

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

+

C.R.P.No.142/2014, C.M.Nos.15293/2014 (Stay) & 15294-15295/2014
(Exemptions)

%

16th September, 2014

SURENDER TOMAR (THR. LR) SMT.SAROJ Petitioner
Through: Mr.Anup J.Bhambhani, Sr.Advocate
with Mr.Yogesh Kumar Dahiya and
Mr.Rajat Bhardwaj, Advocates.

VERSUS

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through: Mr.Arun Birbal, Advocate for DDA.
Ms.Sana Ansari, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On the oral request made on behalf of the petitioner/plaintiff, this petition filed under Section 115 of Code of Civil Procedure, 1908 (CPC) is converted into a petition under Article 227 of the Constitution of India.

2. Let me give a brief preface at the commencement of this judgment. Judicial process in this country is grossly misused by a certain section of the litigants. This litigation is indication of such type of litigants and such type

of abuse of judicial process. This I am saying so because important public work of widening of a very important road, and one of the main roads of the capital, is held up on account of litigations initiated by the petitioner/plaintiff, and that too by such a petitioner/plaintiff who has the gumption to admit that he is sitting on public land, he will keep on sitting on public land and he will keep on preventing widening of the public land which is being done as per the Zonal/Master Plan of Delhi. The important road project in question is one of the lifelines of South Delhi viz of Aruna Asaf Ali Road. The extent of *malafides* of the petitioner/plaintiff goes to the dimension that firstly the father of the petitioner/plaintiff filed a suit claiming rights with respect to the same land, and in which suit, father of the petitioner/plaintiff not finding much success, therefore withdrew that suit. The plaintiff/petitioner/son filed a civil suit but withdrew the same on failing to obtain interim orders. The son/ petitioner/plaintiff then filed a writ petition in this Court, but the same was dismissed. The petitioner/plaintiff thereafter filed an LPA against the judgment of the writ court but that LPA was also dismissed with a limited liberty to the petitioner/plaintiff by the Division Bench of this Court in LPA No.670/2011 to file a suit with respect to reliefs which do not include the land required for widening of the road.

Para 4 of the impugned order dated 23.8.2014 mentions about these various litigations and the same reads as under:-

“4. Delhi Development Authority/defendant no.1/appellant in MCA no.27/13 in its separate written statement inter alia pleaded that the suit of the plaintiff/respondent is barred under order 2 rule 2 of CPC as father of the plaintiff namely Sh.Om Prakash (since deceased) had filed a suit titled Om Prakash Verma Vs. Union of India & Ors. vide suit no.263 of 2003 on same cause of action and sought same relief in the said case and the Court of Ld ADJ Delhi pleased to dismiss the application u/o 39 Rule 1 and 2 of CPC on 12.5.2004. Thereafter the plaintiff/respondent withdrew the said suit and accordingly the same was dismissed as withdrawn without any liberty to file the fresh suit. Thereafter a writ petition vide petition bearing no. WP no.9131 of 2008 titled as Village Kishangarh Welfare Association vs. Union of India and Ors as a member of association was filed and Hon’ble High Court of Delhi was pleased to dismiss the said writ petition. Thereafter another petition bearing no.WP(C) no.5376/2011 was filed and same was dismissed on 16.8.2011 and LPA no.670/2011 was preferred and the same was disposed off. Now after availing all the aforesaid remedies plaintiff/respondent, filed present suit on the same cause of action and for the same relief. The respondent/plaintiff has no right title and interest in the suit property to file any suit against answering defendant/appellant as the property belongs to DDA. The Land in question falls in village Kishangarh which is placed at disposal of DDA through notification. The plaintiff/respondent is an encroacher and is in illegal possession of the suit property and has no right, title or interest in the suit property. Further as per revenue record the land vested in Gram Sabha and on the promulgation of Delhi Land Reforms Act, 1954, the land in question vested in Gram Sabha. The Municipal Corporation Act was enacted in 1957. By issuance of notification u/s 507A of the Delhi Municipal Corporation Act, a number of localities which were formally part of rural areas ceased to be regarded as rural areas i.e the village mentioned in said notification were urbanized.”

