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

+ LPA 419/2017

SANJAY BHARGAVA & ANR

..... Appellants

Through: Mr. Sanjeev Ralli, Mohit Chugh and
Prabhav Ralli, Adv.

versus

**NORTH DELHI MUNICIPAL CORPORATION
& ORS**

..... Respondents

Through: Ms. Puja Kalra for R-1
Mr. Santosh Kr Tripathi and Mr.
Rizwan for R-2

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA**

ORDER
30.05.2017

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C.M. No.21407-08/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

C.M. No.21409/2017

For the reasons stated in the application, the delay is condoned. The application stands disposed of.

LPA 419/2017

1. The present appeal is directed against the judgment dated 16.02.2017

passed in W.P. (C) No.7285/2012 preferred by the appellant/ petitioner. By the impugned judgment, the learned Single Judge has dismissed the writ petition. The appellants, who claim themselves to be the owner of premises/ shop bearing No.1470/2, Ward No.2, H.C. Sen Road Fountain, Chandni Chowk, Delhi preferred the aforesaid writ petition with a plea that in front of their shop, an unauthorised structure was existing in the middle of pathway. It was claimed by the appellants that the footpath was meant for movement of general public and could not be owned by any individual. Any structure raised on the footpath was claimed to be illegal since the land belonged to the government. The appellants claimed that respondent nos.3 to 5 had encroached on the pathway which vests in the North Delhi Municipal Corporation. Respondent nos.3 and 4 were running eatable shops after encroaching on the pathway and raising construction thereon.

2. The learned Single Judge while dismissing the writ petition examined several documents placed before the court including the Wilson Survey Report of the year 1910-11, which showed that a well/ piyau and tree existed at the site. The said report also showed the existence of a platform. The register of immovable property was also examined by the learned Single Judge. The said register referred to Sheet No.131 of the said report, which, as aforesaid, noted the existence of a well/ piyau, tree and platform as early as in 1910-11. On the basis of the aforesaid documents, the learned Single Judge concluded that the platform is none other than the chabutra i.e. municipal chabutra which had been given identification No.1469/1 way back in 1950 – as documented in the record of the municipal corporation.

3. The learned Single Judge also takes note of the documents of 1961 relating to objections raised to house tax assessment in 1961-62 in respect of

the property in question. The same reflects the status of the property as in the year 1961. The Health Department of MCD issued a license in favour of Panna Lal & Sons i.e. respondent no.3, which was valid upto 31.03.1962 and licensed the licensee to carry on the sale of articles of food and drinks. Subsequent license of 20.04.1985 issued under Rule 6(2) of Delhi Food Adulteration and Prevention Act was also referred to. The said license was renewed from year to year between 1968 to 1997 in favour of the private respondents. The learned Single Judge also takes note of the recognition granted by the municipal corporation to municipal chabutra and in this regard reference is made to the decision of this court in W.P. (C.) No.4133/2005, *Chandani Chowk Sar Vyar Mandal v. MCD*. In the said proceedings as well, the chabutra in question vide Municipal No.1469/1 (at sl no.287) was recognised and the occupation of respondent nos.3 and 4 was also recognised. The size of chabutra was mentioned as 5 feet 10 inches x 9 feet 9 inches. In this background, the learned Single Judge observed that the court “*is of the persuasive view that what has come on record is the recognised status of this chabutra/ platform having a municipal no.1469/1*”. The occupation of respondent nos.3 and 4 since prior to 1950 was also evidenced from the record.

4. The submission of Mr. Ralli, counsel for the appellant is that respondent nos.3 to 5 could not show their title to the property which is claimed to be constructed on municipal chabutra. He submits that this itself shows that the property in question is encroached on public land. He has also sought to refer to several file notings made by the Addl. Commissioner (Revenue) in the office of MCD, which record that the chabutra in question was not a municipal chabutra and was an encroachment. He has also referred

to the show cause notice issued by the MCD to respondent nos.3 and 4 dated 26.03.2013, wherein it was alleged that unauthorised construction existed on government/ municipal land without any permission/ sanction from the corporation.

