

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

Date of decision: 15th March, 2011

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W.P.(C) 3338/2001

**FREEDOM FIGHTERS SOCIAL WELFARE
ASSOCIATION**

..... PETITIONER

Through: Mr. Meet Malhotra, Sr. Advocate with
Mr. Ravi S.S. Chauhan & Mr. Gaurav
Varma, Advocates

Versus

UOI & ORS.

..... RESPONDENTS

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

AND

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W.P.(C) 3444/2001

**SHREE HAZUR BABA SADHU SINGH JI
MAHARAJ TRUST**

..... PETITIONER

Through: Mr. Meet Malhotra, Sr. Advocate with
Mr. Ravi S.S. Chauhan & Mr. Gaurav
Varma, Advocates

Versus

UOI & ORS

..... RESPONDENTS

Through: Ms. Barkha Babbar, Advocate for
UOI.
Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

AND

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W.P.(C) 12695-705/2006

DR.TATINDER KUMAR KATHURIA & ORS. PETITIONERS

Through: Mr. Inder Bir Singh, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

AND

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W.P.(C) 12894-905/2006

**SH. LALITESHWAR KUMAR CHOWDHARY
& ORS. PETITIONERS**

Through: Mr. Inder Bir Singh, Advocate

Versus

GOVT OF NCT OF DELHI & ORS RESPONDENTS

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

AND

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W.P.(C) 13229-35/2006

SMT. KISHNI & ORS. PETITIONERS

Through: Mr. Inder Bir Singh, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

AND

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W.P.(C) 13428/2006

**FREEDOM FIGHTERS WELFARE
SOCIETY (REGD.)**

..... PETITIONER

Through: Mr. Ravi S.S. Chauhan & Mr.
Gaurav Varma, Advocates

Versus

UOI & ORS

..... RESPONDENTS

Through: Ms. Ruchi Sindhwani with Ms.
Megha Bharara, Advocates for
GNCTD.

AND

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W.P.(C) 19123-34/2006

SHRI RAJ KUMAR & ORS

..... PETITIONERS

Through: Mr. Inder Bir Singh, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS

..... RESPONDENTS

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. This batch of seven petitions entails the usual tussle of mankind i.e. of deforestation with a short time perspective to use the land of which no more is being produced for residential and commercial purposes, as against of afforestation with the long term perspective of preserving the environment necessary for the very existence of mankind.

2. The challenge in each of the petitions is to the steps taken by the respondents (being the Revenue, Forest and Flood Control Departments of the Government of NCT of Delhi (GNCTD)) pursuant to the Notification dated 2nd April, 1996 of the GNCTD. The said Notification was issued in pursuance to the directions given by the Supreme Court in orders dated 25th January, 1996 and 13th March, 1996 in I.A. Nos.18 & 22 in Writ Petition (Civil) No.4677/1985 titled ***M.C. Mehta Vs. Union of India & Ors.*** The Supreme Court directed that uncultivated surplus land of Gaon Sabha falling in “Ridge” be excluded from vesting in Gaon Sabha under Section 154 of the Delhi Land Reforms Act, 1954 and be made available for the purpose of creation of Reserved Forest. The

Notification declared “the uncultivated land of Gaon Sabha” specified in the said Notification and situated in Southern Ridge as surplus land and excluded the same from vesting in the Gaon Sabha and placed the said land at the disposal of Forest Department of GNCTD.

3. The contention of Mr. Meet Malhotra, Senior Advocate appearing for the petitioners in W.P.(C) Nos.3338/2001 & 3444/2001 is that the purport of the orders aforesaid of the Supreme Court in pursuance whereof the Notification aforesaid was issued and of the Notification was to place only such land at the disposal of the Forest Department, which were open and vacant and not land which had already been encroached and built upon as on the date of the Notification. Reliance is placed on copies of revenue records to show that some of the land mentioned in the said Notification was described as “Gair Mumkin Makaanat”, meaning that the same was already built upon even prior to the orders aforesaid of the Supreme Court. Reliance is also placed on the affidavit dated 4th August, 2003 of Sh. Bajrang Lal, Sub Divisional Magistrate, Hauz Khas, Delhi filed in W.P.(C) No.3338/2001 confirming that as per Khasra

Girdawari of the year 1995-96, the land in Khasra Nos.39 & 40 of village Neb Sarai was described as “Gair Mumkin Makaanat”.

