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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2146/2017, CM No.9342/2017**
MAHINDER SINGH & ORS

..... Petitioner

Through: Mr. Rajiv Kumar Ghawana, Adv.
with Ms. Akshita Chhatwal, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through: Mr. Anuj Aggarwal, ASC (GNCTD)
with Ms. Niti Jain, Adv. and Mr. Ajit
Singh, Tehsildar (Saket)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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09.03.2017

1. The present petition has been filed by sixty five (65) persons with the following prayers:-

“In view of the aforesaid facts and circumstances, it is humbly submitted before this Hon’ble Court that it may be pleased to pass:

(a) issue a writ of Certiorari or any other appropriate writ or direction quashing the impugned notification dated 2.4.1996 issued by the Revenue Department, Government of National Capital Territory of Delhi being No. F1 (29) PA DC/95 to the extent of reserving as forest the residential plots allotted to the petitioners or their predecessors in the years 1974-76 in Khasra

No. 687/570 situated in Village Maidan garhi, New Delhi, along with all the actions taken subsequently in pursuance to the impugned notification; and

(b) issue a declaration declaring that the land allotted to the petitioners under the 20 point programme in Khasra no. 687/570 Village Maidan garhi, New Delhi is not subject matter of notification dated 02.04.1996; and

(c) issue a writ of prohibition prohibiting the respondents from taking any coercive action including demolition of the built up structures of the petitioners constructed upon the plots allotted to them in 1974-76 under the 20 point programme in Khasra No. 687/570, Village Maidangarhi, New Delhi; and

(d) pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice and equity."

2. It is the case of the petitioners that they or their predecessors were allotted residential plots measuring 125 sq. Yds in Khasra no. 687/570, Maidan Garhi under the 20 point programme in Indira Awas Yojna and were issued Form LR 37. The entries were also made in girdawri, khatauni with the Revenue Authorities. On January 25, 1996 and March 13, 1996, in an ***IA No. 18 and 22 in Writ Petition 4677/1985 M.C. Mehta v. Union of India***, the Supreme Court directed the State Government to take up uncultivated surplus land of Gaon Sabha falling in ridge area for creation of reserve forest.

3. It is a conceded position that on April 2, 1996 pursuant to the directions issued by the Supreme Court, as referred above, the Government of National Capital Territory of Delhi issued a notification under Section 154 of the Delhi Land Reforms Act, 1954 declaring the uncultivated land of Gaon Sabha of the villages named therein as surplus land and excludes the same from vesting in Gaon Sabha and placed the land at the disposal of the Forest Department, Government of NCT of Delhi. The village also included Maidan Garhi for an area equivalent to 4263-02. As per Annexure C, which relates to Maidan Garhi, Khasra No. 687/570 consisting of total area of 198-12 (bigha and biswa) was placed at the disposal of Forest Department, Government of NCT of Delhi.

4. It is noted that an Original Application No. 10/2014 was filed before the National Green Tribunal titled as *Pavit Singh v. The State of NCT of Delhi and others* seeking directions against the respondent No.1 herein to identify and demarcate the forest land reserved vide the notification dated April 2, 1996 and to remove unauthorised construction built thereon. The Original Application was disposed of on November 11, 2014 wherein the Tribunal has given the following directions:-

“1. The respondents shall complete the barricading of the entire forest area including encroached area wherein buildings

have been put up within a period of 12 weeks from today.

2. *After the said efforts are completed, the respondents shall put down all the superstructures and remove all debris away from the forest area within a period of two months and restore the forest nature.*

3. *We make it clear that the Revenue department as well as Police Department who are party respondents shall fully co-operate for the purpose of effective implementation of this order for restoration of the forest area within the time granted by this Tribunal.*

4. *During the completion of the work, we direct the respondents to file status report of the compliance done in the first stage after three months and in the last stage after five months in the Registry, after giving copy to the learned Counsel appearing for the applicant.*

With the above-said directions, the original application no. 10/2014 stands disposed of. As the original application is disposed of, all other miscellaneous applications stand closed.”