5. Having heard counsel for the appellant, perused the impugned judgment and the documents placed on record, we are not inclined to interfere with the impugned judgment. The dispute raised by the appellant in the writ petition, namely, that public land had been encroached upon and, therefore, the encroachment should be demolished, in the factual background of the case, could not have been formed the subject matter of writ proceeding at all. As to whether or not, there had been any encroachment as urged by the writ petitioner/ appellant and, if so, to what extent – if at all, are issues which could have been determined only in civil proceedings. It is clear from the impugned judgment and the documents considered by the learned Single Judge that there certainly was a well/ piyau with a tree and platform in existence for a very long time at the site in question. As to when the platform was covered and under what circumstance, and whether there was any encroachment on the adjoining public land were issues which could have been examined only in civil proceedings.

6. The logic of the appellants argument is that – because respondent nos.3 to 5 have not been able to establish their title to the said structure, the same has necessarily to be encroachment and unauthorised construction. In our view, this reasoning of the appellants is misplaced. Merely because the occupants may not have been able to establish their title convincingly – even though they have shown themselves to be in possession of the property in

question for decades, it does not follow that the property itself is an encroachment on public land, or is an illegal construction. The learned Single Judge has also taken note of the earlier decision of this court in *Chandani Chowk Sar Vyar Mandal* (supra), wherein the existence of municipal chabutra in Chandni Chowk area has been recognised. Para 67 of that decision, which is quoted by the learned Single Judge, read as follows:

“67. In the conspectus of the above facts and having regarding to the foregoing discussion, I am of the view that all the shopkeepers and allottees of chabutras in Chandani Chowk cannot be characterized as trespassers or encroachers. This finding is on the basis of the admitted facts namely that the MCD has been recovering both chabutra fee as well as takhatbandi fee from many of them. As a consequence, the MCD could not have taken a unilateral decision to remove all the takhatbandis without WP(C) No.4133/2005 and connected matters considering whether they had been permitted at any stage. If the impugned notice is to be read as confined to only those allottees who had encroached beyond the chabutra and into the pavement, such notice perhaps may have been sustained as one under Section 322. However, the terms of the notice are sweeping and broad. They encompass all alike. The impugned notice treats all alike, thus resulting in equal treatment of unequals. It ignores the possibility of existence of some allottees who are using the chabutras legally”.

7. The file notings relied upon by Mr. Ralli as found in the record of the MCD are neither here nor there. Admittedly, these file notings do not show consideration of all the aspects which the learned Single Judge has considered in the impugned judgment. Moreover, in response to show cause notice dated 26.03.2013 – wherein the municipal corporation claimed that unauthorised structure existed on government/ municipal land without any permission/ sanction from the corporation, when the order dated 05.03.2015

was passed, the stand taken by the municipal corporation, inter alia was that:

“... although the Chabutra structure is municipal property, and therefore not an encroachment, it is also established that the occupancy of M/s Panna Lal & Sons is unauthorised as during the course of hearing, it has nowhere been submitted by M/s Panna Lal & Sons that they are putting any fee to the Municipal Corporation of Delhi. There is a structure over the Chabutra which is actionable. However, it is observed that in Writ Petition No.4133/2005 a status quo has been ordered by the Hon’ble Delhi High Court in respect of the structures built in Municipal chabutras in Chandni Chowk area till finalisation of redevelopment plan by PWD. It is also observed that in the report accompanied with the affidavit dated 18.06.2006 submitted by Shri A.K. Singla, Dy. Commissioner, City Zone, MCD, in the said writ petition the name of M/s Panna Lal & Sons is mentioned at S. No.287. Therefore, the aforesaid protection of status quo needs to be given to the Chabutra Shop No.1469/1, Chandni Chowk, Delhi also and further action against the same should be taken in consonance with the other Chabutras after the finalisation of redevelopment plan to maintain uniformity”. (emphasis supplied)

8. Thus, the stand of the NDMC, after consideration of the response to the show cause notice underwent a drastic change. The stand taken in the show cause notice was only a tentative view, whereas, after consideration of the response thereto, it arrived at a considered view. For all the aforesaid reasons, we dismiss the present appeal. However, since the findings have been returned in writ proceedings and not in civil proceedings, if and when relevant issues are raised before a civil court, the civil court shall examine the same on the basis of the evidence led before it. The observations made by the learned Single Judge in the impugned judgment, and by us in the present decision shall be taken into consideration. However, if compelling evidence to the contrary is led – which has not been considered by the

learned Single Judge and by us, it shall be open to the civil court to take its own independent view in the matter.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 30, 2017

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