

Kailash Nath Mishra & Ors vs Renu Sharma Govt Of Nct Of Delhi & Anr on 2 March, 2023

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

\$~17, 19 & 20

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CONT.CAS(C) 864/2017

KAILASH NATH MISHRA & ORS

..... Petiti

Through: Ms. Shobhana Takiar, Advocate

versus

RENU SHARMA GOVT OF NCT OF DELHI & ANR

..... Respo

Through: Mr. Anuj Aggarwal, ASC for

GNCTD with Ms. Ayushi Bansal and

Mr. Sanyam Suri, Advocates for R

Ms. Monika Arora and Mr. Yash

Tyagi, Advocates for UOI

Mr. Parvinder Chauhan, Mr. Sush

Dixit, Advocates with Mr. P.K. J

Director DUSIB and Mr. Pranav, L

for DUSIB

Ms. Monika Arora, CGSC with Mr.

Yash Tyagi, Advocate for R-3

19.

+ CONT.CAS(C) 515/2019

MEERA DEVI

...

Through: Ms. Zehra Khan, Mr. Prakha

Mani Tripathi, Advocates

versus

SHURBIR SINGH & ANR

.....

Through:

Mr. Manish Kumar, SPC for

Mr. Parvinder Chauhan, Mr.

Dixit, Advocates with Mr.

Director DUSIB and Mr. Pra

for DUSIB

Signature Not Verified

Digitally Signed By:PRAMOD

KUMAR VATS

Signing Date:04.03.2023

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20.

+ CONT.CAS(C) 936/2021 & CM APPLs. 42858/2022, 45513/20
MATHURA PRASAD & ORS. Peti
Through: Ms. Diya Kapur, Ms. Gauri Puri a
Ms. Aditi Gupta, Advocates

versus

AJAY YADAV AND ORS

Through: Mr. Vikrant N. Goyal,
Ms. Tesu Gupta and Ms
Garg, Advocates for U
Ms. Sakshi Popli, ASC
Mr. Parvinder Chauhan
Dixit, Advocates with
Director DUSIB and Mr
for DUSIB

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 02.03.2023

1. The present contempt petition(s) have been filed by Jhuggi dwellers, who were found eligible for rehabilitation in terms of the Delhi Slum and J.J. Rehabilitation and Relocation Policy, 2015 ('Rehabilitation Policy') by Respondent, Delhi Urban Shelter Improvement Board ('DUSIB'). The Court directed DUSIB to complete the process of allotment of the flats/dwelling units in a time bound manner.

2. The judgment which are subject matter of these contempt petition(s) are dated 10.10.2011, 01.08.2017 and 27.11.2019 respectively and are still awaiting compliance.

3. CONT.CAS(C) 936/2021 has been filed seeking compliance of the directions issued by the Division Bench of this Court vide order and judgment dated 27.11.2019 in W.P.(C) 3430/2017, whereby the Respondent, DUSIB, was directed to complete the process of allotment of flats/dwelling units to the 289 eligible unit holders within a period of five months, on receipt of necessary payment, as per the policy decision dated 14.06.2016. The provisional eligibility letters for allotment stand issued to each of the 289 allottees and in compliance with the said allotment letters, the said 289 allottees have made the payment in full to DUSIB. The order and judgement dated 27.11.2019 has attained finality and is binding on the Respondents including DUSIB and Government of National Capital Territory of Delhi ('GNCTD'). The allotment of 289 flats is with respect to building constructed in Sector 16-B, Dwarka.

4. Similarly, in CONT.CAS(C) No. 515/2019, the sole Petitioner therein succeeded and was found eligible for allotment as per the judgment dated 01.08.2017, passed by the Division Bench of this Court, in W.P.(C) 5378/2017. A review petition was filed by the Respondent, DUSIB, assailing the said order, however, the same was dismissed vide order dated 29.07.2022 and further the Special Leave Petition against the said order was also dismissed by the Supreme Court on 09.02.2023.

Therefore, the said order dated 01.08.2017 has also become final and binding upon the Respondents. Pertinently, the Union of India ('UOI') through the Ministry of Housing and Urban Affairs ('MoHUA'), was impleaded as Respondent No. 3 in the said writ petition. The Petitioner therein was also issued an provisional eligibility allotment letter and she as well has made the complete payment in furtherance thereto.

5. CONT.CAS(C) 864/2017 has been filed by three (3) Petitioners, who are relying upon the separate orders both dated 10.10.2011, passed by a Coordinate Bench of this Court, in W.P.(C) No. 705/2011 and W.P.(C) No. 1798/2011. Pursuant to the passing of the aforesaid orders, the said three Petitioners have been found to be eligible for allotment of flat/dwelling unit by the Eligibility Determination Committee on 19.01.2016. However, no provisional eligibility allotment letter has been issued to the said Petitioners.

