

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

Reserved on : 07.05.2013

Pronounced on: 21.05.2013

+ **LPA 496/2012 and CM Appl. 11633/2012 (stay)**

DELHI URBAN SHELTER
IMPROVEMENT BOARD

..... Appellant
Through Mr. Sanjay Poddar, Sr. Adv. with
Mr. Parvinder Chauhan, Adv.

Versus

GOVT OF NCT DELHI & ORS

..... Respondents
Through Ms. Mamta Tandon, Adv. for
Mr. V.K. Tandon, Adv. for R-1 & 4.
Ms. Mansi Gupta, Adv. for MCD/R-2
Mr. A.S. Rao, Law Officer,
DMRC/R-3.
Mr. Mahesh Verma, Adv. for R-5 &
6.
Ms. Rekha Palli, Adv. for R-7 to 13.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present Appeal the appellant Delhi Urban Shelter Improvement Board seeks to challenge the impugned Order dated 14.03.2012 alongwith judgment dated 27.04.2012 passed in the review application.

2. The Writ Petition was filed by the petitioners (who are respondents No.7 to 13 in the present appeal) seeking an appropriate Writ directing

respondents No.1 to 4 to remove illegal construction at Camp No.2, A-Block, Nangloi, Delhi on the land of Delhi Metro Rail Corporation Ltd.(hereinafter referred to as 'DMRC') i.e. respondent No.3 in the present Appeal. The said petitioners claim to be residents of Camp No.2, A-Block, Nangloi, Delhi. It is stated that respondents No.5 and 6 have illegally occupied land in the area and that the land had now been taken over by respondent No.3/DMRC and the appellant had allotted plots to them at some other place.

3. It is the case of the appellant that a piece of land measuring 1331.87 sq. meters situated at Camp No,2, Nangloi, Delhi was under the management of the erstwhile Slum & J.J.Department of Municipal Corporation of Delhi. As per the appellant, the allottees/occupants in question are the evictees of Qutub Road J.J. Cluster and have been occupying the plots since 1968. At that time, the Slum and J.J. Wing was under the control of Delhi Development Authority. Further in 1968, when the DDA re-allocated the allottees, there was no practice of issuing formal allotment letters and the evictees were allowed to occupy plots simultaneous to their removal from J.J. Cluster. Vide allotment letter dated 24.10.2008, the said portion of land was subsequently allotted to respondent No.3 DMRC. As per terms of allotment the allotment was made along with structure existing on the allotted land. The rehabilitation/relocation of the affected persons was also to be carried out by respondent No.3/DMRC.

4. It is stated that 45 plots existed on the land which was allotted to DMRC. It is further stated that respondent No.3/DMRC could clear and use only 1119.16 sq. meters of land out of the 1331.87 sq.meters leaving behind

the balance land in a portion of 15 plots. It is stated that in respect of the said 15 plots only partial demolition was carried out due to resistance put up by the residents. It is further stated that only proportionate compensation with respect to the 15 plots was paid by DMRC.

5. It is contended by learned senior counsel for the appellant that what the residents had was only a right to the superstructure. It is admitted that on partial demolition being carried out, the said 15 residents were paid compensation for the superstructure by respondent No.3 DMRC. It is stated that the said persons are being re-allotted the original land and if the same is not done the appellant would have to give an alternate site to the said 15 persons for rehabilitation in accordance with their policy. It is further argued that for the 15 plots only those who are residing prior to the removal action initiated by the DMRC have been allotted plots. It is also argued that it is these allottees who are carrying out construction. The relevant portion of the letters issued to the said 15 persons dated 11.01.2012 reads as follows:-

“The DMRC by utilizing the major part of land has left the part of land of the JJR Plot(S) where upon you were residing prior to said removal action. The DMRC by intimating towards the compensation given to you against the dismantled superstructure has asked to restore the rest of the unutilized land to you.

It is intimated that the CEO, DUSIB has been pleased to consider the request of DMRC as well as the joint representations submitted by you to restore your possession over the unutilized land (i.e. 23.18 sq.mtr.) on “As is where is” basis and subject to specific condition that you will not make any further claim for allotment of land.”

6. The learned Single Judge, vide impugned order dated 14.03.2012 directed the respondent in the writ petition to immediately take action to remove the re-encroachment which has taken place on the said 15 plots in Nangloi Camp No.2.

