

\$~

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

+ CONT.CAS(C) 1156/2006

PALAM COLONY MARKET ASSOCIATION Petitioner
Through Mr. S.C. Singhal, Advocate

versus

ASHOK KUMAR NIGAM AND OTHERS Respondents
Through Mr. G.D. Mishra, Standing Counsel
with Mr. Harjinder Singh, Asst.
Engineer (Building), Najafgarh Zone
for R-1 and 2/SDMC.
Mr. Rajiv Kumar Ghawana, Advocate
for R-3 and 4.

%

Date of Decision : 14th September, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 15th February, 2006 passed in W.P.(C) 2124/2006 whereby the writ petition was disposed of with a direction to the Commissioner, MCD to personally look into the allegations made in the writ petition and further, if any unauthorised construction was found, the same

was directed to be demolished in accordance with law within six months.

2. It is pertinent to mention that in W.P.(C) 2124/2006 petitioner through its President, Mr. I.S. Solanki had alleged unauthorised construction in property bearing no. RZ-36/A-2/A, Raj Nagar, Palam Colony, Main Road, Delhi. Similar allegation was made in respect of property bearing no. RZ-86, Vaishali, Gali No. 2, Dabri, New Delhi-110045.

3. Mr. S.C. Singhal, learned counsel for the petitioner states that despite the aforesaid categorical order, the Commissioner, MCD did not dispose of the petitioner's representation.

Mr. Singhal has also drawn this Court's attention to various affidavits filed by respondent-SDMC to contend that though the SDMC had ample opportunity to demolish the unauthorised construction, yet it has not done so, as one of the respondents is a politically influential person.

4. Mr. Singhal also points out that at the time of sealing, the unauthorised construction had been stated to be comprising basement, ground floor, first floor, second floor and terrace, but in the present proceedings the respondents officials have stated that the unauthorised construction comprises basement, ground floor, first floor, second floor and third floor.

5. Mr. Rajiv Kumar Ghawana, learned counsel appearing for respondent nos. 3 and 4 states that though his clients are the owners and occupiers of the properties in question, yet they were never impleaded as parties either to the writ petition or to the present contempt petition.

6. Mr. Ghawana further states that both the writ petition and present contempt petition are motivated and mala fide as Mr. I.S. Solanki is uncle of the owner of the property bearing no. RZ-36/A-2/A, Raj Nagar, Palam

Colony, Main Road, Delhi. He contends that the said property had been included in the writ petition as State Bank of India, which was earlier the tenant of Mr. I.S. Solanki had decided to shift its premises to respondent no. 3-Mr. Raj Singh Solanki.

7. Mr. Ghawana further contends that the other property, i.e., RZ-86, Vaishali, Gali No. 2, Dabri, New Delhi-110045 had been included in the writ petition in order to settle the personal scores with the then MLA of the area.

8. Mr. G.D. Mishra, learned standing counsel for respondent-SDMC has drawn this Court's attention to the personal affidavit filed by the Commissioner, SDMC on 22nd July, 2014. In the said affidavit, it has been disclosed that the unauthorised construction in the property bearing no. RZ-86, Vaishali, Gali No. 2, Dabri, New Delhi-110045 had been booked on 3rd January, 2006 and the demolition order had been passed on 13th January, 2006. He states that the demolition programme fixed on 25th January, 11th February and 12th February, 2006 could not be executed due to various factors but the property in question was sealed on 25th February, 2006.

9. Mr. Mishra also states that upon inspection of the property bearing no. RZ-36/A-2/A, Raj Nagar, Palam Colony, Main Road, Delhi, it was found that no unauthorised construction was being undertaken in 2006. He, however, states that as per the record the said property had already been booked vide File No.82/B/UC/NGZ/2006 and a show cause notice dated 16th February, 2006 was issued to the owner. Mr. Mishra further states that after passing of the order dated 15th February, 2006, no unauthorised construction has taken place in the aforesaid properties.

10. Mr. Mishra states that before the prescribed six months demolition period could expire i.e., upto 15th August, 2006, the Ordinance dated 19th May, 2006 was issued by the Government granting protection to all unauthorised construction. He further points out that the said protection has repeatedly been extended by the Parliament and the same is valid uptill 31st December, 2017.

11. Since the writ petition was disposed of on the first day itself, it seems that the show cause notice dated 3rd January, 2006 and demolition order dated 13th January, 2006 could not be brought to the notice of the Court. In the opinion of this Court, after passing of the aforesaid notice and order there was nothing left for the Commissioner to consider with regard to the said property on 15th February, 2006.

12. Similarly, as unauthorised construction in RZ-36/A-2/A, Raj Nagar, Palam Colony, Main Road, Delhi, also stood booked and demolition order passed in 2006, this Court is of the view that non-passing of the order by the Commissioner-SDMC was neither deliberate nor intentional.

13. Consequently, the only mandate which survived for consideration was to take action in accordance with law to demolish the properties in question within six months from the date of the order dated 15th February, 2006. However, before the period of six months could expire, the Ordinance granting protection to unauthorised construction was issued. As this protection is still in vogue, this Court is of the view that it cannot hold the respondents officials guilty of wilful disobedience of the order dated 15th February, 2006. This Court is also of the opinion that there has been substantial compliance with the order dated 15th February, 2006.

14. However, the statement of the officials of respondent-SDMC that as and when the protection/moratorium offered by Delhi Laws (Special Provisions) Act is over, action against the unauthorised construction in the present two properties would be taken, is accepted by this Court and respondents are held bound by the same.

15. Keeping in view the aforesaid statement/undertaking, present contempt petition is closed and notices issued are discharged.

MANMOHAN, J

SEPTEMBER 14, 2015

rn