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

+ W.P.(C) 4919/2011 & CM APPL. 9981/2011, 10474-10475/2011

MRS. MEETA CHAKRABORTY
AND ORS..... Petitioners
Through Mr. Anuj Castileno with Ms. Mrunal
Buva, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through Ms. Shobhna Takiar, Advocate for
R-2/DDA.
Mr. Parvinder Chauhan with
Mr. Akhil Kumar, Advocates for R-3.

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Date of Decision: 23rd July, 2013**CORAM:**
HON'BLE MR. JUSTICE MANMOHAN**J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a direction restraining the respondents from demolishing C-38A, C-224, C-2/52A as well as other houses in Block B, C, C-2 and E, New Ashok Nagar, New Delhi – 110 096. Petitioners have also prayed for regularisation of the site.

2. Mr. Anuj Castileno, learned counsel for petitioners submits that structures constructed by the petitioners have been regularised by the Government of NCT of Delhi, Urban Development Department vide Order

dated 4th September, 2012. The relevant portion of the said Order reads as under:-

“Pursuant to the issue of the revised Guidelines 2007 for the regularization of unauthorized colonies in Delhi by the Ministry of Urban Development Department on 05.10.2007 and the notification of the Regulations for regularization of unauthorized colonies in Delhi dated 24.03.2008 by the Delhi Development Authority under section 57 of the Delhi Development Act, 1957, with the previous approval of the Central Government, the Government of NCT of Delhi (GNCTD) had invited applications from the Residents Societies of the unauthorized colonies in the format prescribed in the aforesaid Regulations. After extensive scrutiny of these applications in accordance with the prescribed manner, the Government has been able to identify 895 unauthorized colonies located without any forest and ridge areas and protected areas under the provision of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and also not posing any hindrance to the provisions of infrastructural facilities under the posing any hindrance to the provisions of infrastructural facilities under the Master Plan 2021, as eligible for regularization under the said Regulations 2008 and the boundaries of each identified colony have been finalized under Clause 5.3 of the Regulations 2008 as amended on 06.06.2012. These identified unauthorized colonies are given in annexures-I and II to this order as follows:-.....”

3. Learned counsel for the petitioners points out that the List of Colonies attached as Annexure-II to the said order mentions New Ashok Nagar at Serial No. 14, 16 and 45. He further states that the boundary wall of New Ashok Nagar has already been fixed and structures of petitioners fall within the boundary fixed by the NCT.
4. Learned counsel for petitioners further submits that by virtue of the National Capital Territory of Delhi Laws (Special Provisions) Second Act,

2011 (for short 'Act, 2011'), petitioners' structures are protected and cannot be demolished. In this connection he relies upon Section 3(2) of the Act, 2011 which reads as under:-

“3. Enforcement to be kept in abeyance

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(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo-

- (i) as on the 1st day of January, 2006 in respect of encroachment or unauthorised development;*
- (ii) in respect of unauthorised colonies, village abadi area (including urban villages) and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1);*
- (iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorised Regularised Colonies and Village Abadis, 2010; and*
- (iv) in respect of all other areas within the National Capital Territory of Delhi as on the 8th day of February, 2007.*

shall be maintained.”

5. He lastly states that DDA had just prior to filing of the present writ petition carried out demolitions without giving any show cause notice.

6. On the other hand, Mr. Parvinder Chauhan, learned counsel for respondent no. 3-Delhi Urban Shelter Improvement Board states that the answering respondent has no role to play in the present petition as the structures in question are not jhuggi-jhopris.

7. Ms. Shobhna Takiar, learned counsel for respondent no. 2-DDA states that petitioners are encroachers on Government land and most of them are

residents of Defence Colony and Jangpura, New Delhi. She denies that the petitioners have been residing in the said area since 28 years. According to her, the petition has been filed with wrong facts in a bid to mislead this Court. She points out that the amended petition refers to the name of the petitioner as not Meeta Chakraborty but HAQ—an NGO which has no locus standing to file it unless and until it is a public interest litigation.

8. Ms. Takiar further refers to Annexure P-1 which has been relied upon by petitioner No.1 to show that she has been residing at the premises being C-38A, New Ashok Nagar since 1984. Though Annexure P-1 is a house tax receipt in the name of the petitioner, it shows her address as P-292, New Ashok Nagar and not C-38A, New Ashok Nagar. She also states that the General Power of Attorney executed in favour of petitioner No.3 is in respect of property bearing No.C-38, New Ashok Nagar whereas in the petition, she has sought protection of property bearing No.C-224, New Ashok Nagar, Delhi from demolition. She submits that aforesaid facts show that petitioners have approached this Court with unclean hands and have mis-represented facts.

