

Delhi High Court

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Rose Marry & Ors. vs Union Of India on 7 July, 1997

Equivalent citations: 1998 IAD Delhi 379, 1998 (44) DRJ 69

Author: R Lahoti

Bench: R Lahoti, S Kapoor

ORDER

R.C. Lahoti, J.

1. This common order shall govern the disposal of two CWP bearing numbers CWP 1230/95 and 2255/95. They arise out of common set of facts though the grievances raised are slightly different. The two were heard together.

2. The Estate known as Maulana Azad Road Mess, formerly known as the King Edwards Mess, was housing the officers of armed forces in British India. Subsequently it was used as residential accommodation for the officers of the Indian defense Forces, and latter for the officers working with the Ministry of defense, Government of India. The petitioners in the two petitions and/or their ancestors were working as domestic servants for the officers and were for that reason residing with their families in the servant quarters located in the said Mess. Sometime in the year 1993, the entire tract of land whereon the aforesaid Mess is situated was taken over by the Ministry of External Affairs from the Ministry of defense.

3. The several petitioners were considered unauthorised occupants of public premises and were ordered to be evacuated by the competent authority, uprooting them from their respective places of occupation, some carrying commercial activities as well. This raised a human issue which received a compassionate consideration of the Government. A solution was found out.

4. The Slum & J.J. Department of the Municipal Corporation of Delhi has constructed tenements and stalls under Slum Clearance Scheme for allotment to some slum dwellers. The Slum evictees, who were allotted alternative tenements under the Scheme were required to pay 10% of the cost of tenement initially and the balance amount in installments spread over a period of 15 years. Only uprooted Slum Dwellers could be beneficiaries of the Scheme. As a special case it was decided to divert some of the tenements constructed under Slum Clearance Scheme for allotment to be unauthorised occupants of the servant quarters of the above said Mess, identified for allotment of alternate accommodation. The process of identification was carried out in a joint survey to find out the bonafide occupants.

5. The Ministry of External Affairs made payment of Rs.1,33,34,700/- to the Slum and J.J. Department, MCD towards the cost of Slum tenements and stalls proposed to be diverted for the allotment to the evictees of Maulana Azad Road Mess. The said payment was made to compensate the Slum & J.J. Deptt. for the funds which they have diverted for release of these tenements and stalls for allotment to the Maulana Azad Road Mess evictees which otherwise should have been allotted to the bonafide claimants under the Slum Clearance Scheme.

6. The Committee appointed on 26.4.94 to identify bonafide occupants deserving allotment of alternative accommodation arrived at a few findings which are as follows :-

i) 72 persons who were residing in the mess as per survey conducted in June 1993 and have submitted photocopies of their ration cards to Slum and JJ Deptt.

ii) 22 persons residing in the complex as per survey of June 1993, but these persons (a) are either not having ration cards or have not submitted photo copies of ration cards to Slum & JJ Deptt.,(b) Or, having ration cards for the places other than the Mess, (c) or, are having ration cards for units like B-16/7, F- 16, F-15 and G-16

which do not exist as per list supplied by the Ministry of defense, (d) or, have bifurcated their ration cards from eligible head of family.

iii) 21 persons who are in addition to the list of 94 persons supplied by Ministry of defense and are residing in the said complex as per survey of June 93, but, (a) are either having ration cards to G-15, H-15, H-16 which do not exist as per list received from Ministry of defense, (b) or, either without any Ration Card or having certain ration cards for the places out side the Complex i.e. Mess or having ration cards for the complex but not residing or have bifurcated ration cards from eligible head of family.

6.1 The findings of the committee relating to occupants of commercial units in the Mess are as follows :-

i) 12 Shopkeepers (10 conforms to the list supplied by Ministry of defense and 2 being legal heirs of earlier unauthorised occupants) and are in occupation of the premises/Mess and stated to have paid the license fee as per survey conducted in June, 1993.

ii) 3 Shopkeepers were not included in the list supplied by Ministry of defense, but were occupying the site as per survey conducted in June, 1993."

