

\$~18, 19 & 26

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

+ W.P.(C) 8651/2014

DINESH KUMAR

..... Petitioner

Through: Mr. Rajiv Ranjan Dwivedi, Adv.

Versus

NORTH DELHI MUNICIPAL CORPORATION

& ORS.

..... Respondents

Through: Mr. Ramkumar, Adv. for R-1.

Mr. Sanjeev Sabharwal and Mr. Hem
Kumar, Advs. for GNCTD.

AND

+ W.P.(C) 8893/2014 & CM No.20366/2014 (for stay)

DINESH KUMAR

..... Petitioner

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THE NORTH DELHI MUNICIPAL CORPORATION

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Through: Mr. Ramkumar, Adv. for R-1.

Mr. Sanjeev Sabharwal and Mr. Hem
Kumar, Advs. for GNCTD.

Mr. Rajeshwar Dagar, Mr. Mayank
Sharma and Mr. Satveer Singh, Advs.
for R-5, 6 & 8.

AND

+ W.P.(C) 3659/2014 & CM No.7432/2014 (for stay)

K.K. SHAHRAWAT

..... Petitioner

Through: Mr. Rajiv Ranjan Dwivedi, Adv.

Versus

THE NORTH DELHI MUNICIPAL CORPORATION

AND ORS

..... Respondents

Through: Mr. G.D. Mishra, Adv. for R-1.

Mr. Sagar, Adv. for R-6.

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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.07.2015

CM No.20367/2014 in W.P.(C) No.8893/2014 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) 8651/2014, W.P.(C) 8893/2014 & CM No.20366/2014 (for stay)
& W.P.(C) 3659/2014 & CM No.7432/2014 (for stay)

3. All the three petitions concern village, earlier known as Chandrawal and now stated to be known as Chandrawali, at Civil Lines, Delhi-110054.

4. It is the case of the petitioner in **W.P.(C) No.3659/2014:**

(i) that the regularization plan of the said village, having a total area of 1.660 hectare, was passed vide minutes of meeting dated 27th April, 1984 of the Standing Committee of the Municipal Corporation of Delhi (MCD);

(ii) that in the said plan, land admeasuring 0.096 hectare was reserved for community hall for the residents of the village;

(iii) that in the year 2007, the respondent No.6 Sh. Omkar Singh tried to encroach on the land reserved for community hall by making unauthorized construction;

- (iv) that vide order dated 25th September, 2008 in W.P.(C) No.9235/2007, MCD was directed to take action with respect thereto;
- (v) that the said unauthorized construction was booked by the MCD but no action was taken by the MCD;
- (vi) that on 20th May, 2014, the respondent No.6 brought building material for raising further construction above the unauthorized construction earlier made;
- (vii) that the respondent No.7 Smt. Tara had also earlier tried to make unauthorized construction on the land reserved for community hall and W.P.(C) No.5910/2012 was filed with respect thereto and vide order dated 19th September, 2012 therein also, MCD was directed to inspect and take suitable action;
- (viii) however, no action was taken with respect to the said unauthorized construction also;
- (ix) that the respondent No.8 Sh. Inderjeet and the respondent No.9 Sh. Shyam Lal had also commenced unauthorized construction on their properties in the said village; that similarly others were also carrying out unauthorized construction in the village.

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Accordingly, in the petition, reliefs of directing the respondents No.1 to 5 North Delhi Municipal Corporation (NrDMC), Govt. of NCT of Delhi (GNCTD), Police and Union of India (UOI), to remove all the said unauthorized constructions and implement the earlier orders with respect to the said village and to ensure that no unauthorized construction takes place were sought. A direction has also been sought for developing / regularizing the village in accordance with a layout plan.

5. Notice in the aforesaid petition was issued and status report was sought.

6. The NrDMC in its response affidavit to W.P.(C) No.3659/2014 has stated, (a) that as per record, there is no land earmarked for a community hall in the village nor is any such land owned by the NrDMC; (b) that the village is spread over the vast area with almost all constructions being prior to 8th February, 2007 and which are protected by "The National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011 (Special Laws Act); (c) that the cut off date with respect to the constructions against which no action can be taken upto 31st December, 2017 has been extended to 1st June, 2014; (d) that the properties specifically referred to in the

petitions have been booked but no action thereagainst can be taken owing to the Special Laws Act; (e) that the area in question is being inspected in a routine manner to ensure that no unauthorized construction takes place in the area and action is taken as and when any complaint is received.

