

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

% Judgment reserved on: 24.10.2013
Date of Decision: 12.11.2013

+ WP(C) No.9957 of 2009 & CM No.8242 of 2009

ANANDPUR DHAM KALYAN SAMITI (REGD.) Petitioner
Through: Mr. Ravinder Sethi, Sr. Adv. With Mr.
Rajiv Kumar Ghawana, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR Respondents
Through: Mr. Dhanesh Relan and Ms. Jahnvi
Upadhyay, Advs. For R-1 – Govt. of
NCT of Delhi
Ms. Anusuya Salwan, Mr. Kunal Kohli
and Mr. Vikas Sood, Advs. For DSIDC.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The petitioner before this Court is a registered society and claims to represent the residents of Anandpur Dham, an unauthorized colony being considered for regularization. According to the petitioner, the aforesaid colony has come up on an agricultural land of Village Karala.

The Government of India prepared guidelines for regularization of unauthorized colonies and submitted the same to this Court on 20.2.2001 in CWP No.4771/1993, Common Cause versus Union of India and others. The aforesaid writ petition came to be disposed of vide order dated 27.2.2001 with directions to the Union of India to notify

colonies, which according to it were to be regularized and which could not be regularized in terms of general principles, more particularly, paragraph 1.1 of the guidelines. It was further directed that till the modalities in terms of the aforesaid guidelines are worked out, interim orders passed in the said writ petition and connected petitions shall be operative. The Government of India revised the aforesaid guidelines in February, 2004 thereby extending the cut-off date for regularization from 31.3.1993 to 31.3.2002. The guidelines were again revised on October 05,2007.

The Regulations For Regularization of Unauthorized Colonies were notified by DDA on 24.3.2008. The modalities for regularization of unauthorized colonies were filed by the Government of India in CWP No.4771/1993, by way of a CM No.5916/2008. The said modalities were taken on record. On 16.6.2008 DDA made certain amendments in the above-referred regulations made by it and accordingly provisional certificates were issued to as many as 1218 unauthorized colonies.

2. Pursuant to the public notice issued by the Government of NCT of Delhi inviting layout plans and other documents from the residents welfare associations of unauthorized colonies, 1639 applications, including the applications in respect of Anandpur Dham, Karala, were received. However, the agencies to whom the aforesaid applications were forwarded for necessary verification are yet to complete the process of verification of the layout plans/ documents of those colonies.

Pursuant to DDA's notification dated 16.6.2008, provisional regularization certificates were issued to the residential associations of Anandpur Dham, Karala.

3. The case of the petitioner is that despite provisional regularization certificate having been issued to it and its application seeking regularization having been forwarded to the concerned agencies for verification, the officials of the respondent no.2 – DSIDC are threatening to carry out demolition in the said colony. The petitioners are, therefore, seeking the following reliefs by way of this writ petition:

- a) Issue a writ of mandamus directing the respondents not to interfere in any manner with the peaceful enjoyment and possession of the members of the petitioner association in respect of properties forming part of unauthorized colony Anandpur Dham, Karala, Delhi, which has been issued provisional certificate of regularization by the respondent no.1; and
- b) Issue a writ or direction in the nature of mandamus thereby directing respondents to abide by the policy and guidelines framed in respect of unauthorized colonies and the provisions of National Capital Territory of Delhi Laws (Special Provisions) Act, 2009 and not to take any contrary and arbitrary action of pick and choose of demolition/ dispossession in respect of the properties of members of the petitioner; and
- c) Issue a writ in the nature of declaration declaring the act of the respondents in threatening to take action for demolition in respect of the properties of the members of the petitioner as being in violation of the guidelines and policy framed for regularization of unauthorized colonies and the provisions of National Capital Territory of Laws (Special Provisions) Act, 2009.