4. The senior counsel has fairly stated that though the petitioners admit that the land belonged to the Gaon Sabha and has been illegally encroached upon but contends that since the same had been built upon prior to the orders of the Supreme Court aforesaid and the Notification dated 2nd April, 1996, it could not have been placed at the disposal of the Forest Department.

5. The further contention of the senior counsel for the petitioners is that the GNCTD is also considering regularization of colonies which have illegally come up on the land meant for agricultural purposes and belonging to the Gaon Sabha. It is contended that the proposals for regularization of unauthorized colonies had been invited and submitted; that some of the land subject matter of the Notification dated 2nd April, 1996 (supra) is part of the said unauthorized colonies. It is contended that the land which, as on the date of the orders aforesaid of the Supreme Court or on the date of the Notification was part of the unauthorized

colony and the proposal for regularization whereof was pending, could not be the part of the Notification dated 2nd April, 1996 whereby the same land was vested in the Forest Department. It is urged that there is thus an apparent inconsistency and arbitrariness requiring this Court to intervene. The petitioners in this regard have relied upon a public notice published in the newspapers in the year 1999 in pursuance of the directions of this Court in W.P.(C) No.4771/1993 requiring submission of lay out plans of the colonies pending consideration for regularization.

6. Though the counsels have not relied upon any orders in W.P.(C) No.4771/1993 (supra) of this Court but I find in the files a copy of the judgment dated 2nd February, 2006 of a Single Judge of this Court in Civil Writ No.8977-79/2003 titled ***Village Pul Pehladpur Residents Vs. Union of India*** therein setting out the order dated 17th August, 1998 of the Division Bench of this Court in W.P.(C) No.4771/1993 titled ***Common Cause (Regd.) Vs. Union of India*** which indicates that this Court had directed the Government to take definite decision whether to regularize or not to regularize the unauthorized colonies and to take

action for removal of encroachments / structures on public land, qua colonies with respect where to decision not to regularize is taken.

7. The senior counsel for the petitioners has further argued that the directions aforesaid of the Supreme Court in the year 1996 and the Notification (supra) in pursuance thereto was to be only prospective i.e. with respect to the land which till then was open and vacant and not qua land which had already been encroached and built upon and was part of the unauthorized colony and a scheme for regularization whereof was under consideration. It is urged that the orders of the Supreme Court did not direct removal of encroachments on the land and used the expression “likely to be misused” and which indicate that the said directions were not intended for land which was not vacant and which already had been encroached and built upon. The senior counsel though during the arguments agreed that the said orders were not so unequivocal and contended that the same could be clarified by the Supreme Court only.

8. Ms. Ruchi Sindhwani, Advocate for GNCTD in some of the writ petitions invited attention to the affidavits filed of the revenue officials to

the effect that there was no construction on the land prior to 2nd April, 1996. She contends that the petitioners have not shown anything to prove construction over the land since prior to the orders aforesaid of the Supreme Court. In the said affidavit, it is also pleaded that the said lands were part of the ridge area as per the Master Plan and were vide Notification dated 2nd April, 1996 (supra) vested in the Forest Department.

9. Ms. Ruchi Sindhwani, Advocate for GNCTD has also argued that pursuant to the directions of the Division Bench of this Court in W.P.(C) no.4771/1993 (supra), the GNCTD has on 24th March, 2008 notified the “Regulations for Regularization of Unauthorized Colonies in Delhi” and has during the course of hearing handed over a copy of the said Notification. As per the said Notification, the unauthorized colony or parts thereof falling under notified or reserved forest areas are not to be considered for regularization. It is contended that as per this Notification also, the question of the land falling in ridge / forest area being considered for regularization even if part of any unauthorized colony,

does not arise and as such there is no inconsistency as has been urged.

10. I may in this regard also notice that the judgment of this Court in ***Village Pul Pehladpur Residents*** (supra) had also noticed that without any regulations or guidelines for regularization, action for removal of encroachments / demolition of unauthorized colonies was being taken selectively. Now in the light of the Notification of 24th March, 2008, there are clear guidelines as to which parts of the unauthorized colonies are eligible for regularization and which are not.