7. The above said findings of the Committee were discussed in the meeting held on 18.7.94, under the Chairmanship of the Secretary of Ministry of Urban Development and the eligibility of 72 persons for residential units and 12 shopkeepers for commercial units was decided for allotment of Slum tenements at Sarai Kale Khan, Phase-I, Nizammudin and fruit and vegetable stalls at Shahzada Bagh on self occupancy lease basis in accordance with the approved terms and conditions of allotment of slum tenements namely, payment of 10% cash down, the rest being recoverable in installments spread over a period of 15 years as per standard guidelines.

8. According to the said decision a computerised draw of lots was held on 16.3.95 and demand letters for initial deposit @ 10% of the provisional cost were issued, in 84 cases (72 for residential units and 12 for commercial units).

9. To the extent of the above, the facts are beyond the pale of controversy. The controversies begin hereafter. We will now notice separately the grievances raised in the two petitions.

CWP 1230/95

10. CW 1230/95 has been filed by seven petitioners, who are all widows submitting that each of them is being demanded an amount of Rs.1,07,750/- as cost of the flat (of which 10% i.e. Rs.10,750/- + Rs.662/50 as ground rent is payable in advance) which it is not within their means to pay. It is further submitted that the Ministry of External Affairs having agreed to pay the cost of the flats on their behalf and having deposited the same, the respondents are not justified in raising any demand from the petitioners.

11. According to the respondents already a very sympathetic view has been taken of the petitioners. They are being allotted flats at a concessional price with facility of payment by installments inspite of their being unauthorised occupants. They are also getting an out of turn allotment by diverting flats from another scheme to them. There is absolutely no reason, either in law or in equity to allot public property to them free of cost. The Ministry of External Affairs has at no time agreed to offer payment of price on behalf of the petitioners. It was only an interim arrangement so that the flats belonging to another scheme could be diverted to the petitioners and the funds made available by Ministry of External Affairs utilised for the purpose of the Scheme, but the petitioners were bound to make payment so that the Government could be reimbursed.

12. Having heard the learned counsel for the parties, we are satisfied that the petition is wholly devoid of any merit. The petitioners belong to the proverbial class of persons who having been allowed to hold a finger try

to catch the wrist and then bounce upon the shoulder to enjoy a ride much to the chagrin of the Samaritan. No material has been brought on record to hold the Ministry of External Affairs having at any time assured the petitioners or the MCD that it was going to pay for the flats allotted to the petitioners.

13. In CWP 124/95 with which this petition was heard, an affidavit sworn in by Shri I.B. Jaisankar, Joint Secretary has been filed on behalf of the Government of India, wherein it has been clearly stated that the payment by Ministry of External Affairs to MCD was their internal arrangement between the two and the petitioners could not claim any interest or involvement in the same. It is also stated that the arrangement did not mean that the petitioners could get such accommodation free of cost. It has also been submitted that if the petitioners' contention was accepted dangerous consequences could result in as much as any person who has unauthorisedly occupied a Government accommodation can claim resettlement free of cost.

14. We have no reason to disbelieve the statement on oath made by Shri.I.B.Jaisankar, more so when it is not rebutted. We are also of the opinion that the question of settling unauthorised occupants free of cost does not arise at all. Already they have been shown much indulgence and none can be shown further. Certainly the petitioners do not have any right much less a fundamental right worth being enforced in exercise of writ jurisdiction of this Court.

#### CWP 1254/95

15. In CWP 1254/95, there are 9 petitioners. Their case is that in spite of being entitled to allotment of flats or shops in accordance with the principle settled by the respondents, the petitioners have been denied resettlement by allotment of alternative accommodation, though their cases are identical with those 84 who have been held entitled to such allotment.

16. According to the respondents the petitioners are blatant encroachers. On a joint survey carried out by the respondents, only 84 claimants were found entitled to allotment.

17. At the hearing the learned counsel for the petitioners took the court through a number of documents to substantiate the plea of the petitioners that on a careful and judicious scrutiny of the documents available with the petitioners they would have been found entitled to allotment. It was also sought to be projected that there has been some confusion about the claims of some of the petitioners and they should be allowed at least one more opportunity of hearing so as to substantiate the claim by each if he could.

