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HIGH COURT OF DELHI : NEW DELHI

Reserved on : March 20, 2012
Pronounced on : March 28, 2012

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W.P. (C) No.2525/2003

% **PUSHPENDRA SINGH AND ORS** ... **Petitioners**
Through: **Mr.Shahzad Khan, Advocate**
Mr. Mukesh Kumar Verma, Advocate for
Petitioner No.16 & 19.

versus

L.G. of Delhi & Ors. ... **Respondents**
Through: **Mr.Ashutosh Shahi and Ms.Sonia Arora,**
Advocates.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER
28.03.2012

1. Vide Notification of 2nd April 1996, (Annexure P-1), issued by the Revenue Department of Government of NCT of Delhi by invoking Section 154 of the Delhi Land Reforms Act, 1954, the uncultivated land of Gaon Sabha (*specified in column III and Annexure 'A' to 'N' annexed to Notification, situated in Southern Ridge in respect of Villages mentioned in Column 'II' of table appended to the Notification as surplus land and excluded the same from vesting in Gaon Sabha*) was placed at the disposal of Forest Department of Government of National Capital Territory of Delhi.
2. A corrigendum in the aforesaid Notification is sought by the petitioners to exclude *Khasra No.435* situated within the Revenue Estate

of *Village Neb Sarai, Tehsil Mehrauli, New Delhi* by way of this writ petition.

3. It is asserted in this petition that the predecessor of petitioners were allotted residential plots of land under *Government's 20-Point Program* in Khasra No.435 of Village Neb Sarai, Tehsil Mehrauli, New Delhi being landless villagers and they had raised pucca construction over the said land in the year 1974-75 and the petitioners have been in continuous and uninterrupted possession of their houses on the land in question and petitioners further asserted that they have been provided Ration Card, Election Identity Cards, Electricity, water and telephone connections at the residential addresses of the petitioners on the land in question. Petitioners expressed ignorance about the aforesaid Notification (Annexure P-1) and it was in January 2003, they claim to have learnt about it, when representative of the respondents had visited the site in question and had threatened to demolish the houses of the petitioners. This had led to filing of the present writ petition.

4. The stand taken by the respondents in the counter affidavit is that the petitioners are in illegal occupation of the land in question as they have no title documents in their favour to establish their claim upon the land in question and in compliance of the orders of 25th January, 1996 and 13th March, 1996 of the Apex Court in W.P.(C) No. 4677/1985, titled as *M.C.Mehta vs. Union of India and Ors.*, vide impugned Notification, the land in question has been transferred to the Forest Department. It is specifically denied by the respondents that the land in question was ever allotted to petitioners under *Government's 20-Point Program* as claimed by them.

5. In the rejoinder filed by the Petitioners, the stand taken is that

even if the Petitioners have illegally occupied the land in question, there is specific provision under the *Delhi Land Reforms Act, 1954*, for eviction of such occupants and the reliance placed by the respondents upon the decision of the Apex Court in *M.C.Mehta* (supra) is misplaced as the subject land in view of the revenue record, i.e. *Khasra Girdawari* of the year 2001-2002, (Annexure P-9) indicates existence of *gair mumkin chaar diwari, kamre, and johar* and the photographs (Annexure P-8 & Annexure P-11) indicates the existence of old constructions at the spot.

6. It is pertinent to note that Petitioner No.16 and 19 with their C.M.No. 2019/2012 under Section 151 of CPC have placed on record copy of Representation (Annexure G) made by them in February, 2012 to first Respondent and copies of the applications filed by them under the *Delhi Land Reforms Act, 1954* seeking Bhumidari rights on the land under their occupation and copies of the orders (Annexure B to Annexure F) to highlight that where proceedings under *Delhi Land Reforms Act, 1954* were initiated by the land owners, protection against forceful eviction of such occupants from the said land has been granted by different Benches of this Court.

7. Upon hearing learned counsel for the parties and on perusal of the material on record and the decisions in *Prataprai N.Kothari vs. John Braganza*, IV(1999)SLT 351; *Jagpal Singh & Ors. vs. State of Punjab & Ors.*, 2011(2)SCALE 42; W.P.(C) No.4687/2010 titled as *Bhagat Singh & Ors. Vs. Union of India & Anr*, rendered on 16th July, 2010; LPA No.267/2011, titled as *Shree Hazur Baba Sadhu Singh Ji Maharaj Trust vs. Union of India & Ors.*, rendered on 11th November, 2011, as well as orders passed in W.P.(C) No. 11919/2009 titled as *Smt.*

