

Deepak Kumar Pathak and ors. Vs. Mcd and ors.

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Court : Delhi

Decided On : Jan-21-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 926/2007

Appellant : Deepak Kumar Pathak and ors.

Respondent : Mcd and ors.

Advocate for Def. : Mr. O.P. Sexena, Adv.

Advocate for Pet/Ap. : Mr. Vivek Chib; Mr. K. Varghese; Mr. Hem C. Vashisht, Adv.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported Yes in the Digest?

RAJIV SAHAI ENDLAW, J.

1. The two petitions were being listed together for hearing on the contention of counsels that they entailed similar question. However, factual matrix being

different, facts thereof are set out separately. W.P.(C) NO.926/2007

2. The fourteen petitioners are the occupants of the stalls allotted in the year 1983 by the Slum & J.J. Wing, then of the DDA, subsequently of the MCD and now succeeded by the Delhi Urban Shelter Improvement Board, in Lakshmi Market, Madangir, Main Road near Khanpur Depot. It is the case of the petitioners that the said stalls were allotted on "License Fee Basis" with the license fee at the time of allotment of `25/- per month. The petitioners claim that about the same time stalls were also allotted on similar basis in Sidharth Market and G-Block Market, also in the Madangir area. The petitioners claim that in the year 1986 the allotment of the stalls in Sidharth Market and G-Block Market was converted from License Fee Basis to "Permanent Lease Basis" upon payment of four times the original cost of the stalls. It is stated that thus a sum of `9,000/- only was demanded and collected from each stall holders. The petitioners claim that they were also informed at that time that their stalls would also be similarly converted from License Fee Basis to Permanent Lease Basis and representations in this regard were also submitted by the petitioners.

3. The petitioners however claim that conversion was not allowed in Lakshmi Market only for the reason that the papers of Lakshmi Market had been misplaced in the office of DDA. The petitioners rely upon an inter office memo dated 5th February, 1992 in this regard.

4. The petitioners however claim that in or about the year 1992 they were issued letters in which initial cost of conversion of `2,000/- was demanded pending the working out of the cost of conversion and to be adjusted in the cost ultimately computed. The petitioners claim to have again represented for issuance of the demand letters of the entire conversion cost.

5. On 29th January, 2002 the Slum & J.J. Department of the MCD published a public notice for regularization of commercial stalls in favour of unauthorized occupiers thereof. The petitioners state that though they are original allottees of stalls but by way of abundant caution applied there under also.

6. The petitioners further claim that in September, 2003 ultimately demand letters were issued in respect of the stalls in their occupation in Lakshmi Market, demanding `2,45,000/- for conversion of the stalls from License Fee Basis to Permanent Lease Basis. The petitioners represented against the said demand contending that they were similarly situated as the stall holders in Sidharth Market and G-Block Market, conversion wherein was allowed for `9,000/- only and thus they could not be charged `2,45,000/-. Upon rejection of their representations, the present writ petition was filed.

7. Notice of the writ petition was issued. A counter affidavit was filed in which it was admitted that though a decision was taken in the year 1999 to convert the allotments of the stalls from License Fee Basis to Permanent Lease Basis but since the costing was not available, the same could not be implemented and on account of payment of `2,000/- only was demanded from those stall holders who were seeking to repair their stalls. It is also pleaded that most of the occupants of the stalls are not the original allottees but subsequent purchasers but allotment in whose favour had been regularized in accordance with the scheme. It is further pleaded that the sum of `2,45,000/- was calculated in the year 2003 by the Finance Wing and the petitioners had not paid the same for four long years till the filing of the writ petition or even thereafter also. It was denied that the case of the petitioners is similar to that of stall holders in Sidharth Market or G Block Market or that the petitioners are entitled to conversion on payment of `9,000/- only as paid by the stall holders of Sidharth Market and G-Block Market.

8. This Court being of the opinion that the counter affidavit did not disclose the basis of the cost, vide order dated 5 th March, 2008 directed filing of an additional affidavit.