4. In its counter affidavit, the respondent no.2 – DSIDC has stated that for the purpose of development of new industrial area, the Government of NCT of Delhi notified land in Village Karala by way of notification dated 25.8.2005 issued under Section 4 of the Land Acquisition Act followed by declaration dated 10.7.2006 under Section 6 of the said Act and an award was also made, in respect of land measuring 1903 bighas and 15 biswas. Out of the total acquired land, the physical possession of 1428 bighas and 5 biswas was taken over and handed over to DSIDC on 27.7.2008. This was followed by possession of 5 bighas and 15 biswas of land on 26.6.2009. According to respondent no.2, out of the remaining acquired land, the land measuring 404 bighas and 12 biswas, is part of unauthorized colonies – Anandpur Dham and Rupali Enclave, whereas the land measuring 65 bighas and 3 biswas is outside unauthorized colonies. The case of the respondent no.2 is that the present writ petition pertains only to the land which falls outside the unauthorized colony – Anandpur Dham and Rupali Enclave. The land in question has been marked as Annexure – R-2 to the counter affidavit of respondent no.2. It is also claimed in the counter affidavit that the land in question has very few roofed structures and several chunks of land are still lying vacant. Most of the structures on land in question are stated to be boundary walls with mud mortar with cordon like structures.

5. It would thus be seen that since no demolition act on the land forming part of unauthorized colony Anandpur Dham, the only issue involved in this writ petition is as to whether the land, subject matter of this writ petition, falls within or outside the said unauthorized colony. The case of the petitioner is that the aforesaid land is a part of the said

unauthorized colony whereas the case of the respondent no.2 is that unauthorized colony namely Anandpur Dham and Rupali Enclave have come up only on the land measuring 404 bighas and 12 biswas whereas the remaining land measuring 65 bighas and 3 biswas falls outside the unauthorized colonies. There is no dispute that the respondent no.2 is not seeking to carry out any demolition action in respect of the structures which have come up on land measuring 404 bighas and 12 biswas.

5. Section 3 of The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011:

“3. (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalize norms, policy guidelines, feasible strategies and make orderly arrangements to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and Jhuggi-Jhopri clusters, hawkers and urban street vendors, unauthorised colonies, village abadi area (including urban villages), and their extensions, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:

(a) orderly arrangements for relocation and rehabilitation of slum dwellers and Jhuggi-Jhopri clusters in Delhi in accordance with the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 and the Master Plan for Delhi, 2021 to ensure its development in a sustainable, planned and humane manner;

(b) scheme and orderly arrangements for regulation of urban street vendors in consonance with the national policy for urban

street vendors and hawkers as provided in the Master Plan for Delhi, 2021;

(c) orderly arrangements pursuant to guidelines and regulations for regularisation of unauthorised colonies, village abadi area (including urban villages) and their extension, as 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;

(d) policy regarding existing farm houses involving construction beyond permissible building limits;

(e) policy or plan for orderly arrangement regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land and guidelines for redevelopment of existing godown clusters (including those for a storage of non-agricultural goods) required to cater to the needs of the people of the National Capital Territory of Delhi;

(f) orderly arrangement in respect of special areas in accordance with the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadis, 2010 within overall ambit of Master Plan in force; and

(g) policy or plan for orderly arrangement in all other areas of the National Capital Territory of Delhi in consonance with the Master Plan on its review.

(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 unauthorized development;

(ii) in respect of unauthorized colonies, village abadi area (including urban villages) and their extensions, 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, 2002, mentioned in sub-section (1);

(iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadi, 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.”

6. It would, thus, be seen that status quo is required to be maintained only in respect of unauthorized colonies which had come into existence on or before 31.3.2002, though construction in such a colony may have taken place even beyond 31.3.2002. This would mean that only those areas are protected under the provisions of the Act which formed part of an unauthorized colony as on 31.3.2002. Any extension of an unauthorized colony after 31.3.2002, therefore, does not enjoy the statutory protection under the Act. Any encroachment on public land after 31.3.2002, therefore, can be removed by the concerned land owning agency even if the said encroachment happens to be adjacent to or extension of an unauthorized colony existing on 31.3.2002. Therefore, in order to succeed, the petitioners are required to show that the land subject matter of this writ petition formed part of the unauthorized colony known as Anandpur Dham, on 31.3.2002. The petitioners, however, have not placed any authentic document on record to satisfy the Court that the land measuring 65 bighas and 3 biswa which according to respondent No.2 does not form part of any unauthorized colony, formed part of an unauthorized colony as on 31.3.2002. The petitioners have relied upon a layout plan submitted to the Government of NCT of Delhi for the purpose of regularization of the aforesaid

colony and their case is that the aforesaid land is shown as part of Anandpur Dham in the aforesaid layout plan. A perusal of the said plan would show that it was prepared only in January, 2009. Therefore, this document does not establish the case that the land measuring 65 bighas and 3 biswas of Village Karala formed part of an unauthorized colony on 31.3.2002.

