

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1688 OF 2007

UNION OF INDIA

...Appellant

VERSUS

OKHLA FACTORY OWNERS' ASSOCIATION
AND OTHERS

...Respondents

WITH

Civil Appeal NO. 1691 of 2007
Civil Appeal NO. 1692 of 2007
Civil Appeal NO. 1690 of 2007
Civil Appeal NO. 1689 of 2007

O R D E R

CIVIL APPEAL NO.1688 OF 2007 AND 1691 OF 2007:

These appeals are directed against two orders dated 29.11.2002, passed by the Division Bench of the Delhi High Court, one of which is seemingly an interim order (66 pages), but by which the High Court not only quashed the policy framed by the Government of National Capital Territory of Delhi for settlement of jhugi dwellers and at the same time, virtually framed new policy for accommodating the jhugi dwellers. The

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relevant portions of that order are extracted below:

"We are thus of the considered view that the continuing existence of such a policy serves no social purpose. Such a policy without any social criteria, is illegal and arbitrary and we hereby proceed to quash the same which requires alternative sites to be provided to slum dwellers occupying public land before they can be removed from such public land. Needless to say it will be open to the respondents to devise a policy for rehabilitation of the economically weaker sections based on a legitimate criteria but the criteria cannot be encroachment on public land.

The question, however, remains as to what directions are now to be issued taking into consideration that much water has flowed since the policy was originally devised in 1990.

We have considered the suggestions given at the bar and have applied ourselves to the problem at hand. While quashing the policy aforementioned we consider it appropriate to give following consequential directions:

1. The cut off date should be maintained as 31.1.90 and a verification should be carried out of all the persons who have been allotted alternative sites. The needful be done within a period of 6 months from today and in any case by 30.6.2003.

2. The persons found in occupation of the original sites would be allowed to continue to occupy the same but strictly on licence basis and appropriate licence deeds should be issued to them clearly stating that the rights are not transferable in any manner whatsoever.

3. In so far as the persons who are occupying the alternative sites and who have transferred it to third parties, the plots should be got cleared from occupation of such third parties and should be allotted only to those who still remain to be allotted plots in terms of the 1990 scheme with the cut off date remaining as 31.1.1990. Steps in this direction should also be taken up and the task should

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be completed within a period of one year from today and not later than 31.12.2003. Such occupants would have no right to continue to occupy since admittedly these sites were given on a licence fee basis and should not have been transferred.

4. If some persons still remain without allotment and were in occupation of any site prior to 31.1.90, the money, if received from them should be refunded and no further plots be created to accommodate such persons.

5. In so far as the persons who have been allotted sites and who had encroached upon land after 31.1.90 are concerned, the same criteria would be applied as in paras 1,2,3 above. However, no further allotment should be made for any such persons and the sites got vacated should be utilized for the benefit of those persons who have been occupying sites prior to cut off date of 31.1.90.

6. No allotment will be converted into ownership basis as is proposed by the Government of NCT of Delhi in its policy guidelines for implementation of the scheme for relocation.

7. No alternative sites are to be provided in future for removal of persons who are squatting on public land.

8. Encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before such encroachment is removed or cleared.

9. The land owning agencies should collect data and verify the position about the land vested in them for planned development of Delhi and keep a periodic

check to ensure that no further encroachment takes place on the public land and that the encroachment already existing are removed expeditiously.

10. The Commissioner of Police would render all assistance as and when required by the public authorities to clear the encroachment on public lands.

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11. The public authorities should make their officers responsible for such protection of public land accountable for any encroachment which takes place on public land since undoubtedly the same takes place in connivance with such public authorities. The local police authorities should also be made responsible to ensure that encroachment does not take place on public land."

At the hearing of the appeals, learned counsel for respondent Nos.1 and 2 in Civil Appeal No.1688 of 2007 and respondent No.1 in the connected matter stated that he has been instructed by his clients to withdraw the writ petitions which are pending before the High Court.

Although, we have serious reservation on the locus of respondent Nos.1 and 2 to invoke writ jurisdiction of the High Court in the name of public interest litigation and prima facie, we are of the view that the High Court should not have tinkered with the policy framed by the Government for settlement of jhugi dwellers, who constitute a very large segment of the society. We may have set aside the impugned order and dismissed the writ petitions but keeping in view the fact that at the threshold of hearing of these appeals, learned counsel for the contesting respondents (writ petitioners before the High Court) have made a request for grant of leave to his clients to withdraw the writ petitions, we deem it proper to accept the same.

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Accordingly, Writ Petition Nos.4441/1994 and 2112/2002, which are pending before the High Court of Delhi are withdrawn to this Court and dismissed. Consequently, the impugned orders are set aside. It is also made clear that the findings recorded by the Division Bench of the High Court shall not constitute

precedent for any purpose whatsoever and the directions contained therein shall not be binding on the appellants.

The appeals are accordingly disposed of.

Civil Appeal Nos.1692 of 2007, 1690 of 2007 and 1689 of 2007:

These appeals are directed against judgment dated 16.2.2005 of the Division Bench of the Delhi High Court whereby the Letters Patent Appeals filed by the appellants against the order of the learned Single Judge declining to entertain their prayer for issue of a mandamus to the respondents to rehabilitate them by upgrading the existing slum cluster where they are living rather than shifting them to an alternative site were dismissed.

The impugned judgment of the Division Bench of the High Court is based on the order passed in Writ Petition No.2112 of 2002 Wazirpur Bartan Nirmata Sangh v. Union of India and others.

By a separate order passed today in C.A. Nos.1688/2007 and 1691/2007, we have allowed withdrawal of the writ petitions pending before the High Court including the one filed by

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Wazirpur Bartan Nirmata Sangh.

In view of the above, the appeals are allowed, the impugned judgment is set aside and the matters are remitted to the High Court of Delhi for fresh disposal of the Letters Patent Appeals. Till the disposal of the appeals, the parties shall maintain status quo regarding possession, as it is obtaining today. This would necessarily mean that the respondents shall not dispossess the appellants from the present sites and the latter shall neither alter character of the sites nor alienate the same to any other person in any manner whatsoever.

As a sequel to disposal of the appeals, all the pending interlocutory applications are also disposed of.

.....J.
(G.S. SINGHVI)

the High Court of Delhi are withdrawn to this Court and dismissed. Consequently, the impugned orders are set aside. It is also made clear that the findings recorded by the Division Bench of the High Court shall not constitute precedent for any purpose whatsoever and the directions contained therein shall not be binding on the appellants.

The appeals are accordingly disposed of.

Civil Appeal Nos.1692 of 2007, 1690 of 2007 and 1689 of 2007:

By a separate order passed today in C.A. Nos.1688/2007 and 1691/2007, we have allowed withdrawal of the writ petitions pending before the High Court including the one filed by Wazirpur Bartan Nirmata Sangh.

In view of the above and in terms of signed order placed on the file, the appeals are allowed, the impugned judgment is set aside and the matters are remitted to the High Court of Delhi for fresh disposal of the Letters Patent Appeals. Till the disposal of the appeals, the parties shall maintain status quo regarding possession, as it is obtaining today. This would necessarily mean that the respondents shall not dispossess the appellants from the present sites and the latter shall neither alter character of the sites nor alienate the same to any other person in any manner whatsoever.

As a sequel to disposal of the appeals, all the pending interlocutory applications are also disposed of.

SLP(C)No.1805/2007: List on 8.9.2010.

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(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)