survey shall also indicate the extent, if any, of construction and whether there are any unauthorized portions.

(b) The result of the survey, disclosing all the particulars in relation to the area and other necessary details shall be furnished to the NSCI within four weeks after its completion.

(c) It is open to the NSCI to take steps in accordance with law for the eviction of such occupants amongst the petitioners, who have unauthorizedly constructed on the quarters allotted to them or have overstayed in them contrary to the terms of their employment or have put up entirely unauthorized constructions which they were not entitled to. Such steps shall include but are not limited to filing of civil proceedings for eviction; in case the NSCI is of the opinion that provisions of the Public Premises Act are available, it can seek assistance of the L&DO in that regard.

(d) The respondents shall not take any action except in accordance with law as

regards the occupation of quarters and structures by the employees of NSCI, covered by directions (b) and (c) above;

(e) Subject to the category of employees and individuals covered by S. Nos. (a) to (e) above, such action as is warranted, for removal of encroachers, in line with this Court's previous orders may be taken.

17. The writ petition and the accompanying applications are disposed of in terms of above directions. No costs.

S. RAVINDRA BHAT
JUDGE

MARCH 31, 2009
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