7. The respondent no.2 has placed on record a letter dated 15.6.2009 received by it from LAC, North-West District. To the extent it is relevant, the said letter reads as under:

“Sub: Taking/handing over physical possession of land in Khasra No.39//16, 40//22min etc. total measuring 70 Bigha 18 Biswa falling outside the unauthorised colonies & acquired by award No.3/08-09/DC (NW) of village Karala.

Sir,

Kindly refer to possession proceedings of village Karala vide which possession of land measuring 1428 Bigha 5 Biswa was handed over to DSIIDC in pursuance of award no.3/08-09/DC (NW) on 29.07/08. The possession of land measuring 70 Bigha 18 Biswa (not being part of any unauthorized colony) in kasra no.39//16, 40//22min 21/2, 61//1, 11, 12, 19/1-2, 20/1-2, 22/1-2, 62//13, 16, 17, 23, 24, 25, 22min, 63//20min 64//15min, 67//7 could not be handed over due to protest/demonstrations raised by violent mob while demolishing the super structure existing on the land.”

(emphasis supplied)

The respondent No.2 has filed copy of the possession report pursuant to Award No.3/2008-2009/DC(NW) of Village Karala. To the extent it is relevant, the said report reads as under:

“During demolition, the violent mob of local people created restraints and hindered in taking over the possession of the land measuring (70-18) Bigha of Khasra Nos.39/16(2-13), 40/22 (0-1021/2(1-11) 67/7(4-16) on 29.07.08 at 2 PM which is adjacent to colonies and boundaries and houses are built on them.

The demolition process was ceased due to non availability of sufficient police force as such possession taking/handing over of the land measuring (70-18) Bigha could not be done. The handing/taking over of this land will be done only after demolition only after the sufficient police force is provided.

The balance land acquired under above award from Khasra No.39/13/1-2(4-16) 67/8(4-16)9(5-6)12(7-0)13(4-16)14(5-8) is the part of Rupali Enclave colony S.No.629 and Khasra No.61/2(305) is the part of Anandpur Dham, C-Block colony serial No.1202. The list of Khasra Nos has been provided by revenue deptt. and is attached herewith. These colonies are included in process of regularization and its possession has not been taken/handed over as per order No.F11(37)/07/L&B/LA/855980 dated 11.09.07.

The possession of land measuring (9-2) Bigha of Khasra No.126 min (3-15) 1329(0-16) 1330 (0-12) 1331 (0-10) 1412 (0-13) 1415 (1-12) 1416 (1-4) which are meant for passage to above colonies has also not taken/handed over.

(emphasis supplied)

The respondent No.2 has also filed a copy of the inspection report dated 14.7.2009. The aforesaid inspection was carried out jointly by the revenue officials and the officers of DSIDC in the presence of the

concerned ADM/LAC. The said report, to the extent it is relevant, reads as under:

The inspection was carried out to ascertain the extent of Habitation/Built up structure on land measuring 65 bigha 3 biswa which is part of 1903 bigha 15 biswa of acquired land in Village Karala but possession not taken in past due to resistance/protest by public. This 65 bigha 3 biswa of land as shown in the sketch plan falls outside the Khasra No. included in the unauthorized colony namely Anandpur Dham and Rupali Enclave. Out of total acquired land, physical possession of 1428 bigha 05 biswa taken over & handed over to DSIIDC on 29/07/2008 404 bigha 12 biswa is in unauthorized colony, 65 bigha 3 biswa outside unauthorized colony with built up boundary walls.

This piece of 65 bigha 3 biswa of land has very few roofed structure and nobody was found residing in them. Further on enquiry from the General Public, nobody could give the details of the occupants. Most of the structures are boundary wall with mud mortar and some guard room like structures. Further on inspection it was noticed that, at most of places there were stakes of bricks lying implying recent construction activities at the site.”

(emphasis supplied)

8. The ‘Regulations for Regularization of Unauthorized Colonies in Delhi’ prepared and notified by DDA with the previous approval of the Central Government to the extent they are relevant for the purpose of this petition read as under:

“3. Criteria for Regularization of Unauthorised Colonies and Habitations

3.1 Cut off date for regularization is 31.3.2002.”

....

“4. Procedure for regularization

....

4.2 The Residents Society shall perform/carry out the following functions:

....

4.2.1.2 Prepare through an Architect/Town Planner, the existing layout plan of the colony. The Resident Society may, however, voluntarily also submit proposal for improved Layout Plan in respect of their colony.