7. The respondent No.6 Omkar Singh has also filed a counter affidavit to W.P.(C) No.3659/2014 denying:

(I) that there is any municipal land, in the village, reserved for the development of community hall;

(II) that the village is in fact an unauthorized colony and figures in the list prepared of 452 colonies and falls in Zone C-12;

(III) that till date no land has been acquired for community facilities approved by the MCD, while sanctioning the plan on 27th March, 1984;

(IV) that the land underneath his property, construction whereof is alleged by the petitioner to be unauthorized, belongs to him.

8. The petitioner in W.P.(C) No.3659/2014 has filed additional affidavits but need is not felt to advert thereto.

9. W.P.(C) No.8651/2014 has been filed seeking a direction to the NrDMC, GNCTD and the Police to remove all encroachments / obstructions from public streets in the same village and to ensure that no further encroachment / obstruction / projection is created in the public streets of the village. It is the case of the petitioner therein, (A) that vide order dated 23rd August, 2006 in W.P.(C) No.18030/2005 filed by some other residents of the village, NrDMC / its predecessor was directed to remove the encroachments from public streets in the village and to ensure that no further encroachment takes place; (B) that vide another order dated 9th May, 2014 in W.P.(C) No.2889/2014 filed by yet another resident of the village also, the NrDMC was directed to remove all encroachments from the public streets in the village and to ensure that the public streets remain free of encroachments at all time and all malba / debris lying therein is removed; (C) that however no action had been taken inspite of representations; (D) that the NrDMC has thus failed to carry out its statutory duties.

10. Notice of W.P.(C) No.8651/2014 also was issued and NrDMC directed to file status report. However, nothing has been filed till date.

11. W.P.(C) No.8893/2014 has been filed by the same petitioner who has filed W.P.(C) No.8651/2014 seeking a direction to NrDMC, GNCTD and Police to remove all encroachments / unauthorized constructions from municipal government land reserved for rehabilitation purpose (0.167 hectare) in the village and to remove other unauthorized construction in the village, *inter alia* making the same pleadings as above. Notice thereof has also been issued.

12. An affidavit dated 2nd July, 2015 on behalf of NrDMC is filed in W.P.(C) No.8893/2014 reiterating, (i) that the village is an unauthorized colony which was regularized vide Resolution No.463 dated 27th April, 1984 approved by the MCD; (ii) "according to the Resolution, 35 properties were in existence at the time of regularization at the site which were earmarked for various public purposes and 20 properties were earmarked under the High Tension Line which were required to be relocated"; (iii) that the sites which were earmarked for parks, schools, open spaces and other community facilities "shall" be acquired through Secretary (Land & Building), Delhi Administration and alternative plots "should" be provided on reasonable basis to persons whose plots are covered in this public utility area; (iv) however till date no land has been acquired nor any policy for

rehabilitation has been made as provided in Resolution dated 27th April, 1984; (v) that only when the land is acquired and handed over to NrDMC, then the rehabilitation scheme will materialize; (vi) that in the regularization plan, width of internal lanes was proposed as 5 meters as against the existing width of internal lanes of 2 to 3 meters; (vii) that the width of internal lanes cannot be increased due to existence of large number of houses on either side of the lanes since long; (viii) that the present existing construction is protected under the Special Laws Act supra and under the order dated 16th February, 2015 of the Ministry of Urban Development, GNCTD; (ix) however no new construction will be allowed to be carried out till materialization of rehabilitation scheme as provided under the Resolution dated 27th April, 1984.

13. The counsel for the petitioners could not controvert the position aforesaid as detailed by the NrDMC.

14. It is thus obvious that in the prevalent circumstances, neither can the Court direct any action to be taken with respect to any construction raised prior to 1st June, 2014, even if unauthorized. All that can be directed is that no further construction / encroachment takes place in the village. The village being in an unauthorized colony, the question of any of the

construction therein being with the requisite sanction does not arise. Thus, whatever construction is found to have been carried out after 1st June, 2014, would be unauthorized and immediate action has to be taken with respect thereto.

