

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No. 7268 of 2008**

Date of Decision : May 21, 2009

SANJAY TYAGI & ORS. Petitioners

Through: Mr. Abhijat, Advocate

Versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Sanjay Pathak and Mr. Mukesh Kumar, Advs. for Mr. Sanjay Poddar, Adv. for the LAC/R-1.
Mr. Ajay Verma, Adv. for the DDA/R-2.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (ORAL)

+ **CM APPL. No. 5859/2009 (for recall of order dt. 24.03.2009), CM APPL. No. 5860/2009 (Stay) in W.P. (C) No. 7268/2008 and CM APPL. No. 5862/2009 (for impleadment) in W.P. (C) No. 7268/2008**

1. A notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) in

respect of total land measuring 77 bighas and 8 biswas situated in Village Basai Darapur, Delhi in the year 1959. A declaration under Section 6 of the said Act was issued on 28.01.1966. The award No.7/97-98 was published and possession of 58 bighas and 10 biswas was taken over. It may be noticed that during this period of time there were certain writ petitions filed challenging the acquisition proceedings where interim orders had been passed but the same were subsequently dismissed/vacated.

2. A second set of litigation began on some co-sharers approaching this Court in the year 2001 alleging a policy of pick-and-choose for carrying out demolitions on the acquired land. The demolitions were, in fact, carried out.

3. The present writ petition was filed as according to the petitioners, the respondents were proposing to release some of the land acquired in the acquisition proceedings but in a pick-and-choose manner. Not only that the petitioners alleged that the land which had been acquired was permitted to be encroached upon by the DDA, which itself showed that there was no need to acquire the land for public purposes.

4. Learned counsel for the respondents, on instructions, stated on 19.01.2009 that all representations received for de-acquisition had been rejected. But insofar as the aspect of encroachment was concerned, time was sought to examine the matter. It was thereafter accepted that the land had in fact been encroached upon

by a few *Kabari Shops and Jhuggis* which had sprung up. A lay out plan of an unauthorized colony of village Basai Darapur was received by the DDA for regularization but on scrutiny of the same, the DDA informed the Government of National Capital Territory of Delhi by its letter dated 13.02.2009 that there could be no question of regularization as the very plea of the applicants; of existence of pucca structure thereon was not satisfied.

5. It was found that though on 28 occasions, complaints had been made regarding encroachment to the SHO, programmes had been fixed for demolition and the Lt. Governor himself had directed prompt action at the ground level, no programme had been fixed to remove the encroachment and the local police had sought deferment of the same on one pretext or the other.

6. The writ petition was thus disposed of on 24.03.2009 noticing all the aforesaid facts and the submission of the learned counsel for the petitioner that the only relief which he now sought was that necessary action should be carried out to clear the land within a specified period of time. We issued a direction to the DDA to take necessary action on or before 31.05.2009.

7. The present applications thereafter came to be filed and were listed before the Court for the first time on 1.5.2009. Learned counsel for the applicants took some time to file photographs of the site as also the land for which regularization was sought. On the proceedings being taken up on 20.05.2009, the counsel for the DDA

had shown some photographs of the site as on the previous date which gave a completely different picture from what was set out in the applications and thus learned counsel for the applicants sought some time to obtain instructions and the matter was posted for today.

8. We also directed the deponent of the affidavit in support of the application, Mr. K.K. Sharma, to remain personally present in Court, being the General Secretary of the Association.

9. We have heard learned counsel for the parties and the applicants.

10. The undisputed position is that insofar as the challenge to the acquisition proceedings is concerned, the matter came to an end long time back. The total area of land sought to be acquired as set out hereinabove was 77 bighas and 8 biswas. Possession of 58 bighas and 10 biswas was stated to be taken over between 31.01.2002 and 2.2.2002 when demolition action took place but no such action took place on the remaining 18 bighas and 18 biswas, which was heavily built up. It may be noticed that the acquisition proceedings were already under challenge but apparently no interim orders enured for the benefit of the owners which resulted in this action. The challenge to the acquisition proceedings came to an end with the dismissal of the writ petition on 12.09.2007. We may also add that the action against 18 bighas and 18 biswas of land as per learned counsel for the applicants was not carried out because

there was a stay order against such an action. The aforesaid stay order had been passed in Civil Writ Petition no. 861/2002. This writ petition has been finally dismissed on 12.09.2007 by a detailed order and has not been challenged further.

