

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.592/2021

SARINA SARKAR & ORS.

PETITIONER(S)

VERSUS

THE STATE OF HARYANA & ORS.

RESPONDENT(S)

WITH

WRIT PETITION (C) NO.759/2021

WRIT PETITION (C) NO.1023/2021

O R D E R

These proceedings are in continuation of directions issued by this Court in cognate matters pursuant to which, action of demolition of unauthorised structures on the forest land has since been taken by the Municipal Corporation Faridabad (for short, "the Corporation"). Further, a housing Scheme has been propounded by the Corporation to provide residential flats to the eligible persons affected by such demolition, in lieu of rehabilitation.

These writ petitions essentially challenge the validity of certain clauses of

Rehabilitation Housing Plan propounded by Municipal Corporation Faridabad (for short, "the Corporation Scheme").

Broadly, six issues have been raised before us.

The first challenge is to the clause providing for eligibility criteria, which reads thus:

"B.3.(e) "Eligibility Criteria"- A resident of Khori jhuggi cluster squatting on PLPA-1900 notified land owned by MCF in the Revenue Estate of Village Lakkarpur will be considered eligible for allotment of EWS flats who has annual income upto Rs. 3,00,000/- (Rupees three lacs) and if the adult earning member/head of the family fulfills any of the following conditions:-

- i) That name of the adult earning member/head of the family is included in the voter list of the area concerned in assembly constituency of Barkhal in State of Haryana as on 1st Jan, 2021
- ii) That the adult earning member/head of the family has a Parivar Pehchan Patra (PPP) issued by the State of Haryana as on 1st Jan, 2021.
- iii) That the adult earning member/head of the family has an electric connection in his/her name provided by Dakshin Haryana Bijli Vitran Nigam Ltd."

According to the petitioners, as the flats which are likely to be allotted to the eligible persons are constructed under the Pradhan Mantri Awas Yojana Scheme (for short, 'the Central Scheme'), the eligibility criteria cannot be restricted to three parameters specified in clause (e), namely, voters list, Parivar Pehchan Patra and electric connection.

It is urged that under the Central Scheme, the incumbent can produce Aadhar card/ Voter Identity Card/any other Unique Identification number or a certificate of house ownership from revenue authority of beneficiary's native district, as noted in Format A, read with clauses 8.3 and 8.4 of the Central Scheme.

As regards the documents required to substantiate the eligibility criteria, the Corporation Scheme also refer to voters list and electric connection besides the Parivar Pehchan Patra.

In our opinion, it will be open to the aspiring person(s) applying for allotment of

flat in lieu of rehabilitation under the Corporation Scheme, to rely on documents referred to in the Central Scheme for the purpose of establishing his/her identity. However, those documents by itself will not be enough to substantiate the other vital facts required to be established by such applicant, *inter alia*, (1) that the structure referred to by the applicant did exist before the cut-off date specified in the Corporation Scheme; (2) that the stated structure was, in fact, in his/her occupation and has been demolished by the Corporation during the demolition action undertaken pursuant to the order of this Court in companion matters; and (3) no one else from the family or in occupation of such demolished structure has applied under the Corporation Scheme for allotment in lieu of rehabilitation. Indeed, it will be open to the applicants to assert such claim on personal declaration-cum-affidavit to be submitted along with the application, but the same need to be substantiated on the basis of tangible

contemporaneous record including official documents. These are matters which need to be verified by the authorities/Corporation besides other relevant facts as may be required on case-to-case basis.

In our opinion, the eligibility criteria in the Corporation Scheme need to be modulated only to this limited extent. In other words, even if the applicant relies on the documents referred to in the Central Scheme besides the documents referred to in the eligibility criteria in the Corporation Scheme, he/she must establish other relevant facts including as noted earlier for being eligible for allotment of a residential flat in lieu of rehabilitation owing to demolition of his/her structure.

The second grievance made by the petitioners is about the cost factor of the flat(s) to be allotted in lieu of the rehabilitation under the Corporation Scheme.

As per clause F.8(a), the cost of flat has been fixed at Rs.3,77,500/- per flat. This

cost has been determined by the State Government and not by the Corporation.

Learned counsel for the Corporation invited our attention to the chart referring to the cost calculation of economically weaker sections flats constructed at site at Dabua Colony and Bapu Nagar in District Faridabad.

As per the said chart, the proportionate land cost for each flat has been quantified at Rs.6,15,470/- and the cost of each flat including land cost as Rs.10,76,900/-. Despite that, the Corporation is offering the flat (under the Corporation Scheme) at the given site at the rate fixed by the State Government, being Rs.3,77,500/- only.

