

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No.4712/2011 & C.M. No.9547/2011**

Decided on : 22nd February, 2016

NAVJOT PAL SINGH RANDHAWA & ANR. Petitioners

Through: Mr. Ved Prakash Sharma, Ms. Amrit
Kaur Oberoi, Ms. Pooja Yadav &
Mr. Kunal Dutta, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Shobhna Takiar & Mr. Udayan
Khandelwal, Advocates.

WITH

+ **W.P. (C) No.7425/2011 & C.M. No.16843/2011**

RAKESH NARANG Petitioner

Through: Mr. Mrinal Bharti & Mr. Manish
Shekhar, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Shobhna Takiar & Mr. Udayan
Khandelwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are two writ petitions filed by the petitioners under Article 226 of the Constitution of India seeking issuance of appropriate writ, order or direction thereby quashing/setting aside of all the actions of the respondent/DDA whereby it intends to undertake the action for demolition against house bearing No.RZ 137/9 now having new number 52A, JNU Road, Village Kishan Garh, New Delhi measuring 155 square yards in violation of the alleged policy framed by the Government of Delhi applicable to an unauthorized colony which have been granting provisional regularization certificate pending consideration before the Delhi Government which is to be granted in terms of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 and to pass such other consequential orders as may be deemed fit. This is the prayer in the first writ petition bearing W.P. (C) No.4712/2011 titled *Navjot Pal Singh Randhawa & Anr. vs. DDA*. So far as the second writ petition bearing W.P. (C) No.7425/2011 titled *Rakesh Narang Vs. DDA* is concerned, all the facts are similar except property is bearing No.RZ 80-C/9 measuring 800 square yards which is 3.09 bighas, part of Khasra No.2797/2016 and 1675/12 situated at JNU Road, Kishengarh, Mehrauli, Delhi. However,

for the sake of convenience, facts of W.P. (C) No.4712/2011 are dealt with in the present order.

2. The case of the petitioners is that they are the owners and in possession of house bearing No.RZ 137/9 now having new number 52A, JNU Road, Village Kishan Garh, New Delhi measuring 155 square yards. The petitioners are claiming themselves to be the purchasers of the aforesaid plot from one Brijender Singh vide Agreement to Sell, General Power of Attorney, Affidavit, Will etc. dated 16.11.1991 and that they were also put in physical vacant possession. The petitioners are alleging that they built the property in the year 1992 and constructed two rooms with boundary wall which was being used by them only for residential purposes. They have got electricity meter installed and are stated to be paying house-tax to the MCD. It is also stated that the petitioners are members of the resident welfare society known as Village Kishan Garh Welfare Association which is duly registered under the Societies Registration Act with the Registrar of Societies, Government of NCT of Delhi on 1.2.1994 and there are around 999 members of the said Society. The property in question of the petitioners is stated to be falling in an unauthorized colony known as JNU Road, Village Kishan Garh and it is

stated that the Association has already been granted a Provisional Regularization Certificate on 17.9.2008 by respondent No.2.

3. It is alleged that the Association had earlier filed a writ petition bearing No.9131/2008 in the High Court of Delhi seeking appropriate writ or direction including the writ of prohibition from carrying out demolition and taking possession of the houses/plots/built-up structures of the aforesaid unauthorized colony and also sought direction that they should not interfere with the possession of the members of the Association so far as their individual plots/houses are concerned, which was disposed of by this Hon'ble court on 3.5.2010 in terms of the order passed on 17.8.2009. It is stated that on 19.5.2006, the Parliament enacted the Delhi Laws (Special Provisions) Act, 2006 and in terms of the said Act, a moratorium against demolition and removal of encroachment was put for a period of one year with effect from 1.1.2006. It has been stated that the said Act has been extended from time to time and at the time of filing of the writ petition was extended upto 31.12.2011 and now it stands extended upto 31.12.2017.