5. It is also noted that an application being MA No. 258/2015 has been filed by the petitioner therein under Section 25 and 26 read with Section 28 of the National Green Tribunal Act, 2010 read with Order 39 Rule 2A of CPC seeking action for violation of order of the Tribunal in OA 10/2014 and for compliance of order dated November 11, 2014 passed by the Tribunal.

6. It is noted that a public notice was issued by the Dy. Commissioner,

South Delhi on February 8, 2014 calling for applications from the allottees of land allotted under 20 point programme for grant of perpetual lease in favour of the allottees or their successors.

7. It is the case of the petitioners and also contended by Mr. Rajiv Kumar Ghawana that for the first time, in August 2016, the officials of the respondent started issuing threats of demolition and it is upon enquiries they were told that the demolitions were happening in pursuance to the directions issued by the National Green Tribunal in the aforesaid OA. He states, that the petitioner had approached the Supreme Court challenging the order dated August 18, 2016 of the National Green Tribunal whereby the Tribunal has, while considering the MA NO. 258/2015, granted one opportunity to the Dy. Commissioner, South Delhi for demolition of unauthorised structures in khasra no. 687/570 Neb Sarai Maidan Garhi, New Delhi within a week. During the hearing of the SLP, the counsel for the petitioners stated that since the petitioners were not impleaded as party to the proceedings before National Green Tribunal nor given any opportunity of being heard, they will have no difficulty in approaching the National Green Tribunal for appropriate redressal. Accordingly, the appeal was dismissed as withdrawn with liberty to the petitioners to approach the Tribunal. The Supreme Court

protected the appellants against demolition of their structures for a period of two weeks from that date.

8. It is stated by the petitioners in this petition and also contended by Mr. Ghawana that pursuant thereto they filed intervention/impleadment application being MA No. 930/2016 in OA 10/2014 in the matter titled as ***Pavit Singh v. The State of NCT of Delhi and others.*** The said application was rejected by the National Green Tribunal on November 9, 2016 with the following observations:-

“Now, order passed in Original Application No. 10 of 2014 is under execution in M.A. No. 258/2015. In these circumstances, if the applicant has any substantive right in the property in question, which is the subject matter of the order in Original Application No. 10 of 2014, they will have to participate in the execution proceeding as objector to the execution. What they seek is impleading under Order 1 Rule 10 (2) read with section 151 CPC. Since the Original Application has been finally disposed of and order is under execution, Order 21 Rule 97 & 101 of the CPC would apply. They can come only as an objector to the execution of the order. The course of action which they have sought is not permissible. Hence, the M.A. No. 930/2016 is rejected.”

9. Mr. Ghawana would submit that the remedy for the petitioners is not to file objections before the National Green Tribunal but to file a substantive

petition challenging the notification dated April 2, 1996, as according to him, the Tribunal does not have the jurisdiction to adjudicate upon the validity of the same. That apart, it is his case that the petitioners, who are the residents of khasra no. 687/570 have been living with their families at various plots admeasuring 125 sq. yds since the date of allotment from 1974-76.

10. According to him, under Section 54 of the Delhi Land Reforms Act, the land can be vested in Gaon Sabha only if an uncultivated surplus land is situated in any Gaon Sabha area. The petitioners being in possession of the land since 1974-76, the land in question does not come under surplus land. That apart, it is his case that the provisions of the Indian Forest Act, 1927 have not been followed. He states that till 2011, the demarcation, as carried out by the respondent No.1 shows the land as the Gaon Sabha land. It is also his case, that the subject-matter of the OA was only with respect to khasra no. 687/570 falling in the village Neb Sarai and does not concern with Maidan Garhi. He would state, under the garb of the directions of the National Green Tribunal, the officials of the respondents, in an arbitrary and illegal manner, marked the houses of the petitioners as one falling under the reserved forest land under the notification dated April 2, 1996, even though

the respondents before various forums have taken a stand that the plots were allotted under 20 point programme in khasra no. 687/570 falls outside the alleged notified ridge area of 198 bigha 12 biswa.

