

GAINDA RAM AND ORS. ETC.

v.

M.C.D. AND ORS.

MAY 1, 1997

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

*Hawkers Matter :*

*Delhi Hawkerc Matter—Hawkers—Rehabilitation of—Claims of allotment of squatting sites—R.C. Chopra Report—Accepted by the Court with some modifications—Directions given to implement the accepted part of the report and to decide the eligibility of squatters accordingly—Applicants held ineligible by the MCD to be given opportunity to make representations for review of their cases—MCD directed to carry out fresh exercise to identify new approved squatting sites in all the 12 zones of MCD—MCD directed to publish the gist of this order and to intimate the squatters concerned to remain present at notified places on specified dates for supporting their claims—In case any of the squatters is aggrieved by rejection of his claim by MCD, he may file written representation before Shri R.C. Chopra, whose decision on the matter shall be final.*

CIVIL ORIGINAL JURISDICTION : I.A. No. 97.

IN

Writ Petition (C) No. 1699 of 1987 Etc.

Under Article 32 of the Constitution of India.

Arun Jaitley, Krishna Mahajan, P.H. Parekh, N.K. Sahoo, Maninder Singh, Chandan Ramamurthy, Kirpal Singh, M.A. Krishna Moorthy, Debasis Misra, S. Balakrishnan, V. M. Issar, Subramaniam Prasad, Irsad Ahmad, M.M. Kashyap, D.S. Nagar, Anil Kr. Gupta-II, P.K. Manohar, Anis Suhrawardy, Sanjeev Anand, M.K. Giri, Vineet Maheshwari, D.K. Garg, P.K. Maheshwari, Varinder Kr. Sharma and P.S. Jha for the appearing parties.

The following Order of the Court was delivered :

1181

A *I.A. No. 37 in WP (C) No. 1699 of 1987*

Pursuant to the earlier orders of this Court dated May 13, 1994, a Judicial Officer of the rank of Additional District & Sessions Judge was appointed to look into the question as to whether the implementation of the Scheme by the MCD had been consistent with the norms and procedure indicated by this Court and to make a report. Accordingly the High Court of Delhi nominated Mr. R.C. Chopra, Additional District & Sessions Judge, to examine the Scheme and to make his report. He has submitted his report on December 20, 1996. Shri Chopra has taken great pains in preparing this report. We record our appreciation for the efforts made by him. So far as his suggestions are concerned, they are found at page 49 of the report.

We have heard learned counsel for the parties on this report. A consensus was reached with regard to the suggestions put forward by Shri Chopra as at page 50 onwards of his report as suggestions (a), (b) (c), (d), (e), (f) and (g) which are accepted and pursuant thereto requisite directions are issued as under :

(a) All applicants held ineligible shall be given an opportunity by MCD to make representations for the review of their cases. Such representations be entertained only in cases where the applicants file copies of the documents to show *prima facie* that they were in fact eligible but have been declared ineligible by the Zonal Licencing Committees. The Zonal Heads of the zones concerned are directed to personally deal with these applications and dispose them of within three months.

(b) In all these Zones where no lists have been prepared regarding the squatters falling in category (3) the lists be prepared on the basis of the representations as referred to in point (a) above and these lists be maintained for future adjustment of the squatters as and when new squatting sites are available.

(c) Since the number of eligible applicants is about 8000 only in all the 12 zones of MCD and in most of the Zones it is less than 1000 each the Zonal Heads shall be directed to re-examine these cases with a view to weed out those who have been wrongly held eligible. This exercise would substantially reduce the number of eligible applicants thereby enhancing the prospects of accommodating those who were wrongly held ineligible.

This exercise would set right wrong seniority also as fixed in many eligible cases. *Inter se* seniority of the enumerated squatters those of whom will be held eligible w.e.f. 23.12.1982, shall be prepared zonewise by treating the squatter who is found to be squatting from the earliest date as the senior-most and the rest will be arranged in seniority thereafter according to their respective dates of continuous squatting.

(d) A fresh exercise is ordered to be carried out by the MCD to identify new approved squatting sites in all the zones. The Zonal Heads, Administrative Officers of the Zone, representative of the Traffic Police and two or three representative hawkers of the zone selected on random basis shall identify fresh squatting zones so that the squatters are properly rehabilitated and not simply uprooted to deprive them of their livelihood. In case joining of representatives of the squatters is not found feasible or even otherwise, written suggestions may be obtained from the squatters of the area in regard to the spots which may be declared approved squatting zones.

(e) After finalising the list of eligible squatters and approved squatting zones fresh preference applications shall be invited and thereafter allotments be made first in accordance with preference applications and thereafter on the basis of seniority cum place of squatting criteria. It would be in the fitness of things if on preference applications the details of approved squatting sites are printed and the squatters are merely required to exercise their three options therefrom.