Much debate was founded on the facts and figures concerning the calculation of the cost of flat at the given site under the Central Scheme. That, however, pertained to year 2012-2013. That is an incomparable illustration. The same cannot be the basis to countenance the grievance of the petitioners. What is significant to note is that the allottee will

not be required to deposit the entire cost of flat upfront at the stage of allotment, but he/she has the option of paying it in instalments spread over a period of 20 years, in monthly instalments at a subsidised rate of interest of 2.5% per annum only.

The upfront deposit is only a sum of Rs.10,000/- per allottee. In other words, the monthly outgoing towards flat cost, as informed to us by the learned counsel for the Corporation, would be Rs.1,572/- per month only.

Suffice it to observe that the analogy adopted by the petitioners for questioning the cost of flat determined by the State Government at Rs.3,77,500/-, is flimsy and untenable. Hence, it needs to be rejected.

The third challenge to the Scheme is to clause G.(9) providing for obligation of the allottee, which reads thus :

"G. OBLIGATIONS FOF THE ALLOTTEE:-

9.(a) In addition to the cost price prescribed by the Commissioner, MCF, the allottee shall be responsible to pay water,

sewerage, electricity charges to the authority concerned.

(b) That in case the allottee fails to clear the dues of water, sewerage and electricity charges etc. even after grant of opportunity to clear the same and the allottee remains in default, then process of revocation of allotment will be initiated. If he/she fails to deposit the arrears within 15 days of the receipt of notice from MCF, allocation of flat/property shall be revoked."

The aforesaid condition postulates that the allottee shall be responsible to pay water, sewerage, electricity charges to the authority concerned.

It is not open to the allottee to argue that he/she would be using all these facilities and yet not liable to reimburse the same.

Indeed, water and sewerage may be linked to the services rendered by the Corporation. Whereas, electricity would be supplied to the flat of the concerned allottee by another entity and not the Corporation. Nevertheless, common electricity used in the campus where the flat is located and the common spending in that regard may have to be shared by the occupant

concerned. The expression "*electricity*" used in this clause may be understood accordingly.

The further grievance of the petitioners is that the condition specified in clause (b) is onerous. For, revocation of allotment merely owing to default in payment of electricity charges is very harsh and excessive.

The argument, though attractive at the first blush, needs to be negated in light of the submission made by the learned counsel for the Corporation.

It is urged by the learned counsel for the Corporation that it is a generic stipulation which would cover all maintenance charges to be recovered from the allottee concerning the allotted flat, including the monthly instalment payable in terms of Clause 8(b).

Suffice it to observe that the issue regarding default and the consequences on account of such default is a matter which will have to be considered on case-to-case basis. It

will be open to the allottee to make representation to the authority so as to explain the fact that he/she had not committed any default or that he/she was not liable to pay any amount as demanded by the Corporation or any other entity on behalf of the Corporation.

It is not open to the allottee to admit the liability towards outgoings and instalments and yet not discharge the same. Such allottee cannot be heard to remain in occupation of the allotted flat without inviting the consequences of revocation of allotment, being a condition for such allotment. Accordingly, even the challenge to Clause G.(9) does not commend to us.

We reiterate that we are not expressing final opinion regarding varied situations which may have to be dealt with in reference to the said stipulation, as that will have to be considered on case-to-case basis as and when occasion arises.

Suffice it to observe that we find this provision to be reasonable if implemented in right perspective; as it gives sufficient space to the allottee(s) to discharge their obligation referred to therein.

The fourth point urged was regarding the last date of inviting applications.

It was urged by Mr. Sanjay Parikh as well as Mr. Colin Gonsalves, learned senior counsel for the petitioners, that since this Court has now expanded the eligibility criteria in terms of this order, the aspiring persons who are in a position to present such documents may be allowed to apply even after the cut-off date.

We are not impressed by this submission. For, the original Scheme had provided for specific cut-off date, which was, in fact, extended by this Court making it amply clear that there would be no further extension.

Further, this Court had already permitted the aspiring persons to submit applications supported by Aadhar Card, as was requested on

earlier occasion, being an interim arrangement and subject to the outcome of these petitions.

Those who were interested in doing so have already applied within the extended time given by the Court. It is not possible to alter the cut-off date and reopen the entire rehabilitation process. As a matter of fact, by way of interim direction, the Court had permitted provisional allotment to those applicants who were able to *prima facie* establish their identity and eligibility, which is not part of the Scheme.

Accordingly, we do not wish to alter the cut-off date as the final allotment process has already been delayed because of pendency of these proceedings.

It is a different matter if the Corporation was to extend the cut-off date, but we do not wish to issue any direction to the Corporation to do so.