9. Ms. Takiar states that the petitioners have no registered title documents in their favour. She also states that no final certificate or any regularisation document has been placed on record other than the provisional registration certificate of Block C of New Ashok Nagar. In support of her contention, Ms. Takiar relies upon para 5 of respondent-DDA's counter-affidavit which reads as under:-

“5. That the details of the so called marginalized petitioners registered with Anganwadis is being given in a tabular form for the convenience of this Hon'ble Court as follows:-

<i>Sl. No.</i>	<i>Name of the Petitioner</i>	<i>Address on MOP/Affidavit</i>	<i>Title Documents on record</i>	<i>Page no.</i>
1.	<i>Meeta Chakraborty</i>	<i>C-38 A, Ashok Nagar</i>	<i>Cooking Gas receipt and property tax receipt</i>	14
2.	<i>Neeraj Chauhan</i>	<i>C-2/52A</i>	<i>DJB and Electricity receipt</i>	15
3.	<i>Dayawati</i>	<i>C-224</i>	<i>GPA dated 22.9.2005 of property no. C-38</i>	17
4.	<i>Subhash Chander</i>	<i>B-6</i>	<i>Unregistered and undated POA of plot of land and not constructed</i>	31
5.	<i>Meera Khanna</i>	<i>B-26</i>	<i>GPA dated October 1997</i>	33
6.	<i>Naresh Tyagi</i>	<i>B-33</i>	<i>GPA of December 1997 of plot of land with no construction</i>	38
7.	<i>Manoj Kumar Aggarwal</i>	<i>B-273A</i>	<i>Undated GPA of plot of land</i>	42
8.	<i>Mohd. Yamin Khan</i>	<i>B-237</i>	<i>Will dated 16.2.2000 of a piece of land</i>	47
9.	<i>Chhavi Nath Parmar</i>	<i>B-273</i>	<i>Ration Card dated 29.5.2002</i>	49
10.	<i>Anil Kumar</i>	<i>C-270</i>	<i>Payment receipt of November 2001</i>	52
11.	<i>Geetha Rastogi</i>	<i>D-237</i>	<i>Payment receipt of February 2002</i>	53
12.	<i>Manoj Kumar</i>	<i>C-296</i>	<i>Unregistered GPA of August 2003 of piece of land</i>	55
13.	<i>Mohd Shahid</i>	<i>B-10</i>	<i>Possession letter dated 11.3.2004</i>	58
14.	<i>Sangeeta Rana</i>	<i>C-1/62</i>	<i>GPA dated 9th October, 2006</i>	59
15.	<i>Neelam Srivastava</i>	<i>B-20</i>	<i>Property receipt of March 2007</i>	68
16.	<i>Seema Gupta</i>	<i>B 4A</i>	<i>GPA dated 18.8.2009 of property C-II/96</i>	72

17.	<i>Raj Pal</i>	<i>B 10/3</i>	<i>GPA dated 31.5.2011 of vacant plot</i>	79
18.	<i>Savitri Devi</i>	<i>C266 & 266A</i>	<i>Payment receipt dated 15.2.2011</i>	86
19.	<i>Ram Naresh Gupta</i>	<i>B-235</i>	<i>Will dated 1.3.2011 in the name of son of the petitioner</i>	88

10. Ms. Takiar further states that the land in question is an acquired land which was acquired by Award No. 39/82-83 for planned development of Delhi. She states that the area occupied by the petitioners falls within the proposed Master Plan Road of forty-five meter wide and as such the petitioners are not entitled to any relief.

11. Ms. Takiar submits that neither the Act, 2011 nor the Regulations for Regularization of Unauthorised Colonies in Delhi framed under Section 57 of Delhi Development Act, 1957 under which the order dated 4th September, 2012 has been issued, offers any assistance to the petitioners. She also states that demolition in the past had been carried out after giving show cause notice. In this context, she refers to the following averments in the counter-affidavit:-

“7. That in exercise of powers conferred under Section 57 of the Delhi Development Act, 1957, with the approval of the Central Government the respondent framed Regulation for Regularisation of Unauthorised Colonies in Delhi which was notified vide Notification dated 24th March 2008 and as amended vide Notification dated 16th June 2008. In the said Regulations criteria for Regularization of unauthorized colonies is laid down in Regulation 3. Under clause 3.3 of Regulation 3, the types of colonies which cannot be considered for regularization has been mentioned. Same is being reproduced hereinbelow:

“3.1: Cut off date for regularization is 31st March, 2002.

“3.3 The following type of colonies or part thereof would not be considered for regularization:

a

b. Unauthorized colonies / part of colonies/ habitations which pose hindrances in the provision of infrastructure facilities or fall in the area of right of way (ROW) of existing or proposed railway lines, master plan roads and major / trunk water supply and sewerage lines.

c. Unauthorized colonies / habitations where more than 50% plots are un-built on the date of formal announcement of regularization scheme. However, plots, which have been built up in the above and till the date of formal announcement of regularization scheme will be taken into consideration for deciding the eligibility of the colony for regularization.”