18. We have already quoted the extract from the proceedings of the Committee constituted by the Government for the purpose in para 6 above. Still at one stage we were inclined to afford the petitioners one more opportunity of hearing to eliminate the possibility of any erroneous decision rejecting the claim of any of the petitioners having been taken inadvertently. However, on 29.11.96 on behalf of the respondent No.1 an additional affidavit sworn in by Shri S.S.Nanda, Under Secretary (Project) Ministry of External Affairs was filed to meet the petitioners plea for reconsideration of their cases for alternative allotment. It has been stated in the affidavit, inter alia, :-

"(2) That after the report dated 26.5.94 of the five Member Committee was submitted, representations were received from some of the petitioners for reconsideration of the matter.

(3) By an order dated 11.8.94 (Annexure 'A'), the Government of National Capital Territory of Delhi ordered the five Member Committee to reexamine the cases of 43 residents and 3 shopkeepers.

(4) Accordingly, the five Member Committee reexamined the aforesaid cases but by a report dated 12.9.94, it was found that they were not eligible for alternative allotment. The report dated 12th September, 1994 submitted by five-Member Committee in this regard is Annexure 'B' hereto.

19. The report of the Committee referred to in the affidavit is as under :-

"REPORT OF THE COMMITTEE CONSTITUTED BY THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, URBAN DEVELOPMENT, VIKAS, BHAVAN, NEW DELHI VIDE OFFICE ORDER NO.81/5/93/UI/8589 DATED 11.8.94 TO IDENTIFY GENUINE PERSONS FOR ALLOTMENT OF ALTERNATIVE ACCOMMODATION.

New Delhi dated the 12 Sept.,1994.

The Committee was desired by the Government of National Capital Territory of Delhi, Department of Urban Development vide letter No.F.1/5/93/UI/8589 dated 11.8.94 to review the claims of persons unauthorisedly occupying the servant quarters of Maulana Azad Road Mess. The Committee had earlier given their findings about unauthorised occupants in para 8 of their report dated 26.5.94 (Copy enclosed).

2. The Committee has inspected the Maulana Azad Road Mess Servant Quarters jointly and has re-examined the case of remaining 43 res. & 3 shop keepers unauthorised occupants listed as per Annexures 5 & 6 and 8 of its above said report in the light of the Photostat copies of the documents handed over by them at the time of Inspection and it has again been observed that not a single unauthorised occupant has been covered within the laid down guidelines issued vide earlier letter No.F1/5/93/VI/4533-39 dated 26th April, 1994 by the Department of Urban Development, Govt. of National Capital Territory of Delhi."

20. There must be an end to everything. The claims preferred by the petitioners have been scrutinised twice. There is no allegation of malafides against the Government, the Committee constituted by it and any member thereof. We cannot sit like an appellate authority over the findings of the committee and judicially review the same. In any case, we cannot enter into highly disputed questions of fact in exercise of our writ jurisdiction. We do not find the petitioners in this petition also entitled to any relief. They have been found not bonafide occupants so as to be entitled to largesse of concessional and out-of-turn allotment. Their representations have also been considered and rejected. We find no reason to afford them yet another opportunity of hearing.

21. For the foregoing reasons, none of the petitioners in any of the two petitions is held entitled to any relief. Both the petitions are held liable to the dismissed and are dismissed accordingly though without order as to the costs.

22. However, before parting, we would like to observe that the possession of all the petitioners in the two writ petitions was protected by interim orders of this court. In view of the petitions being dismissed the interim orders stand vacated.

22.1 The petitioners in CWP 1254/95 are allowed two months time for voluntarily vacating their unauthorised occupations and thereafter the respondents shall be at liberty to evict them according to law.

22.2 So far as the writ petitioners in CWP 1230/95 are concerned, the time for payment appointed in the letters of allotment shall stand extended so as to commence from two months after the date of this decision. The petitioners being all widows and having been protected so far by the interim orders of the Court, the respondents would do well not to raise additional demand by way of interest or escalation of costs. However, if the petitioners fail to honour the terms and conditions of the allotment (subject to the extension of time granted hereby), they too shall be liable to be evicted and their allotments shall also stand cancelled.