6. In these circumstances, the Petitioner(s) were constrained to file the present contempt petition(s) seeking handover of possession of the flats/dwelling units by DUSIB.

7. The learned standing counsel for Respondent, DUSIB states that DUSIB has under its control and possession, currently an inventory of 34,000 built up flats, which are ready for handing over possession. He states that the land on which the said flats are constructed is owned by GNCTD. He states that though subsidy has been provided by UOI in the form of funds for construction of these flats. However, the title of the flats continues to vest in GNCTD.

8. He states that as per the Rehabilitation Policy, 10% of the cost of the flat/dwelling unit is to be paid by the beneficiary and 90% of the cost is paid by the land-owning agency i.e., the land from which the Petitioners were removed. He states that the DUSIB, is the nodal agency and is duly authorised in law to execute the transfer title documents in favour of the eligible allottees.

9. He states that though the said inventory of 34,000 flats is available and in fact as is recorded in its letter dated 22.03.2021, DUSIB is presently under an obligation to handover possession of 9,104 flats to eligible allottees under several Court orders and the directions of the Eligibility Determination Committee. He acknowledges that the Petitioners herein are also included in list of the said 9,104 flats and he fairly admits that the DUSIB has duly notified GNCTD and UOI with respect to the willingness of DUSIB to execute the title documents in favour of the allottees herein, in order to ensure due compliance of the orders of the Court. The relevant extract of the letter dated 22.03.2021 reads as under: -

"4. In addition to this, in some of the court cases Hon'ble High Court has directed DUSIB to rehabilitate the petitioners whose jhuggies were demolished earlier. In the court case titled Sudamn Singh & Ors Vs Govt. of NCT of Delhi & Ors, 223 Petitioners filed Writ Petition no. 8904/2009. 145 applicants, out of 223 petitioners appeared before the Eligibility Determination Committee. The Committee declared 94 JJ dwellers eligible. Among them 46 eligible JJ dwellers have deposited their share money. The aforementioned 46 eligible JJ dwellers have deposited their share money. The aforementioned 46 eligible beneficiaries may also rehabilitated at

Bhalaswa relocation site.

5. Besides, in the court case titled Delhi Jhhuggi Jhopri Kalyan Evam Vikas Sangh Vs Govt. NCT of Delhi & Ors, 80 JJ dwellers have been declared eligible and Land Owning Agency has deposited Rs. 7,69,36,000/- for allotment of flats at Sector 16-B Dwarka. 28 JJ dwellers have also deposited their beneficiary share.

6. Under 1985 Registration Scheme, Draw for allotment for 1144 flats has been done for allotment of flats at Sawda Ghevra. Out of these 218 applicants have deposited their share money and 207 have already taken over the possession of flats.

7. The rehabilitation of these JJ dwellers/bastis/petitioners/registrants is a liability of the DUSIB as the relocation charges have been deposited by the land owning agencies and beneficiaries also deposited their share money.

8. In view of the above, it requested to exclude above mentioned housing sites for the scheme of Affordable Rental Housing Complexes (ARHCs), notified and circulated vide your Circular No. N-11022/51/2020-HFA-V- UD/FTS-9088338 dated 31.12.2020, as these JJ dwellers and concerned land owning agencies were identified and committed prior to the aforesaid communication of MoHUA to GNCTD."

(Emphasis Supplied)

10. He states that in furtherance to the directions issued by this Court on 03.11.2022, a meeting was held between DUSIB, GNCTD and UOI on 12.01.2023. He states, however, no meaningful decision has been taken to give effect to these orders and in fact, UOI has in the first instance called upon the GNCTD to execute a Memorandum of Agreement ('MoA') to transfer the entire inventory of 34,000 flats to UOI and place at the disposal of UOI for its scheme i.e., Affordable Rental Housing Complexes ('ARHC'). He states that it is in these circumstances, that the DUSIB is not proceeding with the execution the title documents on the administrative instructions of UOI.

11. A query was put by this Court to the learned standing counsel for DUSIB with respect to the communication from UOI, which restrains DUSIB from executing the transfer documents in favour of the Petitioners herein. In response he has relied upon a communication dated 31.05.2021, annexed as annexure P-16 to CONT.CAS(C) 936/2021 and a letter dated 09.09.2021, issued by MoHUA, filed as Annexure R-7 to the status report filed by the DUSIB. He states that DUSIB is hesitant to execute the transfer title documents and handover possession to the allottees in view of the said letters.

12. Learned counsel appearing for GNCTD in these matters states that she has no instructions in this matter.

13. In CONT.CAS(C) 864/2017, learned counsel for UOI states that he has no instructions in this matter.

14. In CONT.CAS(C) 515/2019, learned counsel for the Respondent states that he has instructions that the Department is evolving a policy pertaining to the allotment of flats in this matter.