11. Ms. Ruchi Sindhwani, Advocate for GNCTD has also argued that the argument of the petitioners tantamount to a challenge to the Notification dated 2nd April, 1996 (supra) and the said Notification having been issued in pursuance of the directions of the Supreme Court, the challenge thereto can lie before the Supreme Court and not before this Court.

12. Ms. Zubeda Begum, Advocate appearing for the GNCTD in some other writ petitions has contended that the petitioners have not placed

anything before this Court to demonstrate that any of the land with respect whereto the petitions have been filed was part of any unauthorized colony pending for regularization. She has further contended that the purport of the orders aforesaid of the Supreme Court and the Notification dated 2nd April, 1996 (supra) was to vest all land mentioned therein, even if had been already encroached upon, in the Forest Department for the purpose of afforestation as part of the ridge area. She has without prejudice to the said plea contended that none of the petitioners have filed any documents to show the Khasra numbers on which their properties may be located.

13. At this stage, I may describe briefly the land subject matter of each of the petitions:

- (i) W.P.(C) No.3338/2001 has been filed by a Society claiming to be an Association of owners in possession of built up residential plots in Freedom Fighters Enclave Colony, village Neb Sarai. The said Society contends that its members had built upon land in Khasra Nos.39 & 40; that

though as per Notification the entire Khasra Nos.39 & 40 is with the ridge but the action with respect to only parts thereof was being taken. Vide interim order dated 23rd May, 2001 in this writ petition, the respondents were restrained from dispossessing the petitioner.

- (ii) W.P.(C) No.3444/2001 has been filed by a Religious Trust claiming to be having land in Khasra Nos.8 & 41 in village Neb Sarai. Interim order restraining dispossession was granted in this petition also.
- (iii) W.P.(C) No.12695-705/2006 has been filed by eleven residents also of Freedom Fighters Enclave who claim their land to be in Khasra No.26. Interim order of status quo was granted in this petition also.
- (iv) W.P.(C) No.12894-905/2006 has been filed by twelve residents also of Freedom Fighters Enclave who claim their land to be in Khasra Nos.24 & 16.

- (v) W.P.(C) No.13229-35/2006 has been filed by seven persons who claim their land to be in Khasra No.27. They also enjoy interim protection.
- (vi) W.P.(C) No.13428/2006 has been filed by an Association of owners having land in Khasra No.42.
- (vii) W.P.(C) No.19123-34/2006 has been filed by twelve petitioners who claim their land to be in Khasra Nos. 223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi. They contend that even though their land is not included in the Notification dated 2nd April, 1996 (supra) but is being wrongfully treated as part of forest / ridge area and when decision for regularization of the unauthorized colony which has come up on the said land is pending.

14. A perusal of the order dated 25th January, 1996 (supra) of the Supreme Court shows that the land with respect where to Notification was directed to be issued was described as “Ridge area which has to be

preserved. No cultivation or any type of construction can be permitted on this area.” The Supreme Court in the said proceedings was concerned with preservation of the green area to provide a lung to the ever increasing population of the city of Delhi. In the subsequent order dated 13th March, 1996, the Supreme Court further observed that the “land is part of the ridge area. Even though it is not a reserved forest, it happens to be a forest. This area cannot be utilized in any manner in view of the prohibitions contained in the Forest Conservation Act, 1980. In this view of the matter, issuing of notification is a simple formality to secure the area. We, therefore, reiterate and request the Lieutenant Governor to have necessary notification issued within time specified by us.”

15. Seen in the aforesaid perspective, when the purport of the order was preservation of environment necessary for the very survival of the city, it is irrelevant whether the encroachment by the petitioners of the land with respect whereto the Notification has been issued was before the said Notification or thereafter. Even if the petitioners, as they claim had encroached upon the said land prior to the year 1996, they cannot be

permitted to continue with the encroachment. The land subject matter of the Notification is required to be afforested by removal of all encroachment, structures etc. existing thereon.