4. It is alleged that respondent No.1/DDA in utter violation of their own guidelines and the protection granted to the petitioner in terms of the

National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 have carried out demolition on 6.7.2011 and thereby demolished the property No.52A, JNU Road. The petitioners alleged that they brought this illegal action on the part of the respondent to the notice of the Station House Officer, Vasant Kunj, New Delhi as this action was initiated *mala fide*. It is also stated that respondent Nos.2 and 3 have failed to discharge the statutory duties in implementing their policies including the policy of regularization and consequently, the same may be done. The petitioners in support of their contention filed number of documents and various interim orders passed by different courts including the writ court granting the petitioner a restraint order against any demolition being undertaken by the DDA.

5. The respondent/DDA filed its reply affidavit and challenged the very maintainability of the writ petition. It was contended that the petitioners do not have any right, title or interest in the land in question as no document of ownership has been placed by them on record. Further, it was stated that the land in question which was encroached and unauthorizedly occupied by the petitioners was actually a gaon sabha land and vested with the gaon sabha and the same has been usurped by the

petitioners illegally. It has been stated that the respondents are widening and constructing the road known as Aruna Asaf Ali Road in technical collaboration with UTTIPEC and reasons for this is that the answering respondent cannot be made to depend on the whims and fancies of the petitioners for recovery of possession of the area in question which is under the occupation of the petitioners is forming part of the approved road plan according to which a substantial portion of the land under the occupation of the petitioners is falling in green area abutting to the main road itself. It has also been stated that the width of the road is 21.20 meters out of which 10.20 meters falls in road and remaining, that is, 11 meters falls in the green belt abutting the road. It has been contended by the learned counsel for the respondent that they have attached the approved plan of the road as well as the rough sketch of the plan which shows that the road is to be widened and the area which is under the occupation of the petitioners falls in the so-called green area which necessarily has to be taken possession of by the answering respondent for the purpose of giving effect to a public project, namely, widening of a road.

6. The respondent has also stated in its affidavit that the plea of moratorium having been put on the demolition of unauthorized construction till 31.12.2017 is also not applicable to the facts of the present case because Section 4 clause (b) of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 clearly lays down that any retrieval of possession or removal of unauthorized construction on the Government land which comes in the way of effecting a public purpose or a public project will not enjoy the benefit of the said provision, against demolition or allied things.

7. I have heard Mr. V.P. Sharma and Ms. Amrit Kaur, the learned counsel on behalf of the petitioners and Ms. Shobhana Takiar, the learned counsel on behalf of the respondent.

8. The first contention of Mr. Sharma is that the petitioners are the owners and in possession of the property bearing No.RZ 137/9 now having new number 52A in an admittedly unauthorized colony known as JNU Road, Village Kishan Garh, New Delhi measuring 155 square yards of land which they had purchased on 16.11.1991. On this parcel of land, it is stated that two rooms have been built which are being used for residential purpose only and for which electricity connection has been

duly obtained as well as the house-tax is being paid. It is also stated that from 1992 till the filing of the petition, no fresh construction activity has been carried out and this being a part of the larger cluster of houses falling in Kishan Garh area, the residents welfare association has already approached Government of Delhi for regularization of the unauthorized colonies and the Government of Delhi has already issued a provisional regularization certificate on 17.9.2008 which grants protection against any action for demolition or removal of alleged encroachment although there is no case of encroachment so far as the petitioners are concerned.

9. It has also been further supplemented by the contention that the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 which came into force originally in 2007 and has been extended on annual basis is now holding the field till 31.12.2017 and putting a restriction on demolition action being carried out by the respondent. It is stated that because of this statutory embargo, no action for demolition for removal of alleged unauthorized construction ought to be taken against the petitioner as this will not only result in violation of law but also cause disruption. Reference has been made by the learned counsel to the Government policy dated 11.9.2007 which has been taken note of in a

case titled *Harijan Kalyan Samiti Regd. & Ors. vs. Government of NCT of Delhi & Ors.*; W.P. (C) No.5200/2008, copy of which has been placed on record at page 85 of the paper book.