7. In our view, there are no reasons to interfere with the impugned Order. The stand of the appellant does not inspire any confidence. It is an admitted fact in the Counter-Affidavit filed by the appellant that compensation towards demolition of superstructure has been paid by DMRC. This is apparent from a perusal of paragraph 2 of the Counter-Affidavit dated 28.02.2011 filed by the appellant before the learned Single Judge. The relevant portion of paragraph 2 reads as follows:-

“However, it is admitted that the compensation in the shape of money towards demolition of the superstructure as well as shops to the removed occupants have been provided by the Respondent No.4, but except monetary compensation, no alternative in the shape of shops/residential plots have been provided to the 15 JJR plot occupants who were also removed alongwith other 30 JJR plot occupants, and hence the Respondent No.4 has asked for to restore the occupants removed from 15 JJR plots. However, most of the said persons have reconstructed their units over there.”

8. This is also evident from the additional affidavit filed by the appellant in compliance of order dated 15.10.2012 passed by the learned Single Judge. Along with the said additional affidavit, a chart dated 07.04.2010 prepared by DMRC has been placed on record which shows the amount of compensation received by the 15 alleged occupants of the plots in question.

9. Hence, admittedly, the alleged 15 persons whose premises were allegedly partly demolished have received full compensation for the demolition of the superstructure. However, in the present appeal the stand that is taken is that only partial demolition was carried out in the area which has not been utilized by DMRC and that it is argued that the same is reflected by letter of DMRC dated 22.01.2010. Compensation for demolition of the full superstructure has been paid to the said 15 persons though only partial demolition was carried out.

10. It is further obvious that though DMRC purports to return the land in January 2010 allotments have been made by the appellant in January 2012 to the said 15 persons. In the interregnum large scale unauthorised constructions have been carried out. This is clearly apparent from the photographs placed by the respondents No.3 to 7 on record (pages 57 to 59 of the paper book). These photographs show large scale multi-storey construction going on and part of which appears to be for commercial usage. The appellant is completely silent as to how such massive construction has been carried out and as to who has carried out such unauthorised construction. In fact in para 6 of the appeal, the appellant admits illegal constructions being carried out as it is stated that in the intervening period left out structures were repaired/made habitable by the respectable allottees who continued to occupy the same de-hors partial demolition.

11. Respondent Nos. 5 and 6 have filed an affidavit where they have said that DMRC had partially demolished 15 plots and later on when DMRC found that they did not require the plots for their project, they i.e.

DMRC allowed the occupants of 15 plots to restore the structure of the plots. However, DMRC in a reply dated 08.02.2011 to an RTI application has denied that they handed over possession to the 15 plot owners. The stand of respondents 5 and 6 is clearly untenable. It clearly appears that this unauthorized construction has been carried out due to the appellant's or DMRC not effectively protecting the land and persons who appear to be unconnected with the so called allotment made by the appellant in the year 2012, have entered on the land. In any case allotments were made in 2012, while the constructions were made before the allotments. Clearly the structures are unauthorised.

12. It is but obvious that the writ petition in question was filed sometime in October, 2010. At that stage itself, the area in question which was not required by DMRC had been encroached and taken over and unauthorised construction had been made. Hence the writ petition rightly pointed out that unauthorised construction had been carried out on the land in question. Counsel for respondents No. 7 to 13 points out that when the writ was filed only respondents No. 5 and 6 had carried out illegal construction but subsequently others also did the same acts. It appears that during the pendency of the writ petition, the appellants have on 11.01.2012 allotted the said land released by DMRC to 15 persons who are allegedly the original allottees. It appears obvious that with a view to cover up its own lapses, the appellant had issued allotment letters on 11.01.2012 when in fact the land in question which was returned by DMRC appears to have been over run by huge unauthorised construction much before the allotment date i.e. before 11.01.2012. There is no

explanation as to how such construction was allowed to come up. Hence appellants are bound to demolish the unauthorised construction as directed by the learned Single Judge. Needless to add, once demolition is complete, appellants are free to use the land as per its rules and policies.

13. In view of the above, we see no reason to interfere with the impugned order. The present appeal is dismissed. Pending application also stands dismissed accordingly.

JAYANT NATH, J

CHIEF JUSTICE

MAY 21, 2013
nt/rb/raj