16. I am further of the view that now in any case in view of the Regulations for Regularization of Unauthorized Colonies in Delhi, 2008 which prohibit consideration for regularization of unauthorized colonies / portions thereof falling in notified or reserved forest areas, the matter has been placed beyond any pale of controversy. It cannot now be contended that the regularization of the unauthorized colony on the land is pending consideration. The conflict and inconsistency relying whereupon the petitions were filed and the interim orders obtained no longer exists. The petitions now have to necessarily fail.

17. There is another aspect of the matter. The petitioners admittedly are trespassers / encroachers on Gaon Sabha land. They have no equities or rights in their favour. Though the Government as a populist or a humane measure has agreed to consider regularization of unauthorized colonies which had come up illegally on public / private land but none

can claim any right thereto. The petitioners as encroachers / trespassers on land, be it of the Gaon Sabha or of the forest, are liable to be ejected therefrom.

18. Before parting with the subject, I may record that though of the opinion that the petitions before this Court were in any case misconceived since the challenge therein was to the Notification dated 2nd April, 1996 issued under directions of the Supreme Court but since the same have remained pending before this Court for long and interim protection was also granted to the petitioners, I have deemed it appropriate to deal with them on merits rather than dismissing them on such ground only.

19. That leaves only the controversy in W.P.(C) No.19123-34/2006, the land subject matter whereof is claimed to be in Khasra Nos.223 & 224 in Chattarpur Village and which is stated to be not part of the Notification dated 2nd April, 1996. The said petition has been filed contending that nevertheless the said land is being treated as part of ridge / forest.

20. The said contention is misconceived. The Notification dated 2nd April, 1996 is not the sole repository of the land in the ridge / forest area. The said Notification had to be issued only for the reason that though the said land in the Master Plan was shown as part of the ridge area but under the Delhi Land Reforms Act, 1954 vested in the Gaon Sabha. The Notification was therefore directed to be issued for exempting the said land from the land vesting in Gaon Sabha and to place the same with the Forest Department. It thus cannot be urged that the land in Khasra Nos.223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi is not part of the ridge / forest merely for the reason of not finding mention in the said Notification.

21. The counsel for the petitioners in W.P.(C) No.19123-34/2006 however urges that in the counter affidavit filed, it is pleaded that Khasra Nos.223 & 224 is Gaon Sabha land no action of removal of encroachment or for afforestation of Khasra Nos.223 & 224 in pursuance to notification dated 2nd April, 1996 is being taken.

22. However, in pursuance to the specific order dated 2nd February, 2010 of this Court in the said proceedings, an affidavit of Sh. Prabhat Tyagi, Dy. Conservator of Forests (South) has been filed in which it is stated that the land in Khasra Nos.223 & 224 village Chattarpur as also the land subject matter of all the other petitions falls within the Morphological Ridge as per Geological Survey of India Map. The said affidavit also reproduces the Master Plan providing for maintenance of the ridge in its pristine glory for maintaining ecological balance and the need to conserve the same to sustain the natural eco system.

23. Thus the position which emerges is, that the land in Khasra Nos.223 & 224 is part of ridge since before the issuance of the Notification dated 2nd April, 1996. Thus, it cannot be said that merely because the land in Khasra Nos.223 & 224 is not included in the Notification dated 2nd April, 1996, that the same is not part of the ridge / forest.

24. There is another aspect of the matter. Even if the petitioners in W.P.(C) No.19123-34/2006 claim that the land in Khasra Nos.223 & 224

of village Chattarpur is not included in ridge / forest and is Gaon Sabha land, the fora for having the same adjudicated is not by way of this writ petition but is by way of demarcation or by seeking declaration of their rights under the provisions of the Delhi Land Reforms Act, 1954 stated to be applicable. The writ petition is misconceived for this reason also.

25. I find that the Notification dated 2nd April, 1996 (supra) was also challenged before the Division Bench of this Court in ***Bhagat Singh Vs. UOI*** MANU/DE/1737/2010 on the ground that prior to issuance thereof, no exercise for assessing the requirement of the village had been undertaken. The Division Bench held that no such exercise was required to be carried out with respect to land which was part of the Ridge Area inasmuch as the objective of the Notification was to protect the Ridge.

26. None of the petitions have any merits. The interim orders granted earlier are vacated. The petitions are dismissed. The respondents are directed to forthwith take possession of the land by removal of all encroachments / constructions thereon. I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 15, 2011/‘gsr’