Bhateri & Ors. Vs. The Deputy Commissioner (South) & Ors, rendered on 24th September, 2009; W.P.(C) No. 11901/2009 ***Hukan Chand & Ors. Vs. Dy.Commissioner (South) & ors.***, rendered on 17th November, 2009; W.P.(C) No. 5600/2008 titled as ***Jai Bhagwan & Anr. Vs. Govt. of NCT of Delhi & Anr.***, rendered on 18th August, 2010; W.P.(C) No. 4065/2011 ***Dr.Devendra Kumar vs. MCD & Anr.***, rendered on 3rd June, 2011; and W.P.(C) No. 4902/2011 ***Surender Singh and Anr. Vs. Govt. of NCT of Delhi & Ors.***, rendered on 20th July, 2011, what emerges is that the assertion of the petitioners that their occupation upon the subject land is legal in the capacity of being allottees of the subject land under the *Government's 20 Point Programme* remains unsubstantiated as there is no document on record indicating that the petitioners are allottees of the subject land under *Government's 20 Point Programme*. In view of the denial by the respondents of petitioners being allottees of the subject land under the *Government's 20 Point Programme*, it was incumbent upon the petitioners to place on record documentary proof to substantiate their claim of being allottees of the subject land under the *Government's 20 Point Programme*. Even the Representation (Annexure P-10), does not indicate that any proof of petitioners being allottee of the subject land under the *Government's 20 Point Programme* was filed alongwith the said Representation. Similar is the position in respect of the belated Representation of February, 2012 (Annexure G) by petitioner No.16 & 19, and the revenue record i.e. *Khasra Girdawari* of the year 2001-2002 (Annexure P-9) relied upon by the petitioners indicates the ownership of the subject land being that of Gram Sabha and it does not establish the possession of the petitioners on the subject land.

8. After having deliberated upon the submissions advanced in the

light of the decisions cited, this Court is of the considered view that once the subject land has been declared surplus and has been excluded from vesting in the Gaon Sabha, vide impugned Notification (Annexure P-1), resort to proceeding under *Delhi Land Reforms Act, 1954* cannot be made. So far as reliance placed upon orders (Annexure B to Annexure F) is concerned, it would suffice to say that the impugned Notification (Annexure P-1) does not appear to be the subject matter of the said orders.

9. In the aforesaid view of the matter, it would be pointless to now call upon the respondents to decide petitioners representations (Annexure P-10 and Annexure G) as the stand of the respondents on merits already stands disclosed in their counter affidavit. Last minute effort of petitioners No.16 & 19 to retain their possession on the subject land by belatedly filing application under Section 74 of *Delhi Land Reforms Act, 1954*, as late as in January, 2012 is misconceived as in the face of Notification (Annexure P-1), the subject land stands excluded from vesting in the Gaon Sabha and has been already placed at the disposal of the Forest Department in the year 1996 and challenge to it by the petitioners in the year 2003 on the plea that they had no knowledge about the impugned Notification is hardly valid.

10. The documentary proof, i.e., *Voter Identity Cards, Ration Cards, allotment of house numbers by MCD to the Petitioners' houses*, (Annexure P-2 to Annexure P-6), relied upon by the petitioners, does not indicate their possession upon the subject land. Otherwise also, Apex Court in *Jagpal Singh & Ors. vs. State of Punjab & Ors.*, 2011(2)SCALE 42, has reiterated that long duration of illegal occupation on the *Gram Panchayat's land* or huge expenditure in making

construction thereon must not be treated as justification for condoning/regularization of the illegal occupation thereon.

11. In a somewhat similar matter, the Division Bench of this Court in W.P.(C) No. 4687/2010 titled as ***Bhagat Singh & Ors. Vs. Union of India & Anr***, rendered on 16th July, 2010, has dealt with the quashing of the Notification (Annexure P-1) in question, and upon finding the petitioners therein to be encroachers on the Government land, had refused to quash the Notification in question while noting as under:-

“It is thus apparent to us from the aforesaid Notification that it is in pursuance to the orders of the Hon'ble Supreme Court that uncultivated surplus land falling in the ‘Ridge’ area was declared as surplus and excluded from vesting in the Gaon Sabha being placed at the disposal of the Forest Department.”

12. A Division Bench of this Court in LPA No.267/2011, titled as ***Shree Hazur Baba Sadhu Singh Ji Maharaj Trust vs. Union of India & Ors.***, rendered on 11th November, 2011, had noted that the land of Village Neb Sarai in question, vide the Notification (Annexure P-1) in question had placed the waste land of the Gaon Sabha at the disposal of the Forest Department to be maintained as Forest area pursuant to the directions issued by the Apex Court in W.P.(C) No. 4677/1985, titled as ***M.C.Mehta vs. Union of India and Ors.***, and had repelled the claim of the occupants of the said land for regularization while holding as under:-

“Thus, in addition to the reasons given by the learned Single Judge, in law, for the reasons aforesaid, 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.”

13. In the light of the afore-noted authoritative pronouncements of the Apex Court and Division Bench of this Court, and in view of the fact that the status of the petitioners upon the subject land remains unauthorized, there is no justification whatsoever to exclude the subject land from the operation of the Notification (Annexure P-1).

14. Consequently, finding no merit in this petition, I dismiss it with no orders as to costs.

(SUNIL GAUR)
JUDGE

March 28, 2012
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