The fifth point urged is regarding the efficacy of clause D.(5), concerning payment of solatium. The same reads thus:

- "5. A solatium of Rs. 2000/- per month shall be paid to the eligible residents of Lakkarpur Khori jhuggies for making their own rental arrangements till the time the EWS flats at Dabua colony and Bapu Nagar are made habitable by MCF but not exceeding six months in any case."

This arrangement was by way of concession ex-gratia. It was not in vogue before the demolition action had commenced. It has now been made part of the Scheme. The outer limit has been specified, which, in our opinion, is a reasonable condition. In any case, those who were *prima facie* eligible for allotment, have been allotted provisional accommodation as an interim measure. Since they have been provided temporary accommodation, the question of paying them solatium amount does not arise.

Further, the Corporation is not in a position to keep it open-ended because of limited resources at its disposal.

The Corporation has already paid Rs.2,000/- per month to eligible residents of Lakkarpur Khori Jhuggis for making their own arrangements until allotment of flat in lieu of rehabilitation as per the Corporation Scheme.

That was for the initial period of six months, which cannot be extended by Court's order, being a policy matter.

The grievance of the petitioners before us is that no solatium amount has been paid to the persons eligible for rehabilitation. That is a matter which can be raised before the Commissioner in the first place. Such representation be made by the concerned person(s) within four weeks from today.

The Commissioner to consider those application(s) in light of the stipulation in the subject Scheme on case-to-case basis expeditiously and not later than four weeks from its receipt.

The last challenge is to clause G.(11), which reads thus :

"11. The EWS flat shall be used exclusively for residential purposes only and not for any other purposes."

According to the petitioners, the petitioners were doing some commercial

activities in the premises which have been demolished.

That, however, cannot be the basis for issuing direction to rehabilitate the person in the residential flat and permit him to continue with such activities.

The eligible person after allotment would be obliged to use the flat only for residential purpose being condition precedent for rehabilitation under the Scheme as propounded, being a Housing Plan and not for commercial activities as such. Accordingly, even this challenge does not commend to us.

Besides this, nothing more is required to be dealt with in these petitions. These petitions and pending applications are disposed of accordingly. No order as to costs.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELHI;
NOVEMBER 15, 2021.

ITEM NO.304

Court 3 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 592/2021

SARINA SARKAR & ORS.

Petitioner(s)

VERSUS

THE STATE OF HARYANA & ORS.

Respondent(s)

IA No. 92847/2021 - AMENDMENT OF THE PETITION

IA No. 106531/2021 - APPLICATION FOR EXEMPTION FROM FILING TYPED DOCUMENTS

IA No. 82566/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 65544/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 91186/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 64532/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 106530/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 84526/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 103150/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 92851/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 71100/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 92163/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82565/2021 - INTERVENTION APPLICATION

IA No. 71098/2021 - MODIFICATION

IA No. 92160/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 65543/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 91182/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 103148/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P.(C) No. 759/2021 (PIL-W)

IA No. 82248/2021 - APPLICATION FOR PERMISSION

IA No. 82250/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 79663/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82274/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82271/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 1023/2021 (X)

(FOR ADMISSION and IA No.114426/2021-GRANT OF INTERIM RELIEF and IA No.114427/2021-EXEMPTION FROM FILING O.T...)

Date : 15-11-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Parties

Mr. Sanjay Parikh, Sr. Adv
Ms. Srishti Agnihotri, AOR
Ms. Tripti Poddar, Adv
Mr. Satwik Parikh Adv
Ms. Sanjana Grace Thomas, Adv

Mr. Colin Gonsalves, Sr Adv
Ms. Anupradha Singh Adv
Ms. Kawalpreet Kaur, Adv
Ms. Hetvi Patel, Adv
Mr. Haider Ali, Adv
Mr. Satya Mitra, AOR

Mr. Kamal Gupta, Adv
Ms. Sunaina Phul, Adv
Mr. Mohit Paul, AOR

Mr. Tushar Mehta, Ld SG
Mr. Arun Bhardwaj, Sr. Adv
Ms. Ruchi Kohli, AAG
Ms. Srishti Mishra, Adv
Ms. Monika Gosain, AOR
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Ms. Ruchi Kohli AAG
Mr. Himanshu Satija, Adv
Mr. Bhanwar Jadon, Adv
Mr. Sanjay Kumar Visen, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

The writ petitions and pending applications are
disposed of in terms of the signed order.

**(NEETU KHAJURIA)
COURT MASTER**

**(VIDYA NEGI)
COURT MASTER**

(Signed order is placed on the file.)