11. A reading of the stay order shows that the petitioners (including members of the applicants' association) approached this Court with the allegation that the DDA was carrying out the demolition in an arbitrary manner and in violation of principles of natural justice. The finding recorded in the order is that the possession of the land was taken over between the period 31.01.2002 and 2.2.2002. The writ petition was found to be devoid of any merit and dismissed.

12. In view of the aforesaid position, the present case of the applicants is really predicated on a policy of regularization of the Government of NCT of Delhi in pursuance where to an application has been filed by them and a certificate of provisional regularization was issued. We had an occasion to examine the methodology adopted for such regularization when it was brought to our notice that such provisional regularization certificates are issued merely on the filing of an application and it is only thereafter that scrutiny proceeds. The scheme of regularization contains certain essential requirements. This scheme, which is titled as "Regulations for Regularisation of Unauthorised Colonies in Delhi" was issued vide notification dated 24.03.2008. The criteria for regularization is set

out in para 3 of the scheme. Clause 3.1 provides for a cut off date for regularization as on 31.03.2002. Clause 3.3 provides as under:

"3.3 The following types of colonies or parts thereof would not be considered for regularization:

(a) xx xx xx

(b) xx xx xx

(c) Unauthorized colonies/habitations where more than 50% plots are un-built on the date of formal announcement of regularization scheme. However, plots which have been built up in the above mentioned colonies, even after 31.03.2002 and till the date of formal announcement of regularization scheme will be taken into consideration for deciding the eligibility of the colony for regularization.

(d) xx xx xx

13. It is thus obvious that the position as on 31.03.2002 is to be considered and the unauthorized colonies, where more than 50% plots are un-built on the date of formal announcement of the scheme, fall within the scheme. The aforesaid is what weighed with the DDA while issuing a letter dated 13.02.2009. It would be useful to extract the same as under:

"Sub : Regarding deletion of Khasra No. 732, 733 & 734 min. area 58 bighas and 10 biswas of village Basai Darapur from the Layout Plan of 'Extended Abadi of Village Basai Darapur' Unauthorised Colony.

Sir,

A layout plan of unauthorized colony i.e. extended abadi of Village Basai Darapur has been received from Unauthorised Colonies Cell, DDA which has been sent to them by your Department. As per reports obtained from the

Land Management Branch of West Zone, there is neither any unauthorized colony nor any pucca structure exists at the site. The detailed status of land is as under:

As per land record, Khasra No. 732 (12-06), Khasra No. 4023/733 (27-19), Khasra No. 4026/2785/734 (00-10), Khasra No. 4027/2785/734 min. (36-13) acquired total area 77 bigha, 08 biswas and possession taken only area of 58 bigha and 10 biswas from LAC/L&B dated 31/1/2002, 1.2.2002, 2.2.2002 and remaining land 18 bighas and 18 biswas, no possession taken till now. After that residents of that Village filed a writ before the Hon'ble High Court and final order has been passed by the Hon'ble High Court in favour of DDA dated 12.9.2007.

After verification of the layout plan, it has been found that Khasra No. 732, 733 and 734 min. approximately 58 bigha and 10 biswas must be deleted from the unauthorized colony extended abadi of Village Basai Darapur. A copy of the plan showing the land in question (in pink colour) is enclosed. In this connection, it is pertinent to mention that provisional certificate of unauthorized colony is being given on the basis of status of land/colony in the year 2002, whereas DDA has taken possession of the said land in the year 2002 itself after carrying out demolition programme."

14. The DDA has found that there is neither any unauthorized colony nor any pucca structure existing on the site. Another important aspect to be taken note of is that learned counsel for the applicants, on instructions, fairly states that the photographs produced by the respondents more or less reflect the correct position of the site land consisting of 58 bighas and 10 biswas. In fact the demolition action is slated for this area. The photographs show almost a complete absence of pucca structure with only some shanties or jhuggies. The reason for this is stated to be that the

pucca structures existing were demolished in the exercise carried out between 31.01.2002 and 2.2.2002.

