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

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Date: February 25, 2016

+ W.P.(C) 3548/2013

COURT ON ITS OWN MOTION

..... Petitioner

Through Mr.Sandeep P.Agarwal (*Amicus Curiae*) and Mr.Rajesh Pathak, Advocates

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents

Through Mr.Satyakam, ASC for the GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This is a PIL initiated on the basis of a direction of the learned Single Judge dated 02.05.2013. The background facts are that a suit was filed by the plaintiff Sh.Satish Kumar Yadav against the defendant Nos.1 to 7 seeking a preliminary decree for partition in respect of the share of the plaintiff in suit properties, viz. i) 1/24 share of the plaintiff in Industrial Tin Shed built upon Kh.No.29/20 on a plot measuring about 270 sq.yds. situated in the approved industrial area of Village Libaspur, ii) 1/12 share in Residential Property bearing house No.75 total measuring about 165 sq.yds. in old laldora abadi of Village Libaspur, Delhi and iii) 1/24 share in the land and houses built upon plot of land measuring 2300 sq.yds. (approx.) bearing Kh.No.33/3(2-6) situated in the abadi of Village Libaspur, Delhi.

2. On 02.05.2013, the learned Single Judge dealing with the suit passed the following order initiating the present public interest litigation. The said order reads as follows:

“Present suit has been filed for partition.

In the present plaint it has been admitted that an earlier suit for partition filed by the plaintiff in the Court of Revenue Assistant/SDM was dismissed on the ground that the suit property had vested in Gaon Sabha under Delhi Land Reforms Act, 1954 (for short ‘Act’). The said order of the Revenue Assistant/SDM was admittedly not challenged and has attained finality.

Learned counsel for the plaintiff states that the land in question had vested in Gaon Sabha under section 81 of the Act because the said property was being used for a purpose contrary to the one prescribed under the Act.

He, however, states that in view of the Notification bearing F. No.I-33/UC/UD/Policy/2007/20670-20686 dated 12th December, 2007 issued by the Government of NCT of Delhi, Urban Development Department in the name of Lt. Governor, Delhi, land of unauthorised colonies and abadi vested in Gaon Sabha under Section 81 of the Act is liable to be once again treated as private property if the possession thereof had not been taken over by the Gaon Sabha and where physical possession is with the original land owners. The notification dated 12th December, 2007 is reproduced hereinbelow:-

“GOVERNMENT OF NCT OF DELHI
URBAN DEVELOPMENT DEPARTMENT
9TH LEVEL, C-WING, DELHI SECRETARIAT
I.P. ESTATE, NEW DELHI

F. No. I-33/UC/UD/Policy/2007/20670-20686 Dated:-
12/12/07

ORDER

In accordance with Para 2.2 of the revised guidelines-2007 for Regularization of Unauthorised Colonies in Delhi as received from the Ministry of Urban Development, Government of India under letter No. O-33011/2/94-DDIIB-Vol.-XI dated 5th October, 2007, the Lieutenant Government of NCT of Delhi, is pleased to define the Government/Public land and/or private land as follows:

1. Land under acquisition proceedings

Government Land: All lands in respect of which the Awards have been given, and the landowners have received the compensation, irrespective of current physical possession.

Private land: All lands in respect of which the Awards have been given but the landowners have not taken the compensation and are retaining the physical possession.

2. Gaon Sabha lands

Government land: All lands originally vested in the Gaon Sabha at the commencement of the Delhi Land Reforms Act, 1954, irrespective of the physical possession on ground and all lands subsequently vested in the Gaon Sabha under Section 81 of the aforesaid Act, where the physical possession is with the Government.

Private land: All lands vested in the Gaon Sabha under Section 81 of the Delhi Land Reforms Act, 1954 where the physical possession is with the original landowners.”

This Court has grave doubt as to whether land which had vested in Gaon Sabha by a substantive provision of the Statute can be released/returned by an executive notification. This Court is also prima facie of the view that by virtue of the Notification dated 12th December, 2007 the Government of NCT of Delhi has rewarded the infringers of law inasmuch as valuable land which stood vested in Gaon Sabha has been returned to the infringers. This Court is further of the opinion that the aforesaid Notification is too widely worded and can be easily misused by encroachers of government land.

It is also surprising to note that even after vesting of land

in favour of Gaon Sabha, no steps for taking over of its possession were undertaken by the State Government for a long time.

Consequently, as this Court has doubt with regard to the legality and validity of the Notification dated 12th December, 2007, Registry of this Court is directed to open a Public Interest Litigation file and place the same before the concerned Roster Bench on 3rd July, 2013. A copy of this order along with the present plaint be placed along with the said petition.”

3. When the matter was being heard, it turned out that the learned counsel appearing for the parties in the suit and the learned counsel appearing for the Govt. of NCT of Delhi all took the common stand stating that the Notification dated 12.12.2007 which has been doubted by the learned Single Judge was legally valid and was applicable to the facts of this case. Hence, this court on 08.09.2015 appointed Mr.Sandeep P.Agarwal, Advocate as *amicus curiae* to assist the court.