10. Mr. Sharma has further supplemented his contention that so far as the filing of the writ petition by the Resident Welfare Association bearing No.9131/2008 is concerned, to which reference has been made by the respondent in its counter affidavit, that was on a different cause of action and the present writ petition filed by the petitioner is on a different cause of action and therefore, no analogy can be drawn between the two.

11. The learned counsel has also contented that the total width of the road plus foot path is 25 meters which has been divided in the following manner :-

- “(a) Black top carriage way on either side is 10 meters each ;*
- (b) Centre verge of one meter;*
- (c) Foot path on the side of the DDA flats is 1.5 meters;*
and
- (d) Foot path on the village side is 2.5 meters.*

Total width for road plus foot paths on both the sides is 25 meters.”

12. It is the contention of Mr. Sharma that so far as the area of the petitioners is concerned, it falls beyond the area of 25 meters and thus,

does not come in the alignment of the road so as to call for any action for demolition. It has also been contended by Mr. Sharma that the road is already built-up and is operational. He has drawn the attention of the court to some of the photographs placed on the record to show that the road which has been built-up and is in existence is having a free flow of traffic without any obstruction from the property of the petitioner.

13. Ms. Takiar, the learned counsel for the respondent has vehemently contested the submission made by the learned counsel for the petitioner on all counts. It has been stated by her that the petitioners are claiming themselves to be the owners of the suit property but not even a single document has been placed by them on record which will show that they have any title to the property. On the contrary, it is contended that the petitioners are the rank trespassers on a public land which was vested in Gaon Sabha and was thereafter handed over to the DDA under Section 22 of the DDA Act to be used as a Nazul land. It is denied that the construction which has been purported to be raised by him does not come in alignment of the road. It is not denied that the road is already made operational but it was stated that the road which has been made operational is only the carriage way and not the complete road including

the foot path and the green area on the side of the petitioners where their property is situated. The learned counsel has tried to draw the attention of the court to the approved plan of the road as well as to the rough sketch and contended that area which is shown in orange and is belonging to the petitioner falls directly in the area of green belt which is required by the respondent for the purpose of widening of the road as a green area abutting in the entire stretch of the road on the either side.

14. It has also been contended by the learned counsel for the respondent that the writ petition which was filed by the Resident Welfare Association was in the representative capacity and the relief which was claimed in the said writ petition was akin to the relief which was being claimed by the petitioner individually. The only difference being that in the writ petition which was filed on behalf of the Resident Welfare Association was a representative writ petition which require the relief to be granted to all the residents whose properties were falling in the alignment of the road itself and therefore, it cannot be said by any stretch of imagination that the writ petitions filed by the two persons and the association were different. It is nothing but a gross misuse of the

processes of law as repeated writ petitions are being filed to put stoppage to the work which is being done for the public at large.

15. As regards the protection which is purported to have been granted to the petitioner under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, it has been contended by Ms. Takiar that there is a saving clause under Section 4 (b) which is in the nature of an exemption or a proviso. Under this proviso, the land owning agency is well within its right to remove the unauthorized construction or encroachment on its land provided the said land is needed for public purpose or for infrastructural purpose. It is contended by Ms. Takiar that because of this exemption clause granted in the laws enacted by the competent legislature, the petitioners require the land in question for the purpose of larger good of the public and therefore, it cannot be prohibited from initiating any action against the present petitioner.

16. I have carefully considered the submissions made by the respective sides and have also gone through the record carefully. At the outset, it may be pertinent here to mention that the area of controversy is very short one, that is, as to whether the petitioners' occupation in respect of a parcel of a land which they claim to be just 155 square yards of land