4.2.1.3 The Layout Plan thus prepared shall be submitted by the Resident Society to the concerned Local Body/DDA, and simultaneously, a copy of the Layout Plan shall also be submitted to GNCTD by the Resident Society.”

....

“5. Steps/Procedure to be followed by Local Body/DDA/GNCTD for regularization:

....

5.2 On receipt of the layout plan submitted by the Resident Society, the Local Body or DDA, as the case may be, within two months will complete the scrutiny of the layout plan.

5.3. Simultaneously, GNCTD will finalize the boundaries of each identified colony within three months from the last date of submission of layout plan using satellite/aerial survey images.

5.4 After fixing the boundaries on the scrutinized layout plan by the Local Body concerned, GNCTD to formally forward the layout plan to Local Body for approval.

5.5 Layout Plan to be approved by the competent authority in the Local Body concerned within one month of receipt of LOP after fixation of boundaries by GNCTD.

....

5.7 Formal orders or regularization to be issued by GNCTD only after completing all formalities including land use change and payment of all requisite charges.”

....

“7. Miscellaneous

7.1 Grant of Sanction of Refusal – The Local Body may either approve or modify the plans, or may sanction them with modifications or directions as it may deem necessary or thereupon shall communicate its decision to the person giving the notice in the prescribed form. In case where the plans are substantially violative of the guidelines-2007 or the Regulations, the Local Body may reject or cause the plans to be modified by the Resident Society.”

It would, thus, be seen that regularization of unauthorized colony can be finally allowed and its layout plan can be approved only after the layout plans submitted by the society have been scrutinized by the concerned local body or DDA and the boundaries of the colony have been finalized by the Government of NCT of Delhi. The local body concerned is authorized, under the Regulations to modify the plans submitted by the Residents’ Society. Therefore, if a Residents’ Society applies for regularization with a layout plan which includes areas which did not form part of the said colony as on 31.3.2002, it is open to the Government/concerned local authority to reject such plans or to modify them so as to exclude the areas which came to be included in the unauthorized colony after 31.3.2002.

9. It was contended by the learned senior counsel for the petitioner that since the petitioner-Society has already been issued a provisional regularization certificate, the land in question needs to be protected till a

final decision is taken by the Government on the request of the petitioner for regularization of the said colony. Had there been no material placed on record to indicate that the land in question, i.e., land measuring 65 bighas and 3 biswas does not form part of an unauthorized colony, there would have been merit in such a plea, but considering the authentic public documents filed by respondent No.2 and also considering that there is no authentic material on record to show that the land measuring 65 bighas and 3 biswas formed part of an unauthorized colony as on 31.3.2002, no such protection can be granted to the petitioner merely on the basis of the averments made in the writ petition and a layout plan prepared by a private entity and submitted to the Government in the year 2009. Had the petitioner placed on record any layout plan submitted to the Government or any land owning agency soon after 31.3.2002 and showing the land in question as part of the unauthorized colony known as Anandpur Dham, the Court would have been justified in directing maintenance of status quo till verification of the layout plans by the Government and/or the concerned land owning agency. That, however, does not happen to be the position in the case before this Court. In any case nothing prevents the petitioner from filing a civil suit and establishing before a civil court, by leading evidence, that the land in question formed part of the unauthorized colony known as Anandpur Dham as on 31.3.2002 and, therefore, is entitled to statutory protection under the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011.

10. During the course of arguments, the learned counsel for the petitioner placed reliance upon the orders passed by this Court in various writ petitions. Those orders are Annexures P-8 (colly) and P-15

to P-17 to the writ petition. However, in none of those cases, the concerned land owning agency has placed on record authentic public documents to show that land in question did not form part of an unauthorized colony as on 31.3.2002. Therefore, the aforesaid orders do not apply to the factual situation prevailing in the present case.

11. For the reasons stated hereinabove, the writ petition is hereby dismissed. It is, however, made clear that dismissal of the writ petition shall not come in the way of the petitioner filing a civil suit to establish its case that the land in question formed part of an unauthorized colony as on 31.3.2002 and, therefore, is entitled to the benefit of statutory protection under Section 3 of The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, so long as such protection is available to the unauthorised colonies.

In the facts & circumstances of the case there shall be no orders as to costs.

NOVEMBER 12, 2013
rd/b'nesh

V.K. JAIN, J.