

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

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Date of decision: 4th April, 2011

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WP(C) No.1690/2010 & CM No.3369/2010 (for stay).

BEENA BABURAM

..... Petitioner

Through: Mr. Robin V.S for Mr. P.V. Dinesh,
Advocates

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Zubeda Begum, Advocate for R-1
along with J.P. Sejwal, A.E. Civil
Division No.V, Chief Engineer (I&FC
Deptt.)
Ms. Manjira Dasgupta for Ms. Shyel
Trehan, Advocate for MCD.

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? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner claiming to be a resident of A/314, Dr. Ambedkar Colony, Andheria Modh, New Delhi has filed this petition contending that the respondents acting in contravention of the judgment dated 13th February, 2003 in W.P.(C) No.3993/2000 earlier preferred by the

petitioner along with others, have on 3rd March, 2010 demolished the boundary wall of the petitioner's premises and claiming the relief of restraining the respondents from fencing or carrying on any construction activity or from raising a boundary wall taking away a part of the open land claimed to be part of the property of the petitioner. The counsel for the respondents however, on 15th March, 2010 when this petition came up before this Court, informed this Court that the respondent no.1 Government of NCT of Delhi had already taken possession of the open land abutting the property of the petitioner and had also constructed a boundary wall to secure the said land. Accordingly, an interim order was made restraining the respondents from raising any further construction over the said land and restraining the petitioner from demolishing the boundary wall already constructed by the respondents.

2. This petition as aforesaid was filed by the petitioner for restraining the respondents from taking over open area abutting her property. However the said open area/land already stands taken by the respondents, before the filing of the writ petition. Thus the relief claimed in the writ petition has, strictly speaking, become infructuous. The petitioner has not bothered to amend the writ petition to claim the relief of *status quo ante*.

3. Nevertheless, the counsels have been heard on the right asserted by the petitioner to the said open land.

4. It is the case of the petitioner that Dr. Ambedkar Colony is an unauthorized colony under consideration for regularization. The earlier writ petition aforesaid was filed by as many as 707 residents of the said colony to restrain the respondents from taking action of demolition in the said colony. During the pendency of the said earlier writ petition direction was made for each of the petitioners therein including the petitioner to file affidavits disclosing the extent of their respective properties. It is the case of the petitioner (though no document in that regard has been filed) that in compliance of the said direction the petitioner had filed an affidavit disclosing the open land aforesaid abutting her property as part of her property. Ordinarily, if the petitioner had filed such an affidavit in the earlier writ petition, the petitioner would be in possession of copy thereof or would be able to obtain certified copy thereof and would have produced the same before this Court. Nothing of the sort has been done. The only presumption is that the petitioner, in the earlier writ petition, had not disclosed the said open land as part of her property.

5. The earlier writ petition was disposed of as aforesaid vide judgment dated 13th February, 2003 and in accordance with the judgment of the Division Bench of this Court in ***Common Cause v. Union of India*** [W.P.(C) No.4771/1993]. Finding that no definite stand was being taken by the Government for regularization of unauthorized colonies, directions in this regard were issued to the Government of India and, so as to prevent the authorities from indulging in a policy of pick & choose, they were directed to maintain *status quo* till such decision is taken.

6. I may notice that a decision in this regard has since been taken and Regulations for Regularization of Unauthorized Colonies in Delhi have since been notified on 24th March, 2008.

7. The counsels however state that no decision with respect to the colony of Dr. Ambedkar Colony has been taken as yet.

8. The purport of the judgment of the Division Bench in ***Common Cause*** as well as in the judgment dated 13th February, 2003 (supra) was to protect the unauthorized development which had already taken place, till a policy decision was taken. It cannot be lost sight of that most of the said unauthorized colonies including the Dr. Ambedkar Colony subject matter of this petition, to a large extent are an encroachment over public land.

The residents/occupants thereof have no title to the said land and consequently have no right to remain in possession thereof. It is only owing to the policy of the Government that the question of regularizing the said colonies thereby conferring title to the hitherto before unauthorized occupants is being considered.

9. As far as the land subject matter of the present petition is concerned, there is no dispute that the said land belongs to the *Gaon Sabha*. The best claim of the petitioner thereto is of being in unauthorized occupation thereof. But for the protection of the judgments in *Common Cause* and in the earlier writ petition preferred by the petitioner, the petitioner as a trespasser on the said public land would have no right to maintain this present petition with respect thereto. The only question to be thus considered is whether owing to the said earlier judgments the petitioner was entitled to retain possession.

10. The petitioner has not placed anything to show that as on date of the earlier judgment she was in possession. However what is admitted is that the petitioner prior to filing this petition was in possession of the said *Gaon Sabha* land. However the said possession would not be of any avail

without the petitioner establishing that she was in possession on the date of the judgment in the earlier writ petition.

11. The respondents in their counter affidavits have stated that a report was made on 26th December, 2008 that the petitioner had unauthorizedly included *Gaon Sabha* land within her property and accordingly notice was issued to the petitioner and thereafter action taken as aforesaid on 9th January, 2009 for taking back possession of the said *Gaon Sabha* land. The same discloses that the petitioner was not in possession of the said land as on date of the earlier writ petition. The petitioner is thus not entitled to contend that she could not have been removed therefrom when she admittedly had no title to the land.

12. Even otherwise the purport of the earlier judgments was to protect the constructions which had already taken place. The purport was not to also grant protection with respect to the open land abutting the said constructions. As aforesaid, the petitioner as unauthorized occupant/encroacher has no equities in her favour. This Court would not come to the rescue of an encroacher of land.

13. The petitioner inspite of several opportunities has not filed any rejoinder to the counter affidavits filed and has not even stated whether

the land aforesaid is included as part of the unauthorized colony of Dr. Ambedkar Colony in the proceedings for regularization of the said colony.

14. The petitioner is therefore not found entitled to any relief. The writ petition is dismissed, however no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

April 4th, 2011
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