

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 8th November, 2011
Judgment Delivered On: 11th November, 2011

+ LPA 267/2011

SHREE HAZUR BABA SADHU SINGH JI
MAHARAJ TRUST

..... Appellant
Through: Mr.Jairaj Mudgal, Advocate for
Mr.Ramesh Kainthola, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 268/2011

FREEDOM FIGHTERS SOCIAL WELFARE
ASSOCIATION

..... Appellant
Through: Mr.Jairaj Mudgal, Advocate for
Mr.Ramesh Kainthola, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 271/2011

FREEDOM FIGHTERS SOCIAL WELFARE
ASSOCIATION

..... Appellant
Through: Mr.Jairaj Mudgal, Advocate for
Mr.Ramesh Kainthola, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 269/2011

LALITESWAR KUMAR CHOWDHARY
& ORS. Appellants
Through: Mr.Inderbir Singh, Advocate

versus

GOVT OF NCT OF DELHI & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 270/2011

RAJ KUMAR & ORS. Appellants
Through: Mr.Inderbir Singh, Advocate

versus

GOVT OF NCT OF DELHI & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 308/2011

TATINDER KUMAR KATHURIA & ORS. Appellants
Through: Mr.Inderbir Singh, Advocate

versus

GOVT OF NCT OF DELHI & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

LPA 309/2011

KISHNI & ORS. Appellants
Through: Mr.Inderbir Singh, Advocate

versus

GOVT OF NCT OF DELHI & ORS. Respondents
Through: Mr.Mukesh Anand, Advocate for UOI
Ms.Zubeida Begum and Ms.Sana Ansari,
Advocates for GNCT of Delhi

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

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

PRADEEP NANDRAJOG, J.

1. Two distinct issues arise for consideration in the above-captioned appeals. The first pertains to lands comprised in Khasra Nos.16, 18, 24, 26, 27, 39, 40, 41, and 142 Village Neb Sarai and the other issue pertains to lands comprised in Khasra Nos.223 and 224 Village Chattarpur.
2. The factual commonality in all the appeals is unauthorized colonization on said lands.
3. The appellants lost the battle before the learned Single Judge and live on to fight a second round before the Appellate Court.
4. The basis of the right claimed by the appellants is the policy decision dated 24th March 2008 notified by the Government of NCT Delhi pertaining to 'Regularization of Unauthorized Colonies in Delhi'.
5. The notification dated 24th March 2008 specifies the criteria for regularization of unauthorized colonies and vide clause 3.3(a) specifically excludes such unauthorized colonies or part of colonies or habitations comprised in notified or reserved forest area.

6. Lands comprised in Khasra Nos.16, 18, 24, 26, 27, 39, 40, 41, and 142 Village Neb Sarai have admittedly been notified on 2nd April 1996 as gaon sabha waste land and placed at the disposal of the Forest Department to be maintained as forest area. The challenge is to the lands being notified as a 'Reserved Forest'.

7. The notification in question was promulgated pursuant to the order dated 3.1.1996 passed by the Supreme Court in W.P.(C) No.4677/1985 M.C.Mehta Vs. Union of India.

8. Section 154 of the Delhi Land Reforms Act reads as under:-

"154.Vesting of certain lands etc. in Gaon Sabha –

(1) On the commencement of this Act-

(i) All lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) All trees (other than trees in a holding or on the boundary thereof or in a grove or abadi) or planted by a person other than a proprietor on land other than land comprised in his holding,

(iii) Public wells,

(iv) Fisheries,

(v) Hats, bazaar and meals, except hats, bazaar and meals held on land to which provisions of clauses (a) to (c) of sub-section (1) of Section 11 apply,

(vi) Tanks, ponds, water channels, pathways and abadi sites,

(vii) Forest, if any.

Situate in a Gaon Sabha Area, shall vest in the Gaon Sabha:

Provided that if the uncultivated area situate in any Gaon Sabha area is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the Gaon Sabha, under this section and may make such incidental and consequential order as may be necessary.”

9. It is not in dispute that land comprised in Khasra Nos.16, 18, 24, 26, 27, 39, 40, 41 and 142 Village Neb Sarai were uncultivated barren lands when the Delhi Land Reforms Act 1954 was promulgated and were situated in a gaon sabha area and were thus vested in the gaon sabha by operation of law. It remained an unfortunate situation that the inefficient bureaucrat did not declare as aforesaid till the Supreme Court had to needle the inefficient bureaucrat to comply with the law.

10. While passing the direction to notify the reserved forest land in Delhi, the Supreme Court used the expression ‘uncultivated gaon sabha land’ while requiring the Government to ensure compliance with Section 154 of the Delhi Land Reforms Act 1954 and further to identify such lands which were liable to be declared as a reserved forest.