(underlining added)

3. At this stage again, let me first refer to the relevant paras of the impugned order which refers to the observations made by a learned Single Judge of this Court dismissing the writ petition filed by the petitioner/plaintiff, as also that part of the impugned order which reproduces the order of the Division Bench in the LPA by which only limited permission to file the suit was granted. These paras are paras 18 and 19, and which read as under:-

“18. Before advertng to the respective arguments of the parties, it is imperative to refer to the order of Hon'ble High Court in WP 5376/2011 in the case of the respondent titled as SURENDER TOMAR versus DELHI DEVELOPMENT AUTHORITY decided on 16.08.2011 as under:

1.

2.

3. Further adjournment cannot be granted since the petitioner is enjoying the interim order.

4. The writ petition has been filed to restrain the respondent No.1 DDA from carrying out demolition and / or from taking possession and / or from is possessing the petitioner from property bearing plot No.41-A forming part of Khasra No.2727/1674 in village Kishangarh, New Delhi.

5. The counsel for the petitioner admits that the petitioner has no right or title in the land aforesaid. His only argument however is that the property aforesaid of the petitioner is part of the unauthorized colony of Kishangarh to which a Provisional Regularization Certificate has been issued. The counsel for the

petitioner further admits that there have been two prior proceedings, one a writ petition being W.P.(C) No.9131/2008 by an Association of the residents of the said unauthorized colony and of which Association the petitioner is a part and the other a suit being CS(OS) No.162/2003 filed by the father of the petitioner and in both of which petitioner remained unsuccessful in getting the relief. The counsel for the petitioner further admits that petitioner and his father have given an undertaking not to come in the way of the work of road widening underway.

6. The respondent No.1 DDA in its counter affidavit has stated that the property of the petitioner including the portion, with respect to which interim order was granted on 29th July, 2011 is coming in the way of the work of road widening.

7. The only argument of the counsel for the petitioner is that the property of the petitioner is not coming in the way of road widening. The counsel for the petitioner has handed over in the Court a lay out plan. He states that the same was attempted to be filed in the Registry and remained under objection. He states that the extract of the said lay out plan has been filed at page 93 of the paper book and on the basis whereof the interim relief was granted to the petitioner on 29th July, 2011. He further contends that since the respondent No.1 DDA has not filed any documents whatsoever along with its counter affidavit, the petitioner will now have to collect all the documents and to show that the property of the petitioner is not in the way of the road widening work underway. **The counsel for the petitioner further states that out of 300 sq. yds. of the property of the petitioner, about 50 to 60 sq. yds. does not even fall within the green belt.**

8. As aforesaid, the petitioner has had enough opportunity to place the documents. It cannot be forgotten that because of the interim order of this Court, the public work of widening of the road is held up. The rights of the petitioner have to be seen in the said context. It is an established principle now that the element of public interest is to be considered while granting any interim relief (see Smt. Ishmali Devi Vs. DDA MANU/DE/1838/2009 where case law in this regard

is discussed). The petitioner having no right to the property which is admittedly situated within an unauthorized colony, is not found entitled to perpetuate the interim relief, the effect whereof is to hold up the public work of road widening affecting the public at large. Else, as far as the contention of the petitioner of 50 to 60 sq. yds. portion / area of his property not falling in the green belt is concerned, the same are questions of fact and which cannot be gone into in this writ jurisdiction. There is thus no merit in the petition; the same is dismissed. No order as to costs.

(emphasis supplied)

19. The aforesaid order was challenged before Hon'ble High Court in LPA 670/2011, which was dismissed on 20.09.2011 but in the order the following was also observed:

However, we grant liberty to the petitioner to file a title suit, if so advised, within a period of 10 days before a proper legal forum. Further liberty is granted to file an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure which shall be dealt with by the concerned Judge within a period of 10 days therefrom. Status quo, existing as on today, shall be maintained for a period of 20 days.

Needless to emphasize, **the reliefs claimed in the suit shall be restricted to the area which has not been agreed/conceded to be given to the DDA for widening of the road.** If any observation has been made by the learned Single Judge pertaining to the right, title and interest, it shall not be treated as binding findings by the Court which will be dealing with the litigation. The respondent DDA/Central Government/State Government will be entitled to raise all objections available to them in law.”

