Gurpawan Kumar Vs. S.P. Jakhanwat

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Court : Delhi

Decided On : Sep-22-1995

Reported in : 1995IVAD(Delhi)138; 60(1995)DLT347; 1996(36)DRJ29

Judge : Vijender Jain, J.

Acts : Delhi Development Act - Sections 21(2)

Appeal No. : Civil Contempt Appeal Nos. 64, 67, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 9

Appellant : Gurpawan Kumar

Respondent : S.P. Jakhanwat

Advocate for Pet/Ap. : W. Singh,; Mukul Ilipla,; Ravinder Sethi and;

Judgement :

Vijender Jain, J.

(1) This order will dispose of Civil Contempt Petition Nos.82, 64, f)7, 81, 83, 84, 85, 86, 87, {W, 89, 90, 9i, 92, 93, 94, 95, 95, 97, 98, 136, 137, 138, 139,]40, 141, 142, 143 of 1994, which are similar in nature.

(2) These petitions for contempt have been filed by the petitioners on account of non-allotment of a plot of 250 sq.yds. alleging that respondents were bound to allot

to the petitioner said si/.e of plot in view of the order made by the Division Bench of this Court on September 27, 1993. The said order is as follows I -

'for the reasons stated in the judgment of Full Bench of this Court in Civil Writ No.623/91 (Rama Nand v. Union of India & ors.) given on 30th July, 1993 and also in the decisions in Sanwal Singh v. UOl & ors. (Civil Writ No-3172/91), dated 13th September, 1993 this writ petition is disposed of in similar terms. If any person wants change of plot within the same zone or a bigger plot as per the recommendations of the Delhi Administration, then a representation to this effect should be made to the DDA. Mr.Sethi has also submitted that the Dda will allot plots of approximately the same sides as were recommended by the Delhi Administration and, secondly the requests for change of plot within the zone will be considered on merits of each case and subject to availability of plots but this will not confer any vested right on the petitioner for a change of plot.'

(3) MR.WAXIR Singh, learned counsel appearing for the petitioner, has argued that after the order dated 27th September, 1993 and pursuant to the undertaking of the counsel for the respondent-Delhi Development Authority (in short 'DDA'), the petitioner wrote a letter to the respondent dated 24th January, 1994 to allot a plot of Gurpawan Kumar v. S.P. Jakhanwal the size of 250 sq.yds. as per the recommendations of the Delhi Administration dated 22nd April, 1987 wherein the Delhi Administration has recommended for allotment of plot of 250 sq.yds. to the petitioner.' The said letter was written by the Delhi Ad- ministration to the respondents directing them to allot a plot measuring 250 sq.yds in lieu of petitioner's acquired land. The copy of the letter is at pagc-16 of the paper book. Mr.Singh has contended that after the disposal of the writ petition, as I he respondents have' not done anything, the petitioner sent a legal notice dated 24lh January, 1994 to the respondents as to why contempt proceedings he n(r)l initialed against them if a plot of the si/.e of 250 sq.yds. was not allotted to the petitioner as per the orders of the High Court. The stand of the respondents is that there was a change in policy by the Delhi Administration and the petitioner was eligible for 33 sq.yds. si/.e of plot.

(4) MR.RAVINDER Sethi, learned counsel appearing for the respondents, who was the counsel, who gave the statement before the Division Bench, as reproduced above, has argued that what he meant in the Court was that the petitioner will be allotted a plot as recommended by the Delhi Administration, that statement was not de hors the policy of Delhi Administration, which was changed on 1st November, 1992 and from that date onwards, the petitioner was entitled for allotment of 40 sq.yds. of land and not 250 sq.yds. Mr.Sethi has further contended that it was on account of change of policy of the Delhi Administration that the plot of land in question could not be allotted to the petitioner and there was no willful disobedience on the part of the respondents in this regard.

(5) MR.SINGH, repelling the submissions of learned counsel for the respondents, has urged that neither the policy of 1st November, 1992 nor of 1st April, 1987 could be applicable to the case of the petitioner. Mr.Singh has also contended that policy dated 1st April, 1987 cannot be made applicable to the case of the petitioner as the letter recommending his allotment to be of 250 sq.yds. plot was made after the policy dated 1st April, 1987. He has contended that the letter of the Delhi Administration recomending to the Dda for allotment of 250 sq.yds. is dated 22nd April, 1987. Even otherwise, Mr.Singh has argued that the allotment of 40 sq.yds. of land in lieu of land acquired was up to 1000 sq.yds. and the petitioner's land, which was acquired, was one bigha, thereforee, the petitioner would not fall in the policy of the Delhi Administration dated 1st April, 1987.

(6) Regarding the policy of 1st November, 1992, Mr.Singh has argued that the state- ment, made by the counsel for the respondents, was made on 27th September, 1993 wherein he has specifically mentioned that the Dda will allot plot approximately of the same sizes as were recommended by the Delhi Administration. Mr.Singh further contended that even otherwise the policy dated 1st November, 1992 was to come in operation to the recommendations, which were subsequent to 1st November, 1992. Mr. Singh has also contended that by acquisition the land of the petitioner has been acquired and one of the clauses for allotment of alternative plot to such category of persons, whose land has been acquired, is that they do not own any other residential house or plot in the Union Territory of Delhi and, thereforee, he cannot be deprived of a reasonable plot of

land. In support of his contentions, he has cited Stale of U.P. V. Smt. Pista Devi & ors. : [1986]3SCR743 in which the Supreme Court while referring to the provisions as contained in Section 21(2) of the Dda Act held I -

'although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purpose of land development in urban areas. We hope and trust that the Merit Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated person who have no houses or shop buildings in the urban areas in question.

he has also cited the case of Hansraj H.Jain v. State of Maharashtra & ors. : (1993)3SCC634 and in the basis of the aforesaid authorities, Mr.Singh has argued that while his it petitioner which was disposed of by the Division Bench in terms of the order dated 27th September. 1993, it was on the basis of statement made by the counsel for the respondents, Mr.Singh has contended that but for the statement of the counsel for the respondent Court .would have dealt with the aforesaid judgments of Supreme Court, in this context, learned counsel has submitted that Court has not authoritatively decided and dealt with these questions.