Regulation 4.2.3 : There shall be no obligation on part of the local body / DDA / GNCTD / Union of India to allot alternate site / flats to residents who may be displaced on account of provision of land for civic amenities/infrastructure which are not regularized as in clause 3.3.

That the Master Plan of Delhi-2001 was extensively modified and notified by the Central Govt. on 7th February 2007 with the perspective for the year 2021 keeping in view the emerging new dimensions in Urban Development viz a viz the social, financial and other ground realities. The National Capital Territory of Delhi Laws (Special Provisions Act, 2007) was enacted on 5th December 2007 to make special provisions or the areas of National Capital Territory of Delhi for a period upto 31st December 2008 which has been continued for a period upto 31st December 2011 to provide temporary relief and to minimize avoidable hardships and irreparable loss to the people of the NCT of Delhi against any action by the concerned agency. Under Section 3 of the above referred Act enforcement has been

kept in abeyance notwithstanding anything contained in any relevant laws or any rules, regulations or bye laws made thereunder. Simultaneously under Section 4 of the said Act, exceptions have been given by which the provision of the Act does not apply in certain cases. The same is being reproduced hereinbelow:

*“4 : Provisions of this Act not to apply in certain cases
During the period of operation of this act, no relief shall be available under the provisions of the Section 3 in respect of the following encroachment or unauthorized development namely:*

a. encroachment of public land except in those cases which are covered under clauses a, b & c of Sub section 1 of Section 3

b. removal of slums and jhuggi jhonpuri dwellers, hawkers and urban street vendors, unauthorized colonies or part thereof, village abadi area (including urban villages) and its extension in accordance with the relevant policies approved by the Central Govt. for clearance of land required for specific public projects.”

8. That in the present petition maximum land which is the subject matter of the petition is a vacant land as mentioned above or have been purchased or constructed after the cut off date, i.e. after 8th February 2007. The property/ land subject matter of the present petition comes in the way of Master Plan Road which is 45 meter wide and in view of the provisions as mentioned herein above not protected under the existing statute and regulations. The Respondent DDA has demolished the fresh constructions which have taken place in contravention of the above said regulations. The action has been taken by the respondent by informing the residents of the area and the local police before demolition. The petitioners are unauthorized encroachers over the government land and are not protected under the regulations as mentioned above as well as The National Capital Territory of Delhi Laws (Special Provisions Act) 2011 as mentioned above. The Development Plan of Zone E is annexed as Annexure I hereto which shows the proposed Master Plan road of 45 meter width from which the unauthorized encroachment has been or has to be removed.”

12. In rejoinder, learned counsel for the petitioners states that because of existing construction at site the forty-five meter wide road cannot be constructed.

13. Having heard learned counsel for the parties, the admitted position that emerges is that petitioners neither have any registered title documents nor any approved plan/drawing or any sanctioned plan of any building from any statutory authority.

14. Further, New Ashok Nagar is an unauthorised colony, which from the prayer clause of the present writ petition is pending regularization. Though a provisional regularization certificate has been placed on record but no final registration certificate has been produced.

15. Admittedly, the petitioners' construction do neither fall within the definition of Jhuggi or Jhuggi Jhopri Basti under the Delhi Urban Shelter Improvement Act 2010 nor have they been declared in a notification by the Board as Jhuggi Jhopri Basti.

16. In any event, from a perusal of the photographs on record at pages 23 and 24 of the paper book, it is apparent that there are no jhuggi jhopri clusters in New Ashok Nagar. From the photographs it seems that very palatial and large structures have been constructed on Government land.

17. In view of the diametrically opposite stand taken by the parties with regard to the show cause notice as well as practicability of construction of public road, this Court is of the view that the same cannot be adjudicated in writ proceeding as they are disputed question of facts.

18. Since the averment of the respondent-DDA that land in question has been acquired for construction of a proposed Master Plan Road of forty-five

meter wide has not been disputed, this Court is of the view that the protection under the Act, 2011 would not be available to the petitioners. Section 4 of the Act, 2011 reads as under:-

“4. Provisions of this Act not to apply in certain cases.—During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—

- (a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;*
- (b) removal of slums and Jhuggi-Jhompri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area (including urban villages) and their extensions in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”*

(emphasis supplied)

19. The order dated 4th September, 2012 issued in pursuance to Regulations for Regularization of Unauthorised Colonies in Delhi framed under Section 57 of Delhi Development Act, 1957 would not be applicable in view of its Regulation 3.3 which states that unauthorised colonies which pose hindrance in the provision of infrastructure facilities or fall in the area of right of way of existing or proposed master plan roads amongst others cannot be considered for regularization.

20. Consequently, as the land in question is required for construction of proposed Master Plan Road of forty-five meter wide which constitutes a public project, neither Section 3(2) of the Act, 2011 nor the Order dated 4th September, 2012 offers any protection to the petitioners.

21. Accordingly, present writ petition and pending applications are dismissed. Interim orders stand vacated.

MANMOHAN, J

JULY 23, 2013

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