4. The Govt. of NCT of Delhi has filed its status report. The status report states that the object of Section 81 of the Delhi Land Reforms Act (*hereinafter referred to as the 'DLR Act'*) was not to vest land in Gaon Sabha but to prevent its non-agricultural use. However, the report says that the Revenue Authorities have failed as is evident from the creation of a large number of unauthorized colonies all over in Delhi. The status report also states that as the land cannot be reconverted to its original form, hence there is no option but to confirm it in the name of the original holders. The vesting of the land in Gaon Sabha was done through statutory powers. However, the authorities themselves always have the powers to review their orders and restore the status as was before the initiation of the proceedings. The status

report further clarifies that the Notification dated 12.12.2007 has further been clarified by the order dated 03.06.2009 that it is only applicable in the context of regularisation of land and carrying out development works in unauthorised colonies and for no other purpose. Hence, the status report prays that writ petition be dismissed.

5. The learned amicus curiae in its written submissions has pointed that the purpose for which the DLR Act was framed has lost its purpose, i.e. preservation of the land used and connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming etc. Despite drastic changes with regard to the nature and use of land, the State Legislature has paid no heed to amend the DLR Act.

6. The written submission also state that under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Acquisition Act), sections 24 and 25 of the Act, provided that acquisition process lapse in the circumstances stated.

7. The learned amicus curiae further states that it is settled law that executive instructions cannot run contrary to statutory provisions or to whittle down their effect, however, the executive instructions can supplement a statute or cover areas to which the statute does not extend. For this proposition, he relies upon the following judgments:-

- (i) **Sant Ram Sharma vs. State of Rajasthan & Anr., (1968) 1 SCR 111**
- (ii) **Kusum Ingots & Alloys Ltd. vs. Union of India & Anr., (2004) 6 SCC 254.**

- (iii) **Jantia Hill Truck Owners Asso. vs. Shillong Area Coal Dealer, (2009) 8 SCC 492.**
- (iv) **Joint Action Committee of Air Line Pilots' Association & Ors. vs. Directorate General of Civil Aviation & Ors. (2011) 5 SCC 435**

8. As far as proceedings under the Acquisition Act are concerned, the acquisition proceedings lapse on the flux of time as stated in sections 24 and 25 of the Acquisition Act.

9. We may now deal with the relevant statutory provisions contained in the DLR Act. Sections 81 and 82 read as follows:

“81. Ejectment for use of land in contravention of the provisions of this Act.- (1) A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the land holder, as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and also pay damages equivalent to the cost of works which may be required to render the land capable of use for the said purposes.

(2) Notwithstanding anything contained in sub section (1) the Revenue Assistant also may, on receiving information or on his own motion, eject the Bhumidhar or Asami, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be

81. Decree for ejectment under section 81.- (1) A decree for ejectment under section 81 may direct the ejectment of Bhumidhar or Asami from the whole or part of the holding as the Court, having regard to the circumstances of the case, may direct.”

10. Similarly, sections 84 and 85 of the DLR Act read as follows:

“84. Ejectment of persons occupying land without title.-

(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) Where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or

(b) Where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha,

shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be and shall also be liable to pay damages.

.....

85. Failure to file suit under section 84 or to execute decree obtained thereunder.- If a suit is not brought under sub-section (1) of section 84 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall—

(i) where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof;

(ii) where the land forms part of the holding of an Asami on behalf of the Gaon Sabha, become an Asami thereof;

(iii) in any case to which the provisions of clause (b) of sub-section 1 of Section 84 apply, become a Bhumidhar or Asami as if he had been admitted to the possession of the land by the Gaon Sabha.”

11. A reading of sections 84 and 85 of the DLR Act shows that where a suit is not brought under sub-section (1) of Section 84 or a decree obtained in any such suit is not executed within the period of limitation, the person in

unauthorised occupation shall continue to remain a Bhumidhar or Asami as the case may be as provided in the said statutory provisions.

12. The Supreme Court in the case of *Sant Ram Sharma vs. State of Rajasthan & Anr. (supra)* held as follows:-

“We proceed to consider the next contention of Mr. N. C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

13. To a similar effect are the other judgments cited by the learned Amicus Curiae. In the light of the said judgments, the legal position that emerges is that the Government cannot amend or supersede statutory rules/provisions by administrative instructions. But if the rules are silent, the executive can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules.

14. Coming to the facts of this case, the notification in question dated 12.12.2007 issued by the Government of NCT of Delhi are government instructions. It cannot and will not supersede the statutory provisions of the

Acquisition Act or the DLR Act. The statutory provisions would have full effect irrespective of any inconsistency or contrary provision in the said notification dated 12.12.2007.

15. The present petition is disposed off accordingly with the above directions.

JAYANT NATH, J

CHIEF JUSTICE

FEBRUARY 25, 2016/v