(8) Both the parties 'have relied on the Full Bench decision of this Court in Ramanand v. Union of India & ors. 1993 Iii Ad (Delhi) 385. That judgment, as a matter of fact, dealt Wii'. as to whether a person, whose land has been acquired for the planned development of Delhi, has got vested rights to the allotment of alternative plot. The conclusion reached by the Pull Bench is as follows -

'ANindividual, whose land is acquired, does not have an absolute right to the allotment oi alternative plot of land for residential purposes and that such a person is only eligible to be considered for allotment of a plot subject to certain conditions.'.

(9) There is some force in the arguments of learned counsel for the petitioner that the view taken by Full Bench is somewhat different than what has been stated by Supreme Court in State of U.P. V. Smt. Pista Devi & ors. 's case (supra) and Hansraj H.Jain v. State of Maharashtra & ors. 's case (supra), in which the Supreme Court has approvingly made applicable Section 21 of the Dda Act. In Ramanand v. Union of India & ors. 's case (supra), the Full Bench while holding that an individual, whose land has been acquired, does not have absolute right to the allotment of alternative plot of land for residential purposes, his only entitlement is that he is eligible to be considered for allotment of a plot subject to certain conditions. State of U.P. V. Smt. Pista Devi & ors. case (supra), the Supreme Court held -

'We hope and trust that the Merit Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban areas in question.'

(10) The emphasis of the Supreme Court is that development authority as far as 'practicable may provide house site or shop site of reasonable size on reasonable terms.

(11) On the basis of the above arguments, Mr.Singh has argued that the respondents are in contempt as they have willfully disobeyed the order of the Court. In support of his arguments, he has also cited the case of Lt-Colonel Kd Gupta v. Union of India & ors. Air 1989 Sc 1393 in which it was held -

'THE judgment of this Court did clearly proceed on the footing that the lower medical categorisation prejudiced the petitioner in promotions. For the first time, the respondents have taken the stand in the contempt proceeding that the lower categorisation has nothing to do with the refusal to accord promotion to the petitioner. In the circumstances indicated above, the plea now advanced cannot be accepted. In fact, Mr.Ramaswamy, Additional Solicitor General, appearing for the respondents being cognizant of this situation stated to us during the hearing of this application that the petitioner has justification to feel aggrieved.'

(12) He has also cited the case of T R Dhananjaya v. J Vasudevan : 1996 CriLJ426 in which the Supreme Court held -

'.....WHENthe claim inter se had been. adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court.....'

(13) It seems that counsel for the respondent has made the statement before the Court in right earnestness that the Dda will allot plot approximately of the same sizes as were recommended by the Delhi Administration but later on, on account of the policy of Delhi Administration, which was brought to the notice of the respondent the respondent did not allot the plot in question to the petitioner as recommended by Delhi Administration.

(14) Stand taken by respondent No.1 in this regard is to tally unwarranted. It is stated in the counter-affidavit filed by Shri S P Jakhanwal, who, at the relevant time, was the Vice-Chairman of the Dda, that there was no undertaking given by the counsel for the Dda before this Court. He has even denied in the affidavit that the answering deponent has not dealt with the present case as he has not been in picture in respect of the issuance of letter of allotment. A notice, given by the lawyer of the petitioner, was addressed to Shri S P Jakhanwal, which inter alias stated that contempt proceedings will be initiated if plot of size of 250 sq.yds. is not allotted to the petitioner within fifteen days. No reply was given by the respondent of the said letter.

(15) Petitioner has filed the present writ petition, which was disposed of in terms of the decision of Full Bench in Ramanand v. Union of India & ors.'s case (supra) as well as in view of the disposal of C. W.Nos-623/91, 3631/91 and 3172/91, on the assurance made by the learned counsel for the respondent-DDA .that alternative plot approximately of the same size, as has been recommended by the Delhi Administration, Would he allotted to the petitioner. In these circumstances best way for the respondent was to approach this Court for clarification of the order in view of changed policy of Delhi Administration. No efforts were made by the

respondent to go before the Division Bench for seeking clarification or modification of the order passed by the Division Bench. The petitioner was precluded from pursuing his remedy in the writ Court-on account of the aforesaid assurance of the counsel for the respondents. I would not like to dwell much on this aspect while exercising contempt jurisdiction. The question before me is whether in these facts and circumstances any contempt was committed by the respondents or not. In view of the policy decisionof 1991, I do not hold that the respondent has willfully disobeyed the order of this Court but in these circumstances the petitioner has definitely been put to disadvantage on account of the statement made by the learned counsel for the respondents. thereforee, I am of the opinion that no willful disobedience has been made by the respondent. The petitioner is, however, entitled to take appropriate steps available to him before the writ court. The contempt notice is discharged.

(16) The contempt petition is disposed of in terms of the above order.