15. As far as encroachments on common streets and common areas / passages are concerned, the NrDMC is certainly required to take action with respect thereto and the same would not be protected by the Special Laws Act. Even if the land underneath the said common areas / passages / streets does not vest in the NrDMC, none can be said to be having a right to exclusively appropriate the same and unless such common areas / passages / streets are kept free from encroachment, the same would lead to breach of peace.

16. What is however obvious is that inspite of this Court on a number of occasions issuing directions to the NrDMC and its predecessor to ensure that no unauthorized construction or encroachment takes place in the village, the directions have gone unheeded. The same has resulted in repeated writ petitions being filed. I have during the hearing asked the counsels, as to why they have not filed contempt petitions against the officials of the NrDMC or its predecessor who have failed to abide by this

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Court's directions. The counsels state that since the orders were in writ petitions preferred by persons other than the petitioners, they could not apply for contempt. I entertain doubt as to the correctness of the said view. The orders directing a municipality to ensure that no unauthorized construction / encroachment of public streets takes place in a colony or in a locality, in my *prima facie* opinion are enforceable at the instance of any resident of the colony / locality and not only by the persons at whose instance a direction was obtained. Be that as it may, since neither I am sitting over the contempt jurisdiction nor any case for contempt is made out, need is not felt to render any final opinion thereon.

17. No purpose will thus be served in keeping these petitions pending. However, finding that the orders sought in these petitions are nearly identical to the orders already issued by this Court in the past and that the said earlier orders have gone unheeded, need is felt to fix responsibility.

18. The NrDMC is thus directed to, within a period of one month from today, designate a post, the incumbent whereof would be personally liable for non-compliance of the direction hereunder issued and to inform the petitioners of the same and to otherwise publically announce the said post in the village, to enable all concerned to approach the incumbent of the said

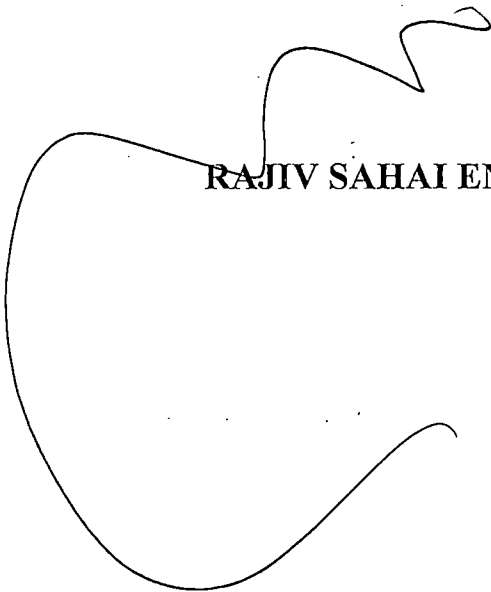
post with the complaints of any unauthorized construction having taken place after 1st June, 2014 or of any encroachment of common areas / passages / streets or of any unauthorized construction or encroachment being carried out now. The said official, without any complaint also, shall visit the village from time to time, preferably every fortnight, to verify any construction / encroachment work going on. The Station House Officer (SHO), Police Station-Civil Lines, Delhi stated to be having jurisdiction over the locality is also directed to instruct the Beat Constable and other police official visiting / patrolling the said locality to immediately report any construction / encroachment activity found to the said official of the NrDMC.

19. The NrDMC is again directed to ensure that unauthorised construction / encroachment, if any taken place after **1st June, 2014** is booked and the action in accordance with law is taken with respect thereto and if ultimately found to be unauthorized to be demolished / removed. It is also directed to remove any encroachments of common areas / passages / streets. It is yet further directed to ensure that no unauthorized construction or encroachment takes place hereafter. The persons against whom NrDMC so takes action would of course be entitled to remedies available to them in

law and which remedies shall be adjudicated by the fora concerned without being influenced by anything contained herein.

20. It is made clear that any resident of the village shall be entitled to invoke contempt jurisdiction of this Court with respect to any non-compliance by the NrDMC and its official aforesaid of the said directions.

The petitions are disposed of. No order as to costs.



RAJIV SAHAI ENDLAW, J.

JULY 02, 2015
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