11. That apart, it is his case that the land where the properties of the petitioners are situated is also part of extended Lal Dora, which is notified by the Government of NCT of Delhi for regularisation of unauthorised colonies and the case of the petitioners is under consideration for regularisation and they are entitled to protection under Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Act, which directs the maintenance of status quo in unauthorised colonies till December 31, 2014. In the last, he states the issue with regard to legality of notification dated April 2, 1996 is pending consideration before this Court in ***W.P.(C) No. 4514/2014 Shyam Sunder and ors v. Govt. of NCT of Delhi and ors*** and this Court vide its order dated July 24, 2014 has stayed the effect of the notification dated April 2, 1996 to the extent of reserving as forest on the residential plots which were allotted to the petitioners under the Indira Awas Yojna in 1974-76 and further the respondent Authorities were restrained from demolishing the residential accommodation pursuant to notification dated April 2, 1996. He would rely upon the following

judgments in support of his contention:-

(i) ***AIR 1987 Supreme Court 1345 Bir Bajrang Kumar v. State of Bihar and others;***

(ii) ***W.P.(C) No.2000/2012 Khushi Seva Sanstha (Regd) v. The State and ors decided on January 16, 2013.***

12. On the other hand, Mr. Anuj Aggarwal, learned counsel appearing for the respondents would state that the present petition is nothing but an abuse of process of law by persons, who were very well aware of the notification dated April 2, 1996 and at no point of time cared to challenge the same and has approached this Court only at the last moment when the National Green Tribunal sought execution of its order dated November 11, 2014. In other words, it is his submission that the present petition is hit by delay and laches.

13. That apart, it is his submission that the filing of the present petition has been triggered because of the notice dated February 20, 2017 of the Department of Forests and Wild Life, whereby the concerned officer issued notice referring to the orders passed by the National Green Tribunal in OA No. 10/2014 ***Pavit Singh v. The State of NCT of Delhi and others (supra)***, on November 11, 2014, December 15, 2016 and January 20, 2017 directing the Government of NCT to demolish unauthorised structures in khasra No.

687/570 of village Maidan Garhi. He would also state that the petitioners despite a public notice issued by the Dy. Commissioner, South Delhi calling for applications from allottees of land under 20 point programme for grant of perpetual lease in favour of the allottees or their successors of the land had not approached the Authorities nor they had approached this Court or the Tribunal at the relevant point of time. He states that pursuant to the final order dated November 11, 2014 when an application for execution was filed by the petitioner in the OA, wherein orders have been passed by the Tribunal seeking implementation of its said order, the action being taken by the respondents, is justified and this Court would not interfere with the action of the respondents as that would set to naught the orders already passed by the National Green Tribunal and there is a likelihood that the persons who are similarly placed may also come to the Court seeking a similar benefit under the pretext of challenging the notification dated April 2, 1996, which was issued almost 20 years back. He also states, insofar as writ petition in the case of *Shyam Sunder (supra)*, is concerned, the same was filed by the petitioner therein in the year 2014, by also challenging the order dated June 27, 2014 passed by the District Magistrate, South pursuant to a direction given by the National Green Tribunal on May 22, 2014 in an

Application No. 316/2014 in OA No. 10/2014 filed by the petitioners in the said writ petition whereby the National Green Tribunal directed them to file application with supporting documents pursuant to a public notice dated February 8, 2014 and on receipt of such applications, the Dy. Commissioner was to scrutinize the record and make physical verification through its responsible officer and after giving opportunity of hearing to them, pass appropriate orders. It is pursuant to the said directions one of the impugned order dated June 27, 2014 was passed. Regrettably, the petitioners have not responded to the notice dated February 08, 2014. According to him, much water has flowed/flown thereafter, inasmuch as OA has been disposed of, execution of NGT order is being sought. The petitioners cannot seek any parity with the petitioners therein.