consisting of a structure of two rooms, kitchen in W.P. (C) No.4712/2011 and the area of 800 square yards land, etc. in the writ petition No.7425/2011, deserves any protection from this court or not on account of being a part of the larger cluster known as Kishan Garh Resident Welfare Association which is an unauthorized colony and in respect of which the provisional certificate for regularization is purported to have been granted by the Government of Delhi. But before examining this point, it will be pertinent here to mention that the entire edifice of the petitioners case is built on the question of his being the owner of the property in question. The ownership of an immoveable property is clearly to be established in terms of Section 17 (b) of the Registration Act, 1908 which lays down that no right, title or interest would accrue in respect of any immoveable property in favour of any person value of which is more than Rs.100/- unless and until the document itself is registered. Meaning thereby, that before a person claims himself to be the owner of a property, he must establish that there is a registered sale deed, conveyance deed or lease deed in respect of the said parcel of land of which he is claiming the owner. In the instant case, there is no such document which has been placed by the petitioner on record. In W.P. (C)

No.4712/2011, the petitioner is pitching his case on the basis of the fact that land in question belonging to one Chuni Lal and they had purchased the said parcel of land from Bijender Singh in the year 1991 and for this purpose, they are placing reliance on agreement to sell, general power of attorney, Will, etc. These documents cannot be considered to be the documents conferring ownership on the petitioner. This is more so after the pronouncement of the judgment of the Apex Court in *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr.*; AIR 2012 SC 206.; wherein it has been clearly laid down that these documents or the documents of the like nature would not be deemed to be conferring any right, title or interest in the suit property. All that these documents entitle a beneficiary of such documents is to sue the original owner of the property for perfecting his title in respect of the said parcel of land. Therefore, these documents on the touchstone of *Suraj Lamp's* case (*supra*) cannot be considered to be the documents of ownership of the plot of land in question.

17. In addition to this, in W.P. (C) No.7425/2011, even the connecting documents showing the ownership of the land in favour of Chuni Lal, from whom the land in question was purchased, are not complete. The

only document which has been placed on record is pertaining to the year 1963-64 khatauni/khasra girdawari where in respect of the land in question the ownership is recorded in favour of one Chuni Lal but after that there is not even a single document which is placed on record which would show that Chunni Lal continued to be the owner or in respect of this parcel of land or for that matter even the names of the present petitioners are not reflected in any khatauni or khasra girdawari assuming it to be an agricultural land. Therefore, in the absence of all these documents, it cannot be ruled in favour of the petitioner that he is the owner of the parcel of land but he is certainly an unauthorized occupant and in possession of the land in question.

18. It may also be pertinent here to mention that Ms. Takiar has drawn the attention of the court to certain documents which show that after enactment of Delhi Land Reforms Act, 1954, the land in question belonged to the Gaon Sabha and thereafter, it was treated to have been vested in the Central Government and forming a part of the land belonging to the Government under Section 22 of the DDA Act and thus became Nazul land which is to be dealt with by the DDA. The MCD had also issued a notification under Section 507 showing that the land in

question was urbanized but the only organization which could deal with the same was the DDA and no other. Therefore, all these facts clearly establish that the petitioner is not the owner and nor could he said to be so and the respondent/DDA is the owner of the land.

19. The second submission which would arise for consideration is that even if we assume that the petitioner is not the owner but being in occupation and having built the structure on the said parcel of land, the question would arise as to whether the petitioner is entitled to any protection against demolition of its property on the land in question till 31.12.2017 when the protection granted under the statutory laws which has been passed by the Government of NCT can be given to him. In this regard, it may be pertinent here to mention that there is no doubt that the house of the petitioner is forming a larger part of the village cluster colony which is known as JNU Road, Village Kishan Garh. It is also not in dispute that before filing of the present writ petition, there have been a series of writ petitions filed by various residents of the said locality in their individual capacity or by their Residents Welfare Association in the representative capacity, as has been done by the association to save the demolition action being taken against any of the owners of the land,