In terms of the earlier directions of this Court the squatters falling in category (1) and (3) must not be clubbed together as has been done by the zones. Squatters falling in category (1) have a preferential right for allotment of squatting sites and the squatters falling in category (3) shall be accommodated only after the squatters falling in category (1) are fully accommodated. Therefore, the squatters falling in category (1) being old squatters, if not accommodated within the zonal areas of their respective zones, will be given preferential right to opt for other zones where the squatting sites may be available.

(f) After the completion of the exercise the Zonal Heads of the MCD and SHOs of the areas shall be made personally liable for ensuring that there is no squatting in non-squatting zones. If any grievance is made regarding squatting in non-squatting areas, it will be open to the aggrieved

A party to approach appropriate court for suitable directions.

(g) With regard to the approach to be adopted in regard to the cases held eligible by the zones after receiving arrears of red-slip for the last so many years without there being any other proof of squatting on the files, it is directed as the scheme was approved in the year 1990 no receipt of arrears subsequent thereto with a view to create proof of continuous squatting shall be accepted for supporting proof of squatting.

It will be open to individual squatters to give their written representations.

(h) It is noticed that some of the squatters were unable to produce proof of continuous squatting as their squatting issues were under consideration of the MCD. In this regard after hearing learned counsel Shri R.K. Maheshwari for the MCD and learned counsel for squatters, we deem it fit to clarify that those of the squatters who had earlier submitted their applications but had not furnished requisite proof will be permitted to produce proof of squatting on the basis of the documents referred to in their original applications and in this connection they may produce either the original documents or even xerox copies thereof. If on the basis of contemporaneous municipal records proof of squatting in the form of challans, tehbazari receipts, composition fee etc. is found to be worth dispensing with and the relevant entries in municipal records by themselves are found to be reliable it will be open to MCD to adopt such a course.

So far as suggestion (1) is concerned it is required to be rejected.

Suggestion (j) is accepted as under :

(j) All cases of manipulations and fabrications, detected by Zonal Heads or the Committees as constituted pursuant to this order for review of applications, are ordered to be referred to the Vigilance Department of MCD for time bound departmental action against delinquent officials.

We make it clear that the aforesaid exercise shall be carried out by MCD with reference to all the applicants totalling to 72045 listed in the charts accompanying Part 'A' of the Report of Shri Chopra giving zonewise statistics of the applicants held eligible as well as ineligible.

The Report of Shri Chopra is accordingly accepted as aforesaid. Six

months' time is given to the MCD to carry out the aforesaid directions of this Court and to report to this Court the result of the said exercise. It is further directed that though six months' time as aforesaid is given to the MCD to complete the exercise, the progress report at the end of three months from today shall be filed by MCD in this Court. A

Before proceeding to embark upon this exercise, the MCD shall publish once at least in three local daily newspapers having circulation in Delhi being Hindi, Urdu and Punjabi newspapers informing all concerned about gist of this order and shall intimate to the squatters concerned covered by this order to remain present at notified places and time on specified dates for supporting their claims for allotment of squatting sites. Hand bills in Hindi shall also be distributed at the main squatting clusters in all the 12 zones. Notices shall also be displayed on the Notice Boards of all the zones in Hindi language. B C

It is also directed that if on consideration of claims of any of these squatters who were earlier held eligible by the MCD and are later found to be ineligible in the light of this fresh exercise, or who were earlier found ineligible and by the present fresh exercise are also found ineligible, individual notices to show cause, if any, shall be issued to the squatters concerned before rejecting their applications. On such notices they shall be given hearing and thereafter if their claims are rejected, brief reasons for the same shall be indicated in the orders. D E

It is further directed that after the report is received from the MCD, about the exercise carried out by it in the light of the present order, if any of the squatters feels aggrieved by the rejection of his claim by the MCD, it will be open to the concerned aggrieved party - squatter, to file a written representation before the same judicial officer, Shri R.C. Chopra, Additional District & Sessions Judge, who has given the present Report and in the light of the said Report, further exercise is directed by us to be carried out by the MCD. The said written representations shall be considered and decided by Shri Chopra within a period of three months from the date of receipt of the representations. Representations shall be filed by the aggrieved squatters within a period of 15 days from the intimation received by them from MCD about rejection of their claims. No representations filed later will be entertained by Shri Chopra save and except in cases where he in his discretion finds it necessary to condone the delay upto 15 H

A more days in the interest of justice. However no such delay in any case should exceed a period of 15 days from the original period of 15 days as entire exercise of review is to be completed in a time bound manner.