14. He would respond to the plea of Mr. Ghawana that the direction of the National Green Tribunal was only concerning Neb Sarai by drawing my attention to various orders passed by the National Green Tribunal to state that the same includes the Maidan Garhi village as well. In the last, it is his submission that when the Court has already observed, the remedy for the petitioners to file objections in the execution petition, appropriate for the petitioners is to file the objections in the execution petition taking all the

pleas, so as to enable the NGT to pass orders, as it is pursuant to the order of NGT, the action is being taken by the respondents.

15. Having heard the learned counsel for the parties, it is noted that the filing of this petition has been triggered because of the action being taken by the respondents pursuant to the directions of the National Green Tribunal in OA 10/2014. I note from the orders shown by Mr. Aggarwal that the Tribunal is seeking implementation of the said order. The notice as placed on record by Mr. Ghawana dated February 20, 2017 does show the demolition intended to be carried out is pursuant to the order of the National Green Tribunal in the OA No. 10/2014. I reproduce the contents of the notice as under:-

“Whereas the total area of Khasra no. 687/570 Neb Sarai is 236 Bigha and 18 Biswa, out of which 198.12 Bigha-Biswas is a Notified Ridge Land.

Whereas the Hon’ble NGT in the matter of Pavit Singh V/s The State of NCT of Delhi & Others in the OA No. 10/2014 and MA No. 258/2015 order dated 11.11.2014, 15.12.2016 and 20.01.2017 directed the Govt. of NCT of Delhi to demolish unauthorized structures in Khasra No. 687/570 of Village Maidangarhi.

The undersigned now therefore, in compliance with the Hon’ble NGT order informs all residents of Khasra No. 687/570 falling

within the Reserved Forest area to remove all the building and structures constructed by them at their own cost within 15 days from the date of issue of this notice. On account of non compliance of this notice, all structures and building falling under Khasra No.687/570 and surrounding forest area will be demolished on 10.03.2017 onwards and cost incurred in this respect will be recovered from those who have occupied the forest land unauthorizely.

This issue with the approval of the competent authority.”

When a Tribunal constituted under a Statute has passed an order in an Original Application filed before it and seeking its implementation, appropriate shall be for the petitioners to approach the same Tribunal taking all such pleas as available to them both on facts and in law, which have been noted above.

16. The plea of Mr. Ghawana that a similar petition challenging the said notification dated April 2, 1996 is pending consideration wherein interim order has been passed, does not appeal this Court, inasmuch as the said petition was also filed challenging the order dated June 27, 2014 passed by the District Magistrate, South pursuant to the directions issued by the National Green Tribunal in Miscellaneous Application No. 316/2014 in OA 10/2014 (for impleadment and direction) dated May 22, 2014 when the said OA was pending. In other words, the petitioners herein had not approached

the Tribunal during the pendency of the OA nor they have challenged orders passed by the respondents pursuant to the directions of the Tribunal in the manner in which those petitioners had. That apart, it is the petitioners, who filed SLP before the Supreme Court, which they withdrew, so as to approach the NGT and in fact approached the NGT in an application under Order 1 Rule 10, which was rejected by the NGT, with observation that they have to participate in the execution. Having approached the NGT, by knowing well, that the action being taken against them in pursuant to the directions of the NGT, this petition is not maintainable.

17. Insofar as the reliance placed by Mr. Ghawana on the judgment of ***Bir Bajrang Kumar (supra)***, the said judgment would not be applicable to the facts of this case and the same is distinguishable, on the reasoning given above.

18. Insofar as the judgment of ***Khushi Seva Sanstha (Regd) (supra)*** is concerned, that judgment has no relevance as according to this Court, and as stated by the Tribunal, the remedy is to file objections before the Tribunal and the judgment relied on is relatable to a contention urged by Mr. Ghawana on merit.

19. The petition is dismissed.

CM No. 9342/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

MARCH 09, 2017/ak