

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

Judgment Reserved on: May 12, 2015
% *Judgment Delivered on: May 14, 2015*

+ **LPA 291/2015**

MOHD SHIBLI & ORS Appellants
Represented by: Ms.Indira Unninayar, Advocate with
Mr.Narayan Krishan, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION
THR COMMISSIONER & ORS Respondents
Represented by: Ms.Mansi Sharma, Proxy Counsel
Mr.Ramesh Kumr, Executive
Engineer (South Delhi Municipal
Corporation), Project II, Central Zone

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. While issuing notice in WP(C) 4464/2014 filed by the appellants, on July 19, 2014 an interim order was passed requiring parties to maintain status quo with respect to further demolition and removal of *malba/debris* in the area known as Sanjay Colony, JJ Cluster, Okhla Industrial Area, Phase-II, Delhi. On July 25, 2014 it was recorded that demolition was carried out only in respect of structures on the road and that the demolition was without notice.

2. Vide order dated March 18, 2015, the respondents were permitted to remove the debris lying at the site. It was made clear that further demolition

was stayed.

3. Vide impugned order dated May 25, 2015, CM No.15140/2015 filed by the South Delhi Municipal Corporation has been allowed noting that as per the approved lay-out plan the road in relation where to demolition was carried out was a 60 feet wide road and encroachments were removed by demolishing the structures which had encroached on the road. Since under the protective cover of the initial order dated July 19, 2014 some of the appellants were refusing to remove their belongings from the road the learned Single Judge has granted 7 days time for the belongings to be removed. As recorded in the order the purpose is that the encroached road be brought in conformity with the lay-out plan.

4. Case of the appellants pleaded in the writ petition is that the slum cluster known as Sanjay Colony has existed for nearly 35-40 years and that all of a sudden, without any prior notice, officers of the South Delhi Municipal Corporation carried out demolition on June 30, 2014 the appellants assert a right citing a decision of a Division Bench of this Court reported as 168 (2010) DLT 218 Sudama Singh & Ors. Vs. Government of Delhi & Ors. The appellants rely upon the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. The appellants also rely upon the National Urban Housing and Habitat Policy, 2007 and the Jawahar Lal Nehru Urban Renewal Mission in support of their case. Clause 4.2.3 of the Master Plan for Delhi-2021 and guidelines called Unified Traffic and Transportation Infrastructure (Plng. & Engg.) Street Design Guidelines are also relied upon.

5. As per the respondents, a 60 feet wide road was laid in the area in question where demolition was carried out on June 30, 2014 and the road

was as per the approved lay-out plan of the area. Public land acquired by the Central Government and placed at the disposal of the Delhi Development Authority around the road was encroached upon and under the garb of slum dwellers, land sharks encroached upon the land and with passage of time erected cement brick and RCC constructions. Three storeyed buildings came up. The appetite of the land mafia grew and even the road got nibbled. The road was to be maintained by the erstwhile Municipal Corporation of Delhi and now the South Delhi Municipal Corporation.

6. The National Urban Housing and Habitat Policy, 2007 on which the appellants rely takes note that shelter is a basic human need next only to food and clothing and that a policy is required to be put in place to ensure equitable supply of land and shelter to all sections of the society. It notes that as of the year 2007 the shortfall in housing needs would be to the tune of 26.53 million units. The policy envisages that the urban local bodies, housing boards and development authorities would pool together their resources to meet the housing need. The policy notes existence of slums and envisages in-situ slum upgradation projects. The appellants rely upon the concept of in-situ upgradation of slums envisaged by the policy and urge that for the Sanjay Colony Slum Cluster no demolition could be carried out without a survey to identify eligible persons entitled for in-situ alternative accommodation. With respect to the Master Plan for Delhi-2010 the reliance is on Chapter IV, dealing with shelter, clause 4.2.3.1 whereof envisages a minimum dislocation of existing squatter settlement and the need for in-situ upgradation. As per the appellants the Master Plan for Delhi-2021 is a statutory plan and gives as statutory flavour to the policy of

in-situ upgradation of slums conceived of by the National Urban Housing and Habitat Policy, 2007. The reliance by the appellants on the Unified Traffic and Transpiration Infrastructure (Plng. & Engg.) Street Design Guidelines, 2010 is with respect to the guidelines envisaging primary roads of width 60 meters and primary roads of width 45 meters. As per the appellants traffic is to be discouraged on streets which are local streets and as per the appellants as per the Unified Traffic and Transpiration Infrastructure (Plng. & Engg.) Street Design Guidelines, 2010 the width of the road has to be between 12 to 20 meters. According to the appellants they had an indefeasible right to an in-situ rehabilitation and this is possible only if prior to the demolition a survey was carried out to identify eligible occupants for in-situ rehabilitation.

