

Devender Kumar vs.delhi Development Authority and Ors

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Court : Delhi

Decided On : Nov-02-2016

Appellant : Devender Kumar

Respondent : Delhi Development Authority and Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI \$~14, 15, 18, 19, 20, 21, 25 & 26 * + W.P.(C) 4677/2016 SHAMA

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun versus Khanna, Advocates. DELHI DEVELOPMENT AUTHORITY AND ORS

... RESPONDENTS

Through Ms.Manika Tripathy Pandey with Mr.Ashutosh Kaushik, Advocates for DDA. Ms.Sakshi Popli, Advocate for R- 2/SDM Punjabi Bagh. Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh. + W.P.(C) 4741/2016 RAJENDER KUMR

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun Khanna, Advocates. versus DELHI DEVELOPMENT AUTHORITY & ANR

... RESPONDENTS

Through Ms.Manika Tripathy Pandey with Mr.Ashutosh Kaushik, Advocates for DDA. Mr.Gaurav Varma, Advocate for R-2. Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh. + W.P.(C) 12115/2015 PYARE LAL

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun Khanna, Advocates. Page 1 of 9 W.P.(C) 4677/2016 & Ors. Versus DELHI DEVELOPMENT AUTHORITY & ORS

... RESPONDENTS

Through Ms.Manika Tripathy Pandey with Mr.Ashutosh Kaushik, Advocates for DDA. Mr.Naushad Ahmed Khan, ASC for SDM with Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh. + W.P.(C) 12147/2015 DEVENDER KUMAR

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun Khanna, Advocates. versus DELHI DEVELOPMENT AUTHORITY AND ORS + W.P.(C) 1791/2016 SHRI NIWAS Through Ms.Manika Tripathy Pandey with

... RESPONDENTS

Mr.Ashutosh Kaushik, Advocates for DDA. Mr.Anuj Aggarwal, ASC for GNCTD. Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh.

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun Khanna, Advocates. versus DELHI DEVELOPMENT AUTHORITY & ANR

... RESPONDENTS

Through Ms.Shobhna Takiar with Ms.Pallavi Shalli, Advocates for DDA. Mr.Naushad Ahmed Khan, ASC for SDM. Page 2 of 9 W.P.(C) 4677/2016 & Ors. + W.P.(C) 4118/2016 SURINDER KUMAR Ms.Prabhsahay Kaur, ASC for GNCTD with Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh.

... Petitioner

Through Mr.Hemant Singh with Mr.Tarun Khanna, Advocates. versus DELHI DEVELOPMENT AUTHORITY AND ANR

... RESPONDENTS

Through Ms.Manika Tripathy Pandey with Mr.Ashutosh Kaushik, Advocates for DDA. Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh. Ms.Jyoti Taneja, Advocate for R- 2/GNCTD. Through Ms.Ujala Vishnoi, Advocate.

... Petitioner

DELHI DEVELOPMENT AUTHORITY AND ORS

... RESPONDENTS

Through Mr.Sanjeev Sabharwal, standing BABLOO + W.P.(C) 1876/2016 versus + W.P.(C) 3236/2016 counsel for DDA. Ms.Swaty Singh Malik with Mr.Harsh Nagar, Advocates for R-2 to 4. Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh.

... Petitioner

SARDAR SEWA SINGH Through Ms.Ujala Vishnoi, Advocate. versus W.P.(C) 4677/2016 & Ors. Page 3 of 9 DELHI DEVELOPMENT AUTHORITY & ORS

... RESPONDENTS

Through Mr.Sanjeev Sabharwal, standing % counsel for DDA. Ms.Prabhsahay Kaur, ASC for GNCTD with Mr.Pradeep Kumar Kanoongo from SDM Office, Punjabi Bagh. Date of Decision :

2. d November, 2016 CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral) 1. Present batch of writ petitions has been filed challenging the impugned letter dated 23rd October, 2015 passed by the SDM Punjabi Bagh, whereby the applications of the petitioners for allotment of flats under Housing Scheme for Rehabilitation of Punjab Migrants (HSRPM) have been rejected on the ground that their names do not exist in the original record of Peera Garhi Camp of Punjab Migrants (Scroll) received from Tehsildar, Headquarters, Record Room of Divisional Commissioner Office, Tis Hazari, Delhi.

2. Learned counsel for petitioners state that the petitioners are bonafide and genuine Punjab Migrants who had initially been recommended by the office of the SDM, Punjabi Bagh for allotment of flats under the aforesaid scheme. They emphatically contend that respondent No.1-DDA is bound to abide by the initial list confirmed by the SDM. They also contend that SDM, Punjabi Bagh, who had issued W.P.(C) 4677/2016 & Ors. Page 4 of 9 the subsequent impugned letter had ignored the eligibility criteria laid down in the HSRPM.

3. On the other hand, learned counsel for respondents refer to and rely upon the eligibility criteria laid down in Clause 3(1) of HSRPM, which reads as under:-

"The applicant must be a person of family who has migrated from Punjab and is staying in the designated 07 refugee camp. This should be certified by the Dy.Commissioner of concerned District in which the camp of the applicant is situated. 4. They state that the second verification process conducted by the SDM at the instance of this Court was in accordance with the law and in consonance with the principles of natural justice.

