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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : April 10, 2015

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LPA 175/2015

DEFENCE PUBLIC SCHOOL

..... Appellant

Represented by: Dr.Arun Mohan, Sr.Advocate
instructed by Mr.Arjun Garg,
Mr.Anurag Tripathi, Advocates
with Mr.Praveen Kataria, AR
of the appellant school.

versus

NCT GOVT OF DELHI & ANR

..... Respondents

Represented by: Mr.Gurcharan Singh, Advocate
for R-1.
Mr.Ajay Verma, Advocate with
Mr.Amit Mehra, Advocate for
R-2/DDA

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The challenge in the appeal is to the decision dated February 03, 2015 passed by the learned Single Judge dismissing WP(C) No.4549/2008 filed by the appellant.

2. The prayer made in the writ petition reads as under:-

“(a) Writ of mandamus or any other appropriate writ/order/direction etc. directing the respondents not to demolish the school building in question situated at the Defence Enclave Colony, Mahipalpur Extension, New Delhi without following the due process of law and without taking any final decision on the issue of the regularization of the structures in the colony in question namely the Defence Enclave, Mahipalpur

Extension in terms of the order of this Hon'ble Court dated 05.10.2005 in Writ Petition No.4134-229 of 2005

(b) Appropriate writ order or direction against the respondents prohibiting/restraining them from taking any action against the petitioner's school building situated in the Defence Enclave, Mahipalpur Extension, New Delhi without following the due process of law and without taking any final decision in terms of the aforementioned order dated 05.10.2005."

3. Case of the appellant pleaded in the writ petition is that it acquired title to 2000 sq.yds. land in Defence Enclave, Mahipalpur, an unauthorized colony under a general power of attorney and other documents executed by one Virender Kumar on July 18, 2000. As per the appellant it constructed a building thereon wherefrom a school is being run. Reliance has been placed in the pleadings on an order dated October 05, 2005 passed by a learned Single Judge of this Court in W.P.(C) No.4134-4229/2005 in which it was held that till the Government takes a decision on regularizing unauthorized colonies no demolition would be effected by selectively picking up and demolishing constructions.

4. Dismissing the writ petition filed by the appellant, the learned Single Judge had noted that the land was comprised in part of khasra No.867/2 in the revenue estate of village Mahipalpur in respect of which award No.34/86-87 had been published and possession of the land was taken over by the Land Acquisition Collector and after removing the unauthorized construction on the land its possession was handed over to Delhi Development Authority on February 11, 2003. The learned Single Judge has also noted that the appellant claims interest in the land on the basis of a General Power of Attorney and other documents executed on July 18, 2000

by one Virender Kumar. The learned Single Judge has reasoned that after the land was acquired and possession was taken over it's title vested in the Government free of any encumbrance and thus Mr.Virender Kumar was left with no interest in the land.

5. Noting that the appellant was running a school from the building constructed, learned Single Judge deferred demolition till April 02, 2015; by when the existing academic year would be over on March 31, 2015.

6. The appeal came up for hearing on March 27, 2015 when Dr.Arun Mohan, Senior Advocate informed the Court that the appellant was willing to demolish part of the building, and the reason thereof was that the policy of regularization excludes such lands which are required for a public purpose. Concededly, 1000 sq.yds land out of 2000 sq.yds to which appellant claims having an interest in are required for a public road and part of the building erected by the appellant falls in said 1000 sq.yds land.

7. At the hearing held on April 06, 2015, Dr.Arun Mohan, Senior Advocate produced photographs which show that the part of the school building which was erected on 1000 sq.yds land, required for the road, has been demolished.

8. Learned Senior counsel argued that there would thus be no impediment in protecting the appellant qua the remaining 1000 sq.yds land.

9. A perusal of the writ petition filed by the appellant would show that the appellant did not disclose to the Court that 1000 sq.yds land out of 2000 sq.yds was required for a road. Thus, we do not have any definite stand of the parties that only 1000 sq.yds land falls in the right of way; for constructing a road. Now, the land required for the land could be more or less. The appellant, as noted above, had pleaded the case with reference to the order passed by a learned Single Judge of this Court on October 05,

2005.

10. In the counter affidavit filed by Delhi Development Authority it has been disclosed that on February 11, 2003 unauthorized constructions which had come up on the acquired lands were demolished and we find that the unauthorized construction on land comprised in khasra No.867/2 in the revenue estate of village Mahipalpur were also demolished. On the same date possession of the land was handed over to the Delhi Development Authority.

