

SUPREME COURT OF INDIA

J.L. Koul

Vs.

State of J & K

C.A.No.3809 of 2005

(Tarun Chatterjee and Dr.B.S.Chauhan JJ.)

27.10.2009

ORDER

1. This appeal has been preferred by the appellants against the judgment and order dated 14.3.1997 passed by the Division Bench of the Jammu & Kashmir High Court by which Letters Patent Appeal (OWP) No.50 of 1997 against the judgment and order of the learned Single Judge dated 24.1.1997 passed in OWP Nos.139, 339 and 621 of 1995 has been dismissed.

2. The facts and circumstances giving rise to this case are that the appellants are Kashmiri Pandits and had been in employment of the State Government. They had been allotted residential accommodation at Jammu in 1989-90 being the Government servants.

3. The houses of the appellants were either destroyed or burnt down by the militants in the valley. The appellants were permitted to retain their respective accommodation at Jammu for safety reasons though they had retired and had no right to continue in possession of their respective accommodation and the accommodation could have been allotted to other government employees who were waiting in the queue. However, such a step was considered necessary by the State Government as the atmosphere was not congenial for the appellants to move in the valley. More so, they had lost their respective houses.

4. The Government employees, who were waiting for allotment of residential accommodation but could not get the same because the appellants were occupying the government houses, filed writ petition nos.139, 339 and 621 of 1995 before the High Court complaining that they were not provided with the government accommodation by the State Government. None of the appellants herein had been impleaded in either of those writ petitions nor any pleadings had been taken against them. The claim of the writ petitioners had been that the Government was duty-bound to provide for residential accommodation which was not being done. Therefore, the High Court was requested to issue appropriate direction for providing them the government accommodation. The learned Single Judge vide judgment and order dated 24.1.1997 allowed the writ petition and issued the following directions:-

“1. That all those persons who have ceased to be Government servants, for any reasons, shall be evicted from the houses allotted to them as Government servants immediately, this direction shall not, however, apply to persons whose eviction has been stayed by High Court in any proceedings.

2. Persons who are not in Government service but require Government accommodation, because of security reasons, should be tried to be accommodated within one complex so that their security is ensured and State has to incur lesser amount for their security.

3. No person who is not a Government servant, but is provided the Government accommodation for security reasons, shall be given more than one Unit of accommodation in the State of Jammu & Kashmir.

Persons who are at present having Government houses both at Jammu and Srinagar be asked for a choice and evicted from the other house. This shall also be done within one month.

4. The houses and the accommodation Units available with the State Government shall be classified by a Committee to be appointed by the Chief Secretary of the State within six months and the entitlement of a particular officer to a particular type of accommodation shall be determined by that classification. A separate queue shall be maintained for separate type of accommodation in which applications shall be considered for the type of accommodation to which the applicant will be entitled on the basis of his status and grade, which may be classified by the Committee.

5. A Government Officer who has his own house at the place where he is stationed, shall not be entitled to Government accommodation.”

5. In view of the fact that the present appellants, who were occupying the said Government accommodation, were directed to be evicted from the houses allotted to them and no other accommodation was available, they preferred the Letters Patent Appeal (OWP No.50/1997) which stood dismissed vide judgment and order dated 14.3.1997. However, the High Court had given the opportunity to the appellants to approach the concerned authorities for appropriate relief.

6. Being aggrieved, the appellants approached this Court and this Court vide order dated 11.4.1997 passed the interim order to maintain status quo regarding possession of the properties. The matter had been heard on several occasions since then and this Court made an attempt to find out as to whether it could be practically possible to ask the appellants to occupy their own houses and whether it would be possible for the State to ensure protection of their person and properties as is evident from the order dated 26.8.1997. During this period of 12 years this case remained pending and the Court had been insisting upon the State to frame the scheme of rehabilitation of the appellants and particularly for providing them accommodation. When the matter was heard on 29.4.2008, the State authorities were

given time to prepare the rehabilitation scheme. But no steps were taken by the respondent-State. This Court vide order dated 3.12.2008 directed the respondent-State to frame the rehabilitation scheme within a period of six months and place it before the Court. As no material/scheme could be placed by the respondent-State before this Court, this Court vide order dated 17.9.2009 directed the Chief Secretary of the State to file his personal affidavit as to what steps had been taken in pursuance of the orders passed by this Court on 29.4.2008 and 3.12.2008.