5. In rejoinder, learned counsel for the petitioners contend that the petitioners names are to be found in the list of 457 Punjab migrants of the Peera Garhi camp. Though they admit that the petitioners names are neither in the original scroll of 1980 nor in 2130 list of Punjab migrants of the Peera Garhi camp, yet they state that all the three lists i.e. the original scroll as well as lists of 2130 and 457 Punjab migrants had been prepared by the respondents and had been used in the past as the basis for allotment of flats.

6. Learned counsel for the petitioners further state that vide letter bearing No.F1(1)/SDM/PB/2014/4979 dated 12th August, 2014, the then SDM had communicated with prior approval of the Deputy Commissioner, GNCT of Delhi, that the Committee will examine the genuineness of Punjab Migrants on the basis of nine documents alone. They point out that the scroll of 1980 was never made a part of the verification process. W.P.(C) 4677/2016 & Ors. Page 5 of 9 7. However, this Court is of the opinion that there are serious disputed questions of fact which need to be adjudicated upon after a full trial in the present batch of matters.

8. A perusal of the paper book reveals that initially the petitioners cases had been recommended for allotment by the then SDM, but subsequently the Director, Vigilance (DDA) had written a letter dated 23rd September, 2014 to the SDM, Punjabi Bagh stating that verification was being done on the basis of nine documents without referring to the basic document i.e. the monthly relief disbursement register. The Director, Vigilance (DDA) had pointed out that the said document is the most material document and without the said document, the list of Punjab migrants would not be acceptable to DDA.

9. Even during the arguments, the admitted position is that none of the petitioners find a mention in the monthly relief disbursement register. This fact assumes importance as the only contemporaneous document which would confirm beyond doubt that the petitioners were Punjab migrants, who had been receiving sustenance amount at the relevant time, is absent.

10. It is also an admitted position that serious allegations have been levelled by the respondents as well as the third parties with regard to allotments under HSRPM.

11. While hearing the connected matters, this Court had been informed that a scam had been perpetrated by brokers under the HSRPM inasmuch as in a number of matters, cheques had been issued in a seriatim manner by allegedly independent and separate beneficiaries from one bank account. The matter is also stated to be under investigation by the Economic Offence Wing of Delhi Police. W.P.(C) 4677/2016 & Ors. Page 6 of 9 12. This Court is also in agreement with the contention of learned counsel for respondent-DDA that in view of the serious allegations of fraud and forgery, the second verification process was conducted by the SDM at the instance of this Court.

13. At this stage, learned counsel for the petitioners state that if someone is wrongly allotted a plot under the HSRPM, then this Court always has the power to cancel such an allotment.

14. This Court may mention that in another writ petition being W.P.(C) 1978/2010 the petitioner-Devender Kumar had prayed that respondent-DDA be directed to

cancel allotment of Flat No.32, Block-C, Sector-7, Pocket-2, Dwarka, New Delhi, allotted to Smt. Raj Rani under HSRPM on the ground that the said lady had impersonated the petitioners mother. The said petitioner-Devender Kumar had also prayed for allotment of flat under HSRPM on the ground that he was a genuine legal heir of Smt. Raj Rani. Though initially the writ petition was dismissed by a coordinate Bench of this Court on the ground that it raised disputed questions of fact, the Division Bench had set aside the order and remanded the matter back for reconsideration.

15. Learned Predecessor of this Court had allowed the said writ petition vide judgment and order dated 05th March, 2015 and directed issuance of allotment letter in favour of the petitioner-Devender Kumar on the ground that he was a sole legal heir of late Smt. Raj Rani. Now, an application being CM No.25530/2016 has been filed for recall of said judgment and order dated 05th March, 2015 by the original allottee on the ground that the petitioner-Devender Kumar had played a fraud upon this Court. Consequently, in the said writ petition, this Court will have to determine as to who is the true legal heir of the Punjab Migrant, late W.P.(C) 4677/2016 & Ors. Page 7 of 9 Smt. Raj Rani. It has also been noticed that in nearly all cases of Punjab Migrants, the flats are sold immediately after allotment and by the time the Court takes up the writ petitions for cancellations for final disposal, the property has exchanged hands multiple times and an innocent purchaser for valuable consideration without notice of fraud is in possession.

16. Consequently, this Court is of the view that the petitioners would have to file a suit and prove the averments as well as the documents that they seek to rely upon.

... RESPONDENTS

would be at liberty to lead evidence to the contrary.

17. Moreover, just because an allotment is stated to have been made in the past by the respondents on the basis of the third list of 457 Punjab Migrants, this Court is of the view that the petitioners cannot claim negative equality. The Supreme Court in *Union of India and Others vs. M.K. Sarkar*, (2010) 2 SCC59 has held as under:-

"25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others. (See Chandigarh Admn. v. Jagjit Singh, Gursharan Singh v. NDMC, Faridabad CT Scan Centre v. D.G. Health Services, State of Haryana v. Ram Kumar Mann, State of Bihar v. Kameshwar Prasad Singh and Union of India v. International Trading Co.

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the W.P.(C) 4677/2016 & Ors. Page 8 of 9 person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief. (emphasis supplied) 18. Accordingly, the present writ petitions are disposed of with liberty to the petitioners to file appropriate legal proceedings in accordance with law. This Court clarifies that it has not expressed any opinion on the merits of the controversy. Rights and contentions of all the parties are left open. MANMOHAN, J NOVEMBER02 2016 KA W.P.(C) 4677/2016 & Ors. Page 9 of 9