whose houses/lands were abutting the main road or whose houses were in alignment of the road. In both these writ petitions, the association as well as the petitioners have failed to get any permanent order restraining the respondents from any demolition. Normally, that should have been the end of the litigation inasmuch as these petitions are representative litigations and the fresh writ petition ought not to have been filed but it seems that as the property of the petitioner was under a cloud, it had ventured into speculative litigation of going into repeated writ petitions in order to save its property and such a practice of filing repeated writ petitions either in his own names or in the name of the association or through different name has to be deprecated. It is also not in dispute that the house of the petitioner is falling in alignment of the road abutting the main road. Having said so, I would say that it is not open to the petitioner to refer to the various plans or rough sketches and to contend that the road has already been widened and therefore, no portion of his land be taken away because his land would be taken only if he is not able to establish his right or title to the same. If he does not have any right to hold the land by all means, the owner of the said parcel of land, that is, the respondent/DDA is well within its right to remove the encroachment or to

take the possession of the land for the purpose of affecting a public project. It may also be pertinent here to mention that no doubt there is a protection against demolition or removal of encroachment but that protection is admittedly available till 31.12.2017 but certainly the subsequent provision Section 4 clause (b) clearly exempts such properties as are falling within the domain of creation of infrastructural facilities or which are to be used for larger public purpose and thus, demolition in such a case is not prohibited and the demolition action can be taken.

20. I do not agree to the contention of Mr. Sharma that green area does not form part of the infrastructural facility or the road and since the road has been made operational, therefore, the land for the purpose of green area cannot be retrieved. It is stated that the court has to take holistic view of the project. If it is done then, the green belt of the plan will also form part of the project and the road. It is also pertinent here to mention that this being the position, it is not open to the petitioner to contend that the road which has to be only of 10 meters carriage way on the either side and then there is a central verge of 1.5 meters, on one hand there is a foot path plus green area extended upto 1.5 meters while as in the area of New Delhi, this area is much wider and broader nearly 2.5 meters. All these

facts are only, I would say, a mirage which is sought to be created by the petitioner to save its property.

21. During the course of arguments, Mr. Sharma had even offered a suggestion that so far as W.P. (C) No.4712/2011 is concerned, the petitioner Navjot Pal Singh Randhawa is prepared to voluntarily give up the portion which is, more particularly, shown in orange which will take care of the green belt proposed to be built by the respondent/DDA with the condition that the portion which will remain under the occupation and available with the petitioner would be only 11 meters or so on which he will continue to have his rights till the time the same is decided by an appropriate forum in accordance with law.

22. I feel that though the suggestion could have been considered by the respondent; however, Ms. Takiar was very emphatic in rejecting this offer given by the learned counsel for the petitioner. Her contention was that as the petitioners do not have any right, title or interest in the entire parcel of land and as the land itself belong to the DDA, therefore, there was no question of taking only a portion of the land and the other portion permitted to remain with the petitioners.

23. Since the offer given by Mr. Sharma has not been accepted by the learned counsel for the respondent/DDA, therefore, the court cannot do much about the same. As regards the merits of the matter, the court has come to the conclusion that in the light of the discussion hereinabove that the petitioners admittedly do not have any right, title or interest in the land especially in the light of the fact that the Apex Court has pronounced the judgment in *Suraj Lamp's* case (*supra*), further the documents of the petitioners do not have any sanctity in law on the touchstone of Section 17 (b) of the Registration Act, 1908, therefore, they cannot be considered to be the owners. The land admittedly belongs to the DDA on account of the same originally belonging to Gaon Sabha and on the creations of the DDA Act, the land has been vested with the Government of India which has transferred it to the DDA under Section 22 of the DDA Act to be treated as Nazul land and therefore, the respondents are well within their right to seek such appropriate action for retrieval of the land as may be deemed fit.

24. In the light of the aforesaid facts, in my considered view, the writ petitions are totally misconceived and accordingly, the same are dismissed; however, the respondent/DDA are restrained from carrying

out any precipitative action including an action for demolition or dispossession till 15.3.2016. This concession has been given on the oral request of Mr. V.P. Sharma, the learned counsel for the petitioner and the fact that the petitioner should be given reasonable time to assail the order. The parties are directed to bear their own costs.

V.K. SHALI, J.

FEBRUARY 22, 2016
‘AA’