15. If the aforesaid material is taken into consideration, the following aspects clearly emerge:

- i. The challenge to the acquisition proceedings has failed and there is no challenge pending.
- ii. The applicants herein were parties who had sought to challenge the acquisition proceedings.
- iii. The demolition action was carried out in respect of 58 bighas and 10 biswas from 31.02.2002 to 02.02.2002 and thereafter there are only shanties existing.
- iv. The photographs shown by the respondents which are undisputedly of the land verify the existence of only shanties.
- v. The DDA has also carried out an independent exercise and found that there can be no question of regularization of the unauthorized colony of village Basai Darapur in terms of scheme of regularization as there are no pucca structure existing on the land measuring 58 bighas and 10 biswas, as communicated vide letter dated 13.02.2009.
- vi. The challenge led by the petitioners to the demolition action in Civil Writ Petition No. 861/2002 and connected matters failed on 12.09.2007 and there was no further challenge. The

proceedings record that the possession of this land already stands taken over.

16. We may also note the contention of the learned counsel for the applicants that they are the co-owners of the land in question and in fact persons from adjacent areas have encroached upon this acquired land and let out shanties and are deriving rent from the same. It is thus the plea that once the respondents have taken a stand that the land is required by them, even if the regularization would have occurred it could only be for the benefit of the petitioners. We are not required to go into this aspect of the matter in detail for the reason that undisputedly the land is required by the respondents and the question before us is not as to who is to be restored the land.

17. Learned counsel for the applicants did seek to point out to us the order dated 24.03.2009, where we had taken note of the instructions of the Lt. Governor. In this behalf, learned counsel has stated that though undoubtedly in the notings dated 3.2.2009, Lt. Governor referred to a meeting with the Minister of State for Urban Development and for necessary action to remove the encroachment over the DDA land, subsequently on the local political leaders' meeting with the Lt. Governor, a communication dated 2.3.2009 was issued requiring the matter to be examined in detail with reference to the relevant maps on account of those persons approaching that authority.

18. We have set out the various important factual aspects of the case aforesaid as to our mind, it leaves no doubt that the applicants have no rights whatsoever to seek restraint against the respondents or seek recall of the order dated 24.03.2009.

19. The grievance of the applicants that the order dated 24.03.2009 was passed in their absence does not survive now as we have heard the parties at length for over an hour on the merits of the controversy.

20. The applicants have lost the challenge to the acquisition proceedings earlier and with their case predicated solely on the regularization scheme, they are not entitled to the benefit as the DDA itself has verified that the parameters of the scheme are not satisfied. The demolition action had taken place prior to the cut off date on 31.03.2002 and the requirement of 50% area in-built up is not satisfied. There is no factual dispute in the present case since even if the total land area measuring 77 bighas and 8 biswas is taken into consideration, the heavily built up area is 18 bighas and 18 biswas while for the remaining area demolition action took place and possession was taken over before the cut off date. This area is almost empty except for rubble at the site or the shanties erected after the demolition action.

21. We find that the applicants are making every endeavour to somehow prevent the respondents from exercising their rights under the Land Acquisition Act even after their challenge has failed.

Proceedings are initiated in one form or the other and pressure sought to be brought upon the authorities not to carry out their lawful duties. The local police failed to give assistance for enforcement of the rights of the DDA which is what weighed with us for issuing the directions on 24.03.2009. We expect our order dated 24.03.2009 to be forthwith complied with as the time period is going to lapse on 31.05.2009 and inaction would result in consequences for the respondents. We are also making it clear that even during the pendency of these applications there were no interdict against the respondents for compliance with our order.

22. We dismiss the applications being devoid of any merit with costs of Rs. 25,000/- to be paid to the respondents within 15 days.

23. Dasti to learned counsel for the applicants and the respondents.

SANJAY KISHAN KAUL, J.

MAY 21, 2009
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SUDERSHAN KUMAR MISRA, J.