7. In pursuance of the said order, the Chief Secretary has filed the affidavit dated 6.10.2009. In the said affidavit it has been disclosed that out of 54 appellants 23 had already handed over the Government accommodation to the State Department and the same had been allotted to the Government employees. Only 31 migrants/retirees are presently in occupation of the Government accommodation. It has further been clarified that there are 37,280 families who have been registered for the relief including the accommodation and out of them only 5,000 families could be provided the accommodation in the camps. However, it had been undertaken that the Government would provide such facilities to all 6 Kashmiri migrants till they are residing at the present places. The relevant part of the affidavit reads as under:-

“5. That it is further submitted that Govt. formulated a package for return and rehabilitation of Kashmiri Migrants which involves an outlay of Rs.1618.40 crores. This is for the first time since 1990, that Govt. of India has come up with a policy for Return and Rehabilitation of Kashmiri Migrants. The policy has been framed on the recommendations of a working group constituted by Govt. of India to suggest various confidence building measures in the J&K State.

While framing the policy various needs of the migrants have been taken into consideration, such as housing, education, revival of Agriculture and Horticulture land, employment etc.

The details of the package announced on 5th June 2008 are reproduced as under:- i) Return and Rehabilitation Package of Kashmiri Migrants:

The total package involves an outlay of Rs.1618.40 crore. The main components of the package are as under:

(a) Housing (i) Assistance @ Rs.7.5 lac for fully or partially damaged house left behind by migrant.

(ii) Rs.2.00 lac for dilapidated/unused houses.

(iii) Rs.7.5. lac for purchase/construction of a house in Group Housing Societies for those who have sold their properties during the period after 1989 and before the enactment of "The J&K Migrant Immovable Property (Preservation, Protection and Restraint of Distress Sale) Act, 1997" on 30.5.1997.

(b) Transit Accommodation : Construction of transit accommodation at three sites @ Rs.20.00 crore each for total Rs.60.00 crore. Alternatively, Rs.1.00 lac per family towards rental and incidental expenses to those families who may not be accommodated in transit accommodation.

(c) Continuation of Cash Relief to Migrants: Migrants families at Jammu and Delhi who are recipients of cash relief and free ration would continue to receive the same @ Rs.5000 per family per month (including rations) for a period of two years after their return to the valley.

7. That it may be further submitted that unemployed youth were asked to convey their willingness for serving in Kashmir Valley. In response to the same, 14074 unemployed youth have expressed their willingness in writing for serving in Kashmir valley.

8. That it is further submitted that a form called "EXPRESSION OF INTEREST" was circulated among the migrants in order to ascertain their willingness to return to valley and so far 1676 families have expressed their willingness to return to valley and avail the concession available under the package.

9. That it is further submitted that land at the following three sites have already been identified for construction of transit accommodation, the details whereof are as under:

a- Land at Vessu, District Kulgam 100 Kanals.

b- Land at Qazigund, District Anantnag 25 Kanals.

c- Land at Khanpura, District Baramulla 50 Kanals

10. That it may be further submitted that 200 flats are nearing completion at Sheikhpura Budgam. In addition to this, 18 flats are available at Mattan Anantnag. These flats are to be used as transit accommodation by the Kashmiri migrants who wish to return to valley. The migrants shall stay in the transit accommodation till they re-construct or renovate their houses.

11. That it may be further submitted that State Government had also constituted an Apex Advisory Committee to oversee the implementation of Return and Rehabilitation package for Kashmiri Migrants in the month of September 2009 and immediately after the constitution of the Apex Level Committee, various suggestions were put forth in a meeting held on 23.9.2009.

12. That it may be further submitted that the State Cabinet vide its decision No.130/11/2009 dated 1.10.2009 has approved the package for Return and Rehabilitation of Kashmiri Migrants to Kashmir Valley. However, with regard to implementation of employment scheme a Committee has also been ordered to be

constituted to go into the legal and other implications for making recruitments of the migrant youth against various posts before the said scheme is formally notified. The Committee has to submit its report within a period of two weeks.

13. That the State Government is keen to rehabilitate the Kashmiri Migrants in the Kashmir valley and shall provide every type of assistance for their return and rehabilitation. The process for the rehabilitation in valley has been initiated in June 2008 after Govt. of India announced the package for their return.”

8. The aforesaid affidavit makes it clear that the State Authorities have framed the rehabilitation scheme and for implementation of the same, it got the resources also. In such a fact situation no further action/direction is required.

9. In view of the above affidavit/undertaking given by the State and after hearing Mrs. Purnima Bhat Kak, Ld. Counsel for the appellants and Mr. Anis Suhrawardy, Ld. Counsel for the State, we dispose of the appeal with a pious hope that State shall take all endeavours to rehabilitate the persons who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellants- retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date.