(underlining added)

4. Thus it is seen that before various courts time and again it is admitted that the land on which the petitioner/plaintiff claims a right was a land which

was acquired by the Government under the Land Acquisition Act, 1894. Even in this litigation this admission is specifically noted by the first appellate court in the impugned order dated 23.8.2014 in its para 22, and which reads as under:-

“ 22. In the present proceedings, the following facts about the suit property has been recorded by Ld Trial Court:

- The plaintiff/ non appellant has no title over the entire suit property and thus encroacher upon the entire land as mentioned at page 12 and 17 of the order of Ld Trial Court; page 12 – **During the course of argument, the plaintiff stated that even he is treated like an encroacher over the land**, even then his right over the property is protected under **the National Capital Territory of Delhi Laws (Special Provisions) Act 2011**.

page 17 – During the course of arguments plaintiff has accepted his status of an encroacher and he admitted that he is not having any title document such as Khatauni of the land in question.

- The entire suit property at present has no structure except small basement which is not in use and open to sky above its staircase as is observed at page 17 of the order of Ld Trial Court. This is an observation recorded by Ld Trial Court after carrying a joint inspection”

5. Not only the petitioner/plaintiff admits that he is an encroacher of Government land, but, that the petitioner/plaintiff is unsuccessful in the writ petition and in the LPA and in the LPA only a limited entitlement was given to the petitioner/plaintiff for filing of a suit with respect to the land not required for road widening is also an undisputed fact.

6. Though, counsel appearing for respondent no.1 argues that the petitioner/plaintiff was only entitled to file a suit claiming title to the land, however, I need not go into this aspect in detail because I am proceeding on a basis as if petitioner/plaintiff was entitled to file the subject suit, but that part from the order of the Division Bench of this Court in LPA No.670/2011 is very clear that no part of the road required for road widening could be claimed by the petitioner/plaintiff.

7. What is, therefore the area of land which is required for road widening? At this stage itself, it is relevant to note that road widening is done under a detailed plan which is drawn out after a survey. Main roads are the lifelines of any Metropolitan City, more so for the capital of this country. In the present case, the Government authorities have specifically taken up a stand that the right of way of Aruna Asaf Ali Road is 45 meters long with a composite plan to stretch it to 60 meters and the road which is built up in front of the suit property is just 7 meters wide. This aspect is noted in para 4.4 of the impugned order, and which reads as under:-

“ 4.4 It was further submitted that as per Zonal Development plan, Master plan and alignment plan, the Right of Way of this stretch Aruna Asif Ali Road, is 45 meters alongwith it in composite plan a stretch of 60 mtrs. width has been shown as green belt and at present, the built up road in front of some of the suit property is of 7 mtrs

width only though the land in question was 45 meters as per plan passed by concerned department. It was further submitted that in 2012 meeting was held in the office of Lieutenant Governor for widening of Maheruali – Mahipalpur from Andheria Mod to NH8 and also widening of Aruna Ali Road from Neela Hauz to intersection at Mehrauli Mahipalpur Road and following decisions were taken after deliberation on the meetings which are as follow:

(a) The R/W of Mehrauli-Mahipalpur road is 75 m as per maser/Zonal plan. It was informed that the 3 km stretch from Andheria Mod to Aruna Asaf Ali Junction mostly consisted of vacant land and could be taken up for widening and junction improvement immediately, provided DDA land along the road is transferred to PWD, GNCTD, DDA will hand over the land to PWD, including the needed for work junction.

(b) Principal Secretary, PWD suggestion to take up widening of about 1 km of stretch of Aruna Asaf Ali Road from Neela Hauz to MM Road intersection was approved in principle. Since, the alignment of the road has been approved by the technical committee/Authority, lands deptt. was asked to provide the details of land in possession of DDA as well as status of other and under litigation to PWD.

(c) DDA will handover the above lands, wherever already acquired, on priority. The un-acquired lands, wherever already under emergency provision immediately to ensure that PWD complete the road improvement works.”

8. This Court cannot in any manner whittle down a Master/Zonal Plan with respect to the total width of a main road/right of way, much less on the alleged fanciful averments of the petitioner/plaintiff that action be taken against all the encroachers together and not only against the petitioner/plaintiff in a pick and choose manner. This argument of pick and

choose against the petitioner/plaintiff may sound very flowery and appealing, however, it is inconceivable that in one-go Government can ever remove all encroachments in large areas and lengths, and surely therefore on this misconceived ground that action is only being taken against the petitioner/plaintiff, the petitioner/plaintiff cannot be entitled to injunction. Surely, the Government authorities when undertaking the widening of the road; and of a road which runs into a great length and which has encroachments at different places; can as per the circumstances and situations take actions wherever possible and plausible, and there is no mandate in a case having facts such as the present case that encroachments cannot be removed by the Government authorities one by one and all/each and every encroachment must be removed in one go.