9. In the additional affidavit so filed, it is stated that the costing of the stalls in occupation of the petitioners was worked out on the basis of the expenditure documents and was duly approved by the competent authority on 19th April, 2002; that the area of the stalls was 8 sq. mtr. and the updated rates of L&DO; for the area for the year 2002, were `27,820/- per sq. mtr. and thus the cost was worked out to `2,45,000/- per stall.

10. On the contention of the counsel for the petitioners on 30th April, 2008 of disparity in cost being charged from the petitioners and stall holders of other Markets aforesaid, yet another affidavit was directed to be filed.

11. Along with additional affidavit so filed, the Policy contained in Resolution No.318 dated 10th September, 2001 of the respondent MCD was filed. In the said Policy it was noted that in early 1980s the scheme relating to construction of stalls and shops with a view of providing stable employment opportunities to the urban poor was floated; the shops/stalls were constructed by the Slum & J.J. Department in various Colonies of Delhi; as per the instructions of Delhi Government, the said shops/stalls earlier allotted on License Fee Basis were agreed to be allotted on Leasehold Basis; that over the years the stalls were sold by the original allottees and which was posing a problem in recovery of dues with respect thereto and a decision was taken to regularize the unauthorized occupants by charging occupancy charges equal to four times of the cost prescribed at the time of allotment and issue leasehold rights to such persons. The original cost of the stalls in the possession of the petitioners was stated to be not available.

12. This Court vide order dated 8th February, 2010 directed filing of further additional affidavit to the effect whether the demand for `2,45,000/- was made on the basis of original cost of the stalls at the time of allotment.

13. In the affidavit so filed it was reiterated that the cost of `2,45,000/- 10 was calculated as per L&DO; rates of 1999 to 2002; that the cost of the stalls in other Markets in Madangir was also calculated as per the L&DO; rates then prevalent. It is stated that since the cost of the stalls of the petitioners was calculated in subsequent year, the same was higher than the cost of the stalls in other Markets calculated in earlier years. In yet another additional affidavit dated 3rd April, 2010 it was disclosed that the stalls subject matter of this writ petition were allotted on License Fee Basis in 1983, proposal for costing of the stalls was received in April, 2002 in accordance with updated land cost on L&DO; rates and construction cost by adding interest at 14% with effect from 1982 to 2002 and which had the approval of the appropriate authority.

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14. The three petitioners claim to be in possession of the stalls initially allotted in the year 1984 by the Slum & J.J. Department, then of the DDA, thereafter transferred to MCD and now substituted by the Delhi Urban Shelter Improvement Board in Sunlight Colony, Hari Nagar, Ashram, New Delhi. It is the case of the petitioners that the said stalls were allotted in accordance with the scheme for allotment of low cost commercial stalls/shops to Economically Weaker Sections of the society. The stalls were allotted initially on "License Fee Basis" with license fee of `25/- per month. The petitioners further claim that the respondents vide Resolution No.318 dated 10th September, 2001 (supra) decided to regularize change of hands of the stalls and also change the terms of allotment from License Fee Basis to "Permanent Lease Basis" upon payment of four times the cost of the stalls at the time of allotment. The petitioners claim that demand letters for `42,400/- were issued in this regard to those similarly situated as the petitioners, the original costs of stalls being `10,600/-. The petitioners also claim to have deposited the said amount with the respondents on 17 th February, 2002. The petitioners however claim that letters illegally demanding `4,84,228/- were issued to each of them. Upon representations of the petitioners not meeting with any success, the present writ petition was filed.

15. Notice of the writ petition was issued on 9th February, 2007 and the respondents directed to disclose as to on what basis the original cost of the stalls was worked out at `1, 20,557/- (i.e. 1/4th of `4, 84,228/-) and also the amounts demanded from other similarly situated persons and the basis thereof.

