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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9340/2015

D.K. BHANDARI

Through

..... Petitioner

Mr. Rakesh Malviya with
Mr. Karanveer Choudhary and
Mr. Saurabh, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through

Mr. Rajat Malhotra with Mr. Jitendra
Kumar, Advocates

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Date of Decision: 9th February, 2016.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed with the following prayers:-

“(a) Issue a writ in the nature of mandamus thereby restraining the respondents from carrying out further demolition & dispossession in the property of petitioner which is now known as A-316, Dr. Ambedkar Colony, Andheria More, New Delhi.

(b) Issue a writ in the nature of mandamus thereby directing the respondents to initiate action against the officials responsible for carrying out illegal part demolition on the property of petitioner on 02.09.2015.

(c) Direct the respondents to make good the losses and damages suffered by the petitioner due to the illegal acts of the respondents,

(d) Pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice."

2. Learned counsel for petitioner states that the land in question is part of an unauthorised colony with respect to which Provisional Certificate of regularisation dated 17th September, 2008 has already been issued. He further states that the ejectment proceedings under Section 86-A of the Delhi Land Reforms Act are pending against the petitioner.

3. Learned counsel for respondent states that the petitioner is an encroacher of public land. He states that the entire demolition in the area in question has been carried out on 2nd September, 2015, that is prior to filing of the writ petition. He further states that possession of the entire land has already been handed over to Directorate of Health Services (DHS), GNCT Delhi on 2nd September, 2015 itself. He states that no proceedings under Section 86-A of the Delhi Land Reforms Act has either been initiated or is pending with respect to the subject land.

4. However, learned counsel for petitioner disputes the said facts. He states that possession of the disputed land has not been handed over to Directorate of Health Services (DHS), GNCT Delhi, till date.

5. In the opinion of this Court, there are serious disputed questions of fact which cannot be adjudicated in writ proceedings.

6. Moreover, this Court in ***W.P.(C) 3386/2011*** in ***Sh. Atul Singh Gandas & Anr. Vs. Lt. Governor of GNCTD & Ors.***, has on 17th April, 2014 held that a provisional regularisation certificate is of no legal

consequence and same cannot be considered or recognised by any Court or authority as creating right in favour of its recipient. The relevant portion of the said order is reproduced hereinbelow:-

“7. Ms. Zubeda Begum, learned standing counsel for respondent nos. 1 and 2 states that as per Regulations for Regularisation of Unauthorised Colonies existing in Delhi notified on 24th March, 2008 by Government of India, there is no provision for provisionally regularising any unauthorised colony. She states that issuance of a provisional regularisation certificate does not regularise any unauthorised colony automatically.

8. She also confirms that no physical verification was conducted by the State before issuing the provisional certificates. She has placed on record an additional affidavit of Mr. Mansoor Usmani, Deputy Secretary, Department of Urban Development, Government of NCT of Delhi dated 27th March, 2014, which reads as under:-

“Most respectfully it is submitted that the Govt. of India notified the regulations dated 24.03.2008 for regularization of unauthorized colonies existing in Delhi, subject to fulfilment of Provisions laid down in above said regulations. As per regulations dated 24.03.2008 there is no provision for Provisionally Regularizing any unauthorized colony. It was a decision taken by the then Government and Provisional Regularization Certificates (PRC) were issued to the unauthorized colonies on the basis of certain documents submitted by RWAs representing unauthorized colonies and no physical verification was conducted before issuing PRC. The issuance of PRC does not regularize any unauthorized colony automatically. For regularization, unauthorized colony has to satisfy the provisions laid down under regulation dated 24.03.2008 and its subsequent amendments.

Further the PRC is neither a necessary not a sufficient condition for regularization of unauthorized colony. The clause 4.6.3 of Amendment dated 16.06.2008 states that “However, the final boundaries would be fixed by GNCTD only after completing all requisite formalities including those in clause 3 of regulations dated 24.03.2008.”

(emphasis supplied)

9. The aforesaid affidavit filed by the Government of NCT of Delhi is accepted by this Court. The Government of NCT of Delhi is held bound by the same.

10. Mr. A.K. Sen, learned counsel for respondent nos. 6 to 8 states that petitioners have approached this Court with unclean hands inasmuch as petitioners have also got similar colonies provisionally regularised. In this connection, he has drawn this Court's attention to a letter dated 13th July, 2010 written by Deputy Secretary (UC), Department of Urban Development, Government of NCT of Delhi at page 219 of the paper book wherein a decision has been recorded to keep the regularisation of certain colonies in abeyance till all the allegations made by certain complainants are examined.

11. In rejoinder, Mr. Rajesh Yadav, learned counsel for petitioners refutes the aforesaid contentions/allegations.

12. This Court is of the view that if respondent nos. 6 to 8 have any grievance with regard to any application for provisional regularisation having been filed by the petitioners, they are at liberty to file independent proceedings. However, in this petition the said allegations cannot be examined as neither any detail has been provided nor any document has been placed on record to show as to for which colony the petitioners had applied for provisional regularisation.

13. In any event, in view of the Government of NCT of Delhi's admission that provisional regularisation certificate has no legal sanctity and confers neither any legal title nor any legal status, this Court is of the view that it need not quash the illegal and irrelevant provisional regularisation certificate issued by respondent-State Government.

14. However, to avoid any doubts, it is clarified that a provisional regularisation certificate is of no legal consequence and the same would not be considered or recognized by any Court or authority as the same creates no right in favour of the applicants. It is further clarified that no Court/authority shall recognise or pass any order relying upon the provisional regularisation certificate”.

7. Consequently, the provisional regularisation certificate has no legal sanctity. Accordingly, present writ petition is dismissed with liberty to the petitioner to file appropriate proceedings in accordance with law. All interim arrangements stand vacated.

MANMOHAN, J

FEBRUARY 09, 2016

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