9. The only argument which is really stressed on behalf of the petitioner/plaintiff is by placing reliance upon the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. As per this Act, no doubt, protection has been given with respect to encroachments on Government lands and construction made on Government lands in terms of Section 3 of the Act, however, Section 4 of this Act makes it clear that there is no protection to encroachers on public lands which are specifically

required for public projects. Building and widening of roads, more so of important main roads, is undoubtedly a public project.

10. In the present case, since land is required for a public project being widening of the Aruna Asaf Ali Road, it is not open to the petitioner/plaintiff to argue that he is refusing to give land for the road because the road is already constructed, inasmuch as the courts are bound by the Master/Zonal Plan which specifically provides a specific width with respect to the road widening and which Zonal/Master Plan shows that a road is not necessarily only a road in itself, but, along with the road, land is required as per the project for foot paths, pavements and various other requirements which come in the public right of way as per the Master/Zonal Plan.

11. In the present case, the trial court passed the order dated 27.2.2013 allowing the injunction application, because the trial court seems to have been led to do so by a statement made on behalf of the petitioner/plaintiff when the injunction application was being heard. I am reproducing that statement and that part of the order of the trial court which will show as if the petitioner/plaintiff is doing a charity/favour by giving up that part of the property on the encroached Government land, and, the statement of the petitioner/plaintiff was, that it would be conditional that the Government

authorities will act “*bonafidely*”. This statement of the petitioner/plaintiff which has been wrongly and unfortunately relied upon by the trial court reads as under:-

“ Without prejudice to my rights and contentions in the suit I hereby state that I will provide the possession of the part of the suit property that may genuinely be required for further widening up of Aruna Asif Ali Road i.e. for construction of road or green belt if the same is made uniformly through out the road. The said statement is given under the belief that the respondents will act bonafidely and they will not pick and choose the plaintiff for differential treatment in this regard provided till that date the possession of the property shall remain with me and I further undertake that I shall not raise any construction on the said plot. I further undertake that I shall not create any hindrance in undertaking the project of road construction by PWD on any ground whatsoever.”

12. The trial court had clearly misdirected itself. It is on account of the trial court failing to appreciate the orders passed against the petitioner/plaintiff dismissing his writ petition as also dismissing his LPA, that the injunction application of the petitioner/plaintiff was allowed in the suit and which order of the trial court has rightly been set aside by the first appellate court by its impugned order.

13. I may note that the father of the petitioner/plaintiff had also filed a suit, though the details of the same are not available, it was upon the petitioner/plaintiff to give details, documents and pleadings with respect to

the earlier suit filed by the father of the petitioner/plaintiff, and possibly without saying so finally even the present suit would have been barred as really the present suit is nothing but presentation of the same facts in the suit filed by the father of petitioner/plaintiff i.e old wine in a new bottle. What is the effect of the petitioner/plaintiff himself having filed a suit qua the same land and then withdrawing the same without liberty to file a fresh suit will also have to be examined before the trial court proceeds ahead with the suit.

14. I may note that even very small areas of lands abutting main roads have values running into crores and crores of rupees. These values keep on further rising regularly. Accordingly, false litigations are initiated by litigants, advocates are engaged, high amounts of fees are paid, all of which to ensure continued illegal occupation on encroached Government land, with the only loser being the general public. It is high time that courts send a very strong message to litigants such as the petitioner/plaintiff for initiating false litigations. Costs of public projects steeply rise by crores and crores of rupees in view of false litigations such as the present. The higher costs are unfortunately paid by the general public as their tax moneys go towards constructing/making of the public projects.

15. In view of the above, I do not find any merit in this petition, and which is a complete abuse of the process of law. The petition is therefore dismissed with costs of Rs.5 lacs to be equally shared by the defendants/Government authorities. The payment of these costs of Rs.5 lacs shall be a condition precedent for the petitioner/plaintiff to continue with the present suit. Even if the suit is not continued by the petitioner/plaintiff, the Government authorities, who are the defendants in the suit, can execute this order of costs as if it was a decree with respect to costs.

VALMIKI J. MEHTA, J

SEPTEMBER 16, 2014
KA