16. The respondents filed a counter affidavit pleading that the writ petition filed in the year 2007 impugning the demand of 31st December, 2002 was barred on the principles of laches, acquiescence and waiver; it was admitted that demand letters for `10,600/- as cost were issued to the allottees except where there was unauthorized occupants/change in hands of the stall; it was pleaded that as per the Policy and Terms of allotments, the stalls could not be sold/transferred; it was pleaded that there was no Policy of regularization of such unauthorized occupants and when the Policy was approved, demand letters for `4,84,228/- were issued; it was also pleaded that the said cost was calculated by the Finance Wing of the respondents.

17. This Court finding that the counter affidavit did not comply with the direction in the order dated 9th February, 2007, directed filing of an additional affidavit.

18. In the additional affidavit dated 24th September, 2007 it is stated that the cost of `1,20,557/- was worked out on the basis of current L&DO; rates in the year 2000-2001.

19. The contention of the counsels for the petitioners is twofold. Firstly, for its own delay, the increased price of land cannot be claimed by the respondents from the petitioners. Secondly, it is contended that the Policy being for regularization at four times the original cost of the stalls, the cost cannot be calculated as per the prevalent land rates but has to be as per the said formula only. The counsel for the respondent MCD has chosen not to argue.

20. Though the Supreme Court in *Premji Bhai Parmar v. DDA* (1980) 2 SCC 129 and *M/s Shri Sitaram Sugar Co. Ltd. v. Union of India* (1990) 3 SCC 223 has held that it is not the function of the Court to sit in judgment and interfere in price fixation matter or over such matters of economic policy and it must be left to the Government to decide the same but the fact remains that there has to be a basis for the cost/price demanded.

21. The respondents in none of the affidavits in either of the petitions have been able to show any decision or Policy to demand the cost/price for conversion from License Fee Basis to Permanent Lease Basis as per the prevalent rates of land and on which basis the sum of `2,45,000/- and `4,84,228/- has been demanded from the petitioners in the two petitions respectively. The only decision/Policy disclosed is the Resolution No.318 dated 10th September, 2001 (supra). The same clearly provides for conversion at the rate of four times the cost prescribed at the time of allotment. The year of allotment is indisputably 1983 and 1984 respectively in the two petitions. It appears that the cost at the time of allotment of the stalls in question in W.P.(C) No.926/2007 is not available. However the same, without any further decision in this regard (which has not been disclosed) would not entitle the respondent MCD to change the basis of calculating the cost of conversion from the petitioners. If the cost at the time of allotment is not available, the respondent MCD is required to re- work the said cost but cannot change the

formula. It is incomprehensible that the cost at the time of allotment cannot be re-worked. The same can be worked out on the basis of the then cost of land and the then cost of construction as per the published CPWD rates and used by respondent MCD for other purposes.

22. Though the respondents in the affidavits filed have reiterated that the cost demanded of `2,45,000/- and `4,84,228/- respectively has been approved by the appropriate authorities but the said approval would be of no avail inasmuch as the working of the cost is admittedly not as per the Policy shown. The respondent MCD cannot be permitted to act contrary to their own decision/Policy and this Court will have to necessarily interfere.

23. The writ petitions therefore succeed to the effect that the demand of `2,45,000/- for conversion from License Fee Basis to Permanent Lease Basis of the stalls in possession of the petitioners in W.P.(C) No.926/2007 at Lakshmi Market, Madangir and of `4,84,228/- for conversion from License Fee Basis to Permanent Lease Basis of stalls in possession of petitioners in W.P.(C) No.1026/2007 at Sunlight Colony, Hari Nagar, Ashram, New Delhi is set aside/quashed. However the respondents cannot be directed to make the said conversion at the rate of `9,000/- and `42,400/- as sought. The respondents are required to work out the cost of allotment of the stalls and to thereafter demand from the petitioners the conversion cost at four times the said cost of allotment in accordance with its Policy/Resolution aforesaid.

No order as to costs.

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