

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

%

Judgment delivered on: 22.08.2012

+

**LPA 915/2011**

**OKHLA VIHAR SOCIAL WELFARE ASSOCIATION** ... Appellant

versus

**UNION OF INDIA & ORS** ... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr Mohammad Sajid.

For the Respondents : Mr Himanshu Bajaj for R-1.

Ms Zubeda Begum and Ms Sana Ansari for R-2.

Mr Anil Mittal and Mr Amritansh Batheja for R-3.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This Letters Patent Appeal is directed against the order dated 20.10.2011 passed by a learned Single Judge of this court whereby the appellant's writ petition WP(C) No.7602/2011 was dismissed with heavy costs of ₹ 1 lakh. The question involved pertains to regularization of the appellant's colony which is known as Okhla Vihar, Jamia Nagar, New Delhi-110025.

2. The learned Single Judge dismissed the said writ petition on three counts. Firstly, according to the learned Single Judge this court did not have

the jurisdiction to entertain the writ petition and the appellant ought to have approached the Allahabad High Court, if at all, inasmuch as the apprehension of dispossession, which the appellant had, was at the hands of respondent No.3 (State of U.P.). The second ground on which the writ petition has been dismissed is that of delay and laches. According to the learned Single Judge since the appellant had sought the quashing of the notice dated 27.05.2005 which was published on 16.06.2005, the writ petition was filed after an inordinate delay inasmuch as the writ petition was filed in 2011. The third ground for dismissal of the writ petition was that the petition was barred by constructive *resjudicata* inasmuch as the same issue had purportedly been considered in respect of residents of the very same colony in WP(C) No.10579/2005, **Samiuddin & Others v. Executive Engineer and Others** which had been disposed of by another learned Single Judge of this court on 26.07.2011. In that writ petition, the petitioners therein had withdrawn the writ petition with liberty to file a civil suit in order to get the disputed questions of facts adjudicated. The court had granted interim protection against forcible dispossession in that matter. However, it appears that the petitioners therein did not file any civil suit. Now the Okhla Vihar Social Welfare Association is before us for, *inter alia*, the same relief of

regularization and protection from forcible dispossession.

3. We have heard learned counsel for the parties. Insofar as the first point is concerned we feel that the learned Single Judge has not arrived at the correct conclusion. The property in question is situated within the territorial jurisdiction of Delhi. It falls within the jurisdiction of this court. It is another matter that a part of the relief was sought against one of the respondents, namely, the respondent No.3 which happened to be the State of U.P. That does not mean that just because one of the respondents is outside the territorial jurisdiction of this court, the writ petition would not be maintainable in this court on that ground alone. We are of the clear view that the learned Single Judge had erred on this aspect of the matter. This Court had the jurisdiction to entertain the Writ Petition.

4. Another point which needs to be set at rest is that once the learned Single Judge felt that this court did not have the jurisdiction, he ought not to have dealt with the merits of the matter. At this stage the learned counsel for the appellant association submitted that he may be permitted to withdraw this appeal as also the writ petition inasmuch as there are several factors whereby the appellant is already protected. As such, it is not necessary for us to examine the other aspects of the matter. One factor that was pointed out

to us was that the appellant already has a provisional certificate of regularization issued by the Delhi Government. The said certificate is signed by the Joint Secretary (Unauthorized Colonies) as well as by the Urban Development Minister, Government of NCT of Delhi. The said provisional certificate has been issued on 17.09.2008 and the same has been issued to the residents of Okhla Vihar, Jamia Nagar, New Delhi-110025 through Shri Mohd. Aslam, Secretary of the Okhla Vihar, SWA(the appellant herein). The provisional certificate clearly states that Okhla Vihar, Jamia Nagar, New Delhi, an unauthorized colony, is provisionally regularized. However, the certificate also makes it clear that the provisional regularization certificate is subject to the scrutiny of the requisite documents by the local body/Delhi Development Authority/GNCTD, with regard to fulfillment of conditions stipulated under the Regulations for Regularization of Unauthorized Colonies in Delhi, notified by the Government of India vide notification No.S.O.683(E) dated 24.03.2008 amended by notification No.S.O.1452 dated 16.06.2008. It is also pointed out in the said certificate that only the unauthorized colonies fulfilling those conditions shall be considered for final regularization.

5. Thus it is seen that the appellant already has a provisional certificate

of regularization. Furthermore, the learned counsel for the appellant drew our attention to a communication dated 11.09.2007 which conveyed the decision of the Lieutenant Governor of Delhi on the subject of taking possession of the awarded land falling within the boundaries of certain unauthorized colonies. The said communication indicates that in view of the policy decision to regularize certain unauthorized colonies any land falling within the boundaries of such colonies as per the survey which had been carried out by Divisional Commissioner, whether built up or not, will not be now taken over by the Government. Added to this is the statement of the learned counsel for the respondent No.2 (GNCTD) made before another Division Bench of this court on 29.11.2011 to the effect that the land in question belongs to the Government (*Sarkar Daulat Madar*) but is in the possession of the Agra Canal and, thus, there is no question of respondent No.2 taking any coercive action.

6. It is in this backdrop that the learned counsel for the appellant states that as long as the appellant's case for regularization is considered by the concerned respondent as per the said policy of regularization, the appellant does not have any remaining grievance in view of the provisional certificate already issued and the communication of the Lt. Governor's decision as also

the statement made by the learned counsel for the respondent No.2. He only requests that this court may clarify that the decision and observations made by the learned Single Judge in this case as well as in the case of **Samiuddin** (*Supra*) would not come in the way of the respondents taking a decision with regard to regularization of the appellant's unauthorized colony. In view of the fact that the Petitioner already has a provisional regularization certificate and the respondent No.2 has already stated that no coercive action would be taken while the question of regularization is pending, we permit the appellant to withdraw this appeal as also the writ petition and make it clear that any observations made by the learned Single Judge in the impugned order will not be looked into while considering the case of the appellant for regularization under the extant policy for regularization. We also feel that in this backdrop the imposition of costs of Rs.1 lakh by the learned Single Judge was not warranted. The appeal as well as the writ petition stands withdrawn with the above observations.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**AUGUST 22, 2012/mk**