7. Since the writ petition is pending consideration before the learned Single Judge, lest prejudice is caused to parties by any opinion expressed by us, we propose to deal with the issue at hand limited to the question : whether the learned Single Judge was justified in directing the belongings of such slum dwellers to be removed whose structures were demolished to retrieve the land encroached upon of the road in question.

8. The National Urban Housing and Habitat Policy, 2007, the Jawahar Lal Nehru Urban Renewal Mission and the Master Plan for Delhi-2021 lay emphasis on benefit of in-situ upgradation of slums because this results in minimum dislocation of the slum dwellers and they remain close to the place of their livelihood as against rehabilitation in far off areas. But these policies cannot prima-facie be treated as legislative mandates because the policies themselves recognized that in-situ upgradation would be subject to availability of land and amenities in an area. For example the place where a

slum has come up is earmarked for a public utility such as say a sewage treatment plant. If there is no land available in the vicinity where the slum dwellers can be relocated, per force the relocation would have to be at some other place. The policies only express a desirability and not a mandate.

9. The emphasis upon the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 is prima-facie entirely misplaced because the said law was brought into force to nullify judicial decisions wherein entertaining public interest litigations the High Court and the Supreme Court had directed demolition of unauthorized constructions and removal of encroachers on public land. While putting an embargo on any demolition or removal of encroachers and directing status quo to be maintained, encroachment was defined in Clause (c) of sub-Section 1 of Section 2 of the Act to mean '*unauthorized occupation of Government land or public land other than streets, lanes, footpath and parks, by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use*'. Thus, the provisions of the Act which nullify the implementation of any law or a decision concerning encroachment would mean that encroachment i.e. unauthorized occupation of Government land would exclude encroachment on streets, lanes, footpaths and parks. The reason is obvious. Streets, lanes, footpaths and parks do not belong to the Government. They belong to the citizens of the city and the Government holds them in trust.

10. The encroachment in the instant case is on a public road. Laid for a width of 60 roads as per the lay-out plan of Okhla Industrial Area, Phase II 30 feet of the road came under encroachment.

11. It is trite that while granting an interim injunction the trinity of : (i) a

prima-facie case, (ii) an irreparable injury, and (iii) balance of convenience have to be considered.

12. By the time the writ petition was filed the demolition of the structures on the road had been effected. The debris was permitted to be removed. The only thing which remained the belongings of the appellant on the road.

13. The consistent view taken by Courts is that where a private interest conflicts with a public interest, the public interest must be given weightage over the private interest and an interim injunction should be declined.

14. The grievance of the appellants of a survey not being carried out prior to the demolition is capable of being rectified by a post demolition hearing, akin to a post decisional hearing. The appellants claim to be armed with documents of possession showing that they were inhabitants of the unauthorised constructions after encroachment was made on the road. Thus, such appellants who would be entitled to be rehabilitated as per the rehabilitation policy can always be identified.

15. Reliance upon the decision in Sudama Singh's case (supra) was for the proposition that even if the encroachment was on a right of way the slum dwellers would have a right of rehabilitation is misplaced in the instant case for the reason the observation relied upon in Sudama Singh's case was to a slum cluster which had come up on barren land when there was no lay-out conceived of for a road to be laid through the slum. In the instant case Okhla Industrial Area Phase II was planned somewhere in the early 1960 and development was completed somewhere between 1967-1969. Amenities by way of roads etc. were laid during said period. Respondents assert that a 60 feet wide road was laid which was encroached upon up to half its width and that the road was retrieved.

16. The appellants would have no right to stay put on the road. At best their right would be to be rehabilitated as per the policy of the respondents.
17. The appeal is dismissed.
18. Interim order granted is vacated.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MAY 14, 2015
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