B For effectuating this exercise the MCD shall, apart from serving written intimations to concerned squatters whose claims are to be rejected, also give a public notice once in three local newspapers being Hindi, Urdu and Punjabi newspapers having circulation in Delhi about the said exercise being finalised. The MCD shall provide appropriate infrastructure and facilities to Shri R.C. Chopra for carrying out the aforesaid exercise entrusted to him. This will be treated to be in continuation of the earlier exercise undertaken by Shri Chopra.

C It is clarified that whatever decision is rendered by Shri Chopra on these representations, shall be final and shall not be subject to scrutiny of any court. It is also made clear that this Court will also not undertake any review against the decision of Shri Chopra and the decision of Shri Chopra shall be treated as final and binding on the concerned squatter as well as on the MCD.

E Shri Maheshwari raised one submission in connection with the *status quo* order granted by us earlier on March 27, 1997 which has been continued by subsequent orders till today. He submitted that this order is misunderstood and those squatters who were ordered to be removed by the orders of this Court from time to time also tried to re-occupy the sites. He further contended that till the aforesaid scrutiny is completed by the MCD about the eligibility of squatters, in all the 12 zones, those squatters who were earlier ordered to be removed under the scheme, require to vacate the site if they are given alternative sites.

G In our view, the *status quo* order as granted earlier by us and which has operated qua the squatters concerned deserves to be continued in connection with all the squatters, whose cases are going to be re-considered by the MCD pursuant to the present order in the light of Shri Chopra's report. The said *status quo* order cannot be vacated as a whole. However it deserves to be continued with the following modifications :

H 1. Those squatters who were ordered to be removed by the earlier orders of this Court passed from time to time shall not be entitled to any benefit of this *status quo* order.

2. Those squatters who are directed to shift to alternative sites pursuant to the orders passed in the Interlocutory Applications moved by them before this Court earlier and which were already disposed of by this Court, shall also be required to comply with those orders of this Court and will not get the benefit of the present *status quo* order of this Court. A

3. Those squatters who were earlier subjected to any orders of removal from the sites under the orders of the Lt. Governor but who are covered by the earlier *status quo* order dated 27th March, 1997 which is continued till date or who are protected by any injunction order issued by any competent court will have their earlier removal made subject to the final result of the present exercise and only because of their earlier removal, the *status quo* order of 27th March 1997 onwards, if at all operating in their favour, will not lose its efficacy for them. B C

This matter (I.A. No. 37 in Writ Petition No. 1699/87 awaiting interim report) will now stand adjourned to August 8, 1997 at 2. p.m. D

It is obvious that all the authorities concerned have to co-operate in seeing to it that the aforesaid orders including the *status quo* orders are strictly complied with. The MCD is directed to publish the gist of this order within two weeks from today as aforesaid so that the scrutiny of the claims as per the present order can be effectively carried out by the MCD. The MCD shall evolve proper modalities for carrying out the aforesaid exercise after giving hearing to the concerned parties. E

Copy of this order is directed to be sent to the Registrar of the Delhi High Court and to Shri R.C. Chopra for doing the needful at their end. We request the High Court to spare the services of Shri Chopra at an appropriate time to enable him to complete the task entrusted to him by us. F

I.A. 97 :

The MCD shall file its response to the grievance of the applicants latest by Monday, the 5th May , 1997 and give a copy to the other side. G

I.A. 193/96 :

In view of the general order passed by us today this application stands dismissed as not pressed. H

A *I. A. Nos. 196, 197 & 198 :*

In view of our general order passed today, the applicants will be permitted to put forward their claims before the MCD and the said claims will be processed in accordance with law. It will be open to the MCD to find out the exact position as to when such earlier applications were moved and in this connection the applicants will also be permitted to file photostat copies of the applications and of any other documents mentioned in the applications originally tendered before the MCD.

The above said three I.As. are accordingly disposed of.

C *C.P. No. 231/1997 :*

In Contempt Petition No. 231 Shri Maheshwari, learned counsel appearing for MCD is requested to look into the grievance of the applicant and submit his response on Wednesday, the 7th May, 1997 at 2. p.m. Learned counsel for the applicant states on instructions, that the Deputy Municipal Commissioner, Shri Nathu Singh, has promised to look into the grievance of the applicant and has been even good enough to suggest that the applicant will be given an alternative site opposite to the Post Office at Lajpat Nagar. In view of this statement, we direct that the aforesaid Deputy Commissioner shall remain present in this Court on the aforesaid date.

The remaining matters will be listed on May 7, 1997 at 2. p.m. before appropriate Bench along with I.A. No. 97.

R.P.

Matter disposed of.