11. The issue of demolition in unauthorized colonies or its regularization has been the subject matter of litigation in Delhi since the year 1993. A social organization called 'Common Cause' had filed a writ petition in this Court laying a challenge to the appeasement policy of the Government to regularize each and every unauthorized colony without any policy laying down guidelines for the same. The writ petition was disposed of by a Division Bench of this Court in the year 1999 noting that the Government had framed a policy laying down guidelines. It was observed that constructions already made would not be disturbed till when, on case to case basis, the Government takes the decision. However it was clarified by the Division Bench that its order would apply to existing constructions.

12. The guidelines framed by the Government were not given a statutory recognition because of the fact that development of land and its use in Delhi is governed by the Delhi Development Act, 1957 and unless land use is changed and regulations notified, nothing could be done. In that view of the matter, while deciding W.P.(C) No.4134-4229/2005 on October 05, 2005, the learned Single Judge had noted that the Government had framed guidelines for considering regularization of unauthorized colonies in Delhi which had come up prior to March 31, 2002. Noting that the officers of the

Delhi Development Authority were resorting to pick and chose to demolish unauthorized constructions, the learned Single Judge directed that till decision is taken for such lands which were eligible for being considered for regularization no demolition would be effected in Defence Enclave, Mahipalpur. A caveat was entered. Such constructions which had come up post April 01, 2002 were held not entitled to any protection.

13. Prima-facie it is established that the appellant has raised the unauthorized construction afresh post February 11, 2003, a fact which has been suppressed in the writ petition. Our reason for so saying is the possession report dated February 11, 2003 pursuant to the award No.34/86-86. The same records that unauthorized constructions on land comprised in Khasra No.867/2 have been demolished. The 2000 sq.yds. land which is the subject matter of the appeal is comprised in said Khasra number. Therefore the appellant cannot claim the benefit of the order passed by the learned Single Judge on October 05, 2005. Nor can the appellant claim the benefit of policy of regularization which excluded any fresh construction post April 01, 2002.

14. The statutory recognition to the policy of regularization was given on March 24, 2008 when the Regulations for Regularization of Unauthorized Colonies in Delhi was notified in exercise of the power conferred under Section 57 of the Delhi Development Act, 1957. The criteria for regularization of unauthorized colonies reads as under:-

“3. Criteria for REgularizationof Unauthorized Colonies and Habitations.

3.1 Cut off date for regularization is 31.3.2002.

3.2 Habitations that have come up as extension to village abadi and are outside the Lal Dora of village, would be eligible

for regularization o on the same lines as those of unauthorized colonies.

3.3 The following types of colonies or parts thereof would not be considered for regularization.

(a) Unauthorized colonies/part of colonies/habitations falling in notified or reserved forest areas.

(b) Unauthorized colonies/part of colonies/habitations which pose hindrances in the provision of infrastructure facilities or fall in the area of right of way (ROW) of existing/proposed railway lines; Master Plan roads and major/trunk water supply and sewerage lines.”

15. An additional affidavit filed by the Delhi Development Authority in the writ petition has enclosed an order dated June 17, 2014 issued by the Department of Urban Development (Unauthorized Colony Cell) of the Government of NCT of Delhi rejecting the application submitted by the Welfare Association of Defence Enclave, Mahipalpur for regularizing the colony.

16. Submission made by learned Senior counsel for the appellant that in that view of the matter a direction should be issued that there should be no pick and chose of any unauthorized construction in Defence Enclave, Mahipalpur, needs to be noted and rejected, for the reason the appellant has no legal title in the land; having purchased the same under a Power of Attorney, agreement to sell etc. which were executed by one Virender Kumar on July 18, 2000. The land in question comprised in khasra No.867/2 were already acquired vide award No.34/86-87 and possession was taken over by the Land Acquisition Collector on February 11, 2003. By virtue of mandate of Section 16 of the Land Acquisition Act, 1894, then in vogue, the title in the land vested in the Central Government. Further, in

appeal the appellant itself has conceded to the point that at least 1000 sq.yds.out of the 2000 sq.yds land is required for a road and thus is excluded under the policy of regularization which is the foundation of the writ petition. We note that the policy of regularization found a statutory recognition when the Notification dated March 24, 2008 was issued notifying Regulations for Regularization of Unauthorized Colonies in Delhi. Vide Regulation 3.3(b), land required for right of way for purposes of rail lines, roads, sewerage lines and water supply lines were excluded from being considered for regularization. Equity has a role to play when a Court is called upon to exercise its discretionary remedy. That the appellant trespassed upon the land after February 11, 2003 disentitles the appellant to any discretionary relief. Further the policy of regularization excludes construction post April 01, 2002.

17. Looked at from any angle, the appellant would not be entitled to any relief as prayed for.

18. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 10, 2015

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