11. Picking on the said expression used by the Supreme Court, case of the appellants is that the Supreme Court had required uncultivated gaon sabha land to be notified in terms of Section 154 of the Delhi Land Reforms Act and thereafter as reserved forest and since; it is urged,

that on the lands in question colonization has been effected, the necessary corollary would be that the lands could not be declared as a reserved forest.

12. The argument has been negated by the learned Single Judge who has held that there are no equities in favour of the appellants since admittedly they are trespassers on gaon sabha land and secondly that the lands are declared a reserved forest with the approval of the Supreme Court. The learned Single Judge has thus held that he could not issue any direction as prayed for. The learned Single Judge has further held that the issue stands concluded by the decision dated 16.7.2010 in W.P.(C) No.4687/2010 Bhagat Singh & Ors. Vs. UOI & Anr.; decided by a Division Bench of this Court.

13. The argument in appeal before us was that since the Supreme Court had directed uncultivable gaon sabha land to be declared as a reserved forest, the subject lands which were used for colonization could not be declared as reserved forest.

14. A little historical peep is needed into the Delhi Land Reforms Act 1954.

15. The Act was promulgated to provide for modification of zamindari system so as to create a uniform body of peasant proprietors without intermediaries and with respect to waste lands, grazing lands, forests and lands of common utility in different villages in Delhi, Section 7 of the Act provided that all interests in such lands would cease and be void and all such lands would be vested in the gaon sabha. Waste lands were specifically included in Section 7

and as per the explanation to sub-Section 1 of Section 7 waste land included cultivable and uncultivable waste area of the village.

16. The Delhi Land Reforms Act 1954 does not define the word 'cultivate' and thus the same has to be given its ordinary grammatical meaning, which would mean to prepare and use land for agricultural purposes.

17. Thus, when the Supreme Court used the expression 'uncultivated gaon sabha land' it has to mean that such gaon sabha land on which no cultivation is being effected and cannot mean, as urged by the appellants, vacant land.

18. That the appellants are admittedly not cultivating the lands and that admittedly the lands were never cultivated in the past is a fact not in issue as the appellants admit that never ever in the past or in the present any agricultural operations are being performed on the lands.

19. The revenue records show the said lands to be uncultivated waste lands vested in the gaon sabha is not in issue.

20. Thus, in addition to the reasons given by the learned Single Judge, in law, for the reasons aforementioned, the appellants would have no case pertaining to the lands comprised in Khasra Nos.16, 18, 24, 26, 27, 39, 40, 41 and 142 Village Neb Sarai which have rightly been declared as waste lands, vested in the gaon sabha and being common pasture/forest lands in the past have been declared as reserved forest pursuant to directions issued by the Supreme Court.

21. As regards lands comprised in Khasra Nos.223 and 224 village Chattarpur, learned counsel for the respondents conceded that no notification has been issued qua said lands declaring the same to be gaon sabha lands or as a reserved forest land. But, learned counsel urged, an argument which was urged before the learned Single Judge and accepted by the learned Single Judge, that the topology and morphological features of said lands has been opined to be similar to the ridge land, declared as a reserved forest, pursuant to the notification dated 2nd April 1996.

22. Now, where law vests a power and regulates the manner in which the power has to be exercised, the power has to be exercised in the manner specified and in no other manner.

23. The notification dated 24th March 2008 laying down the criteria for regularization of unauthorized colonies does not exclude regularization of unauthorized colonization on government land. It only excludes unauthorized colonization on lands notified as reserved forest areas, meaning thereby, that unless notified as a reserved forest area, it cannot be at the will of a government servant to self opine whether the land is a reserved forest area.

24. Leaving it open to the government to issue the necessary notification, if it is established that land comprised in Khasra Nos.223 and 224 village Chattarpur was a waste land or a forest land, the appeals stand dismissed in so far they pertain to lands comprised in Khasra Nos.16, 18, 24, 26, 27, 39, 40, 41 and 142 Village Neb Sarai and qua the land comprised in Khasra Nos.223

and 224 village Chattarpur, the impugned order dated 15.3.2011 passed by the learned Single Judge disposing of 7 writ petitions is modified by issuing a direction that till the government notifies land comprised in Khasra Nos.223 and 224 village Chattarpur as a reserved forest, the same would be treated at par with other gaon sabha lands for the purposes of the notification dated 24th March 2008. We clarify. It would be for the Government of NCT Delhi to either amend the notification dated 2nd April 1996 or to promulgate a further notification qua said lands on the issue of the same being waste land or for any other reason, vested in the Gaon Sabha and placed at the disposal of the Forest Department.

25. No costs.

26. Dasti.

(PRADEEP NANDRAJOG)
JUDGE

(S.P. GARG)
JUDGE

NOVEMBER 11, 2011
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