15. In CONT.CAS(C) 936/2021, learned counsel appearing for UOI states that UOI was not a party in W.P.(C) 3430/2017. He states that DUSIB has filed an application before the Division Bench in the said writ petition seeking a direction that the judgment binds UOI as well so that DUSIB can comply with the directions issued. He states that UOI is in the process of filing its reply in the said application pending before the Division Bench.

16. This Court has considered the submissions of the parties. In the facts and circumstances, it is evident that the orders of the Court which are subject matter of compliance, have attained finality. DUSIB is the nodal authority, which is duly authorized in law to execute the title transfer documents in the flats in favour of the allottees and as per the statement of the standing counsel, DUSIB remains ready and willing to do so.

17. Prima facie, a perusal of the letters dated 31.05.2021 and 09.09.2021 shows that the subject matter is "regarding utilisation of vacant flats constructed under JnNURM".

18. In the opinion of this Court, the flats in respect whereof commitments have been made by DUSIB for allotments i.e., the 9,104 flats, whether in pursuance to the orders of Court or in pursuance to the determination by the Eligibility Determination Committee, will not fall within the meaning of vacant flats, since a commitment has already been made, judicial orders have been passed and monies have also been received by DUSIB, from the beneficiaries. The Jhuggi dwellers relying upon the representation of government authorities vacated the sites where the Jhuggis were located. The Division Bench as well relying upon the allotment made in favour of the allottees, directed the Jhuggi dwellers to vacate the sites, where the Jhuggis were located. In these facts and circumstances, the flats/dwelling units to be handed over to the allottees cannot be considered to be vacant. If DUSIB fails to execute the transfer title documents and handover the possession, it would be travesty of justice and would falsify the representation made to the Court while seeking orders of eviction of the Jhuggi dwellers from the respective site where the Jhuggis were located. For instance, the allotment of 289 flats is specifically with respect to building constructed in Sector 16-B, Dwarka.

19. Therefore, the letters dated 31.05.2021 and 09.09.2021 cannot come in the way of DUSIB to comply with its binding obligations arising under the orders of the Court to the allottees as the said flats cannot be considered vacant. The said letters cannot negate the binding effect of the judgements passed by this Court and obstruct the compliance of the judgments of this Court.

20. In view of the submission of Respondent counsel that UOI is seeking execution of a MoA with respect to all the existing 34,000 flats without first complying with the orders of the Court, it is imperative to preserve the flats. In view of the findings of this Court that the allottees herein have a vested right in the allotment of the said flats, DUSIB and GNCTD are restrained from executing a MoA or any other document transferring the said inventory, until the orders of the Court are complied with. Further, in view of the fact that there are orders of the Courts and Eligibility Determination Committee pertaining to allottees for 9,104 flats, DUSIB is restrained from entering

into any agreement which in any manner impairs the 9,104 allotments, already agreed to be made by the DUSIB. DUSIB and GNCTD may after complying with its obligation for allotment and handing over of possession of the 9,104 flats, may proceed with execution of MoA, in accordance with law.

21. The DUSIB is further restrained from acting upon the circular dated 31.12.2020 issued by the MoHUA, the relevant extract whereof reads as under, until the aforesaid compliance is carried out by the DUSIB and GNCTD: -

3. As ARHC is being implemented as a sub-scheme under PMAY-U, it is reiterated that with effect from the date of Union Cabinet approval of the scheme i.e. 08.07.2020, all existing vacant and under construction houses of JnNURM and RAY in the States/ Union Territories (UTs) shall henceforth be deemed to be ARHCs and will be allotted to the beneficiaries of the ARHCs only."

22. The submission of learned counsel for the Respondent, UOI, in CONT. CAS(C) 936/2021, that it is not a party to the W.P.(C) 3430/2017 and therefore, not bound by the directions is without any basis. In view of the fact that the DUSIB is the nodal authority, duly authorised in law to execute the transfer title documents, UOI cannot by administrative letters interdict compliance of the final orders of this Court. UOI has due notice of the said orders.

23. Since this Court has clarified that letters issued by UOI dated 31.05.2021 and 09.09.2021 cannot pertain to and have no bearing on the provisional eligibility letters for allotment, which already stand issued prior to the said dates, Respondent, DUSIB, is directed to take immediate steps for complying with the orders of this Court. In case of any further delay, it will be construed that the disobedience by DUSIB is wilful. The said two (2) letters which were relied upon by DUSIB for not complying with the orders of the Court.

24. The learned standing counsel for DUSIB states that in view of the order passed today the draw of plots will be carried out within a period of four to six weeks from today.

25. At request of DUSIB, list on 19.05.2023.

MANMEET PRITAM SINGH ARORA, J MARCH 2, 2023/rhc,aa