

Sarwan Kumar & Ors vs State Govt Of Nct & Anr on 24 August, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5594/2020 & CM APPL. 20211/2020 (stay)
SARWAN KUMAR & ORS. Petitioners
Through: Mr. Mimansak Bhardwaj, Advocate.

versus

STATE GOVT OF NCT & ANR. Respondents
Through: Mr. Anjum Javed, ASC for GNCTD.
Ms. Biji Rajesh, Advocate for Mr.
Gaurang Kanth, SC for R-2/SDMC.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 24.08.2020 The hearing was conducted through video conferencing. CM APPL. 20212/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off. W.P.(C) 5594/2020 & CM APPL. 20211/2020 (stay)
3. Issue notice. The learned counsel named above accept notice on behalf of respondents no. 1 and 2 respectively. At request the petition is taken up for hearing.
4. The petitioners impugn the 'speaking order' dated 10.08.2020 passed by respondent no. 2, rejecting their representation (i.e. the earlier writ petition W.P.(C).11732/2019 which was to be so treated). They had sought allotment of an alternate plot of land in lieu of their jhuggi jhopris at Tirtarpur, Rajouri Garden, New Delhi. According to the South Delhi Municipal Corporation ('SDMC'), the petitioners are squatters on municipal land and have to be evicted therefrom. Reference is made to two orders of this Court; i) order dated 04.02.2020 in W.P.(C) No.11732/2019 and ii) order dated 11.08.2020 in CONT (CAS). 407/2020.
5. The order dated 04.02.2020 in W.P. (C) No. 11732/2019 had directed, inter alia, as under:

"9. Let the concerned Deputy Commissioner treat the present writ petition as a representation of the petitioners for implementation of the policy as contained in the

communication dated 18.4.2007. Same shall be disposed of by a speaking order. Needful will be done within eight weeks."

6. The order in the aforementioned contempt petition reads as under:

"
ORDER
11.08.2020

1. The hearing was conducted through video conferencing.
2. Learned counsel appearing for the respondents on advance notice submits that a speaking order has been passed on 10.08.2020 and as per the decision, the case of the petitioners is not covered by the scheme and they are not entitled to alternative accommodation.
3. He submits that in terms of the speaking order steps would be taken to evict the petitioners from the respective jhuggi jhopris. He submits that prior to any physical eviction taking place a notice to vacate, granting at least one week's time, would be issued to the petitioners. The statement is taken on record.
4. In view of the above, respondents are directed to communicate order dated 10.08.2020 to the petitioners and also to the counsel for the petitioner. It is further directed that for a period of two weeks from the date of communication of the order dated 10.08.2020 to the petitioner, no coercive steps shall be taken against the petitioner.
5. In view of the above statement and assurance given by the respondents, learned counsel for the petitioner seeks leave to withdraw the petition reserving the right of the petitioners to challenge the order dated 10.08.2020.
- 6: The petition is accordingly dismissed as withdrawn. All rights and contentions of the parties are reserved.
7. Copy of the order be-uploaded on the High Court website and be also forwarded to learned counsels through email...."
7. In purported in compliance of the aforesaid directions, a 'speaking order' was passed by the Corporation on 10.08.2020. It is reproduced hereunder:
8. According to the petitioners i) the said impugned order does not specify, as to how the petitioners would not be entitled to the benefits of the policy of relocation and ii) if the Corporation wanted to examine certain documents in support of the petitioners' claims, the same could have been sought from the claimants. Instead, the Corporation went ahead and rejected their claims, without asking for the papers and without even granting a hearing to the petitioners; iii) there has been denial of natural justice; iv) therefore, for all the aforesaid reasons the impugned order is erroneous, non-speaking, baseless and arbitrary.

9. According to the Corporation, the petitioners had 'not filed any document or record to show how the petitioners are entitled to be considered for relocation'. However, it is not in dispute, that the Corporation did not ask for these documents or records. To that extent the order is premature. The petitioner claim they have evidence in support of their claims. The same should be taken into consideration. In view of the above, this petition shall be treated as further representation of the petitioners to the SDMC. Additional documents, as may be sought by the Corporation or sought to be relied on by the petitioner, to establish their eligibility under the rehabilitation policy, as mentioned in the order dated 04.02.2020, may be supplied by the petitioners within 2 weeks from the date of receipt of the Corporation's communication in this regard. The petitioners shall be granted a hearing by the SDMC before the final decision is taken. Till then no coercive measures shall be taken against the petitioners.

10.If the petitioners are aggrieved by the order of the SDMC, it will be open to them to pursue their legal remedies.

11.The writ petition, along with the pending application, is disposed-off in terms of the above.

12.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J AUGUST 24, 2020 AB