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

% *Judgment reserved on: 02.02.2017*

Judgment delivered on: 16.02.2017

\+ W.P.(C) 7285/2012 & C.M. No.13774/2015

SANJAY BHARGAVA AND ANR ..... Petitioners

Through Mr.Sanjeev Ralli and Mr.Trinayan Sonowal, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION OF DELHI & ORS

..... Respondents

Through Ms. Puja Kalra, Advocate for North DMC/R-1 along with Mr.Vinod Mantoo, ALO, City Zone (Land & Estate Department), Mr. Jeewan Singh, S.O. City Zone, Mr. Virender Singh (Patwari), Mr.Balbir Singh, PHI–Land & Estate Department

Mr.Ashwani Garg, Advocate for R-2/PWD.

Mr.Ravi Gupta, Sr.Adv.with Mr.Ankit Jain, Mr.Sachin Jain and Mr.Naman Sarswat, Advocates for R-3.

Mr.Nimesh Chib, Advocate for R-4.

Mr.Lalit Gupta, Mr.Dhananjaya Sud, Mr. Siddhartha Arora, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Petitioners (Sanjay Bhargava and Sandeep Bhargava) claim themselves to be the owners of premises/shop bearing No.1470/2 Ward No.2, H.C.Sen Road Fountain, Chandani Chowk, Delhi. This property had been purchased by them vide a sale deed dated 25.11.2011. In front of this shop there is an unauthorized structure existing in the middle of the pathway. The footpath is meant for movement of general public and the same cannot be owned by any individuals. Any structure raised upon it is illegal as this land belongs to the Government. Submission is that this pathway/public space has been encroached upon by respondent nos.3 to 5; this land vests with respondent nos.1 (North Delhi Municipal Corporation). The encroachment on this pathway unauhtorizedly by respondent no.3 (Panna Lal and Sons) and respondent no.4 (legal heirs of Balbir Singh) who are running a Jalebi Shop and a Kulfi Shop respectively is even otherwise without a sanctioned plan. Being wholly illegal it is the responsibility of respondent no.1 and 2 to demolish this illegal structure. Several complaints have been made to the public officials of respondent no.1 but to avail.

2 Learned counsel for the petitioner in support of his submissions has

placed on record photographs depicting this illegal and unauthorized structure. Submission is that the plea of respondent nos.3 and 4 that this is a chabutra which has been in existence since several years is negatived by the fact that this structure was never a part of the original layout plan. Attention has been drawn to the Wilson Survey Report of the year 1910-1911; it is pointed out that as per this report the original structure at that point of time was only a well/Piyau and a tree. This pavemented structure now described as a chabutra by the private respondents has come up unauthorizedly and at a much later point of time. Learned counsel for petitioner has relied upon various RTI queries (which he has obtained from the respondent Department) wherein on a specific query put qua the status of this chabutra (it had been replied as way back as on 11.6.2012) that this chabutra is not a municipal chabutra as per the record available in their office; no plan has also been sanctioned from the Building Department for either a Jalebi shop for a Kulfi/Faluda Shop. Respondent no.5/Nirmla Devi claiming herself to be the alleged owner of this pavemented structure had also been granted opportunities by the North DMC/respondent no.1 to produce documentary proof to show that she owned this property (as the claim of respondent no.5 was that she had leased out a portion of this chabutra to respondent nos.3 and

4) but respondent no.5 could not produce any such documentary proof. A show cause notice dated 26.3.2013 had thus been issued to respondent nos.3 and 4. On 09.6.2014 it had been noted that as per the Wilson Survey the structure existing at that point of time was only a well/Piyau and a tree. It is pointed out that this note penned by the Additional Commissioner of the Revenue Department who is a much more senior officer than an Assistant Commissioner (who had disposed of the show cause notice on 05.3.2015) had also recorded that there is no encroachment pertaining to the property of the petitioner; the nature of the chabutra leased out to respondent nos.3 and 4 is not at par with the strucuture of the petitioner. On 27.6.2014 the Departement while reiterating its earlier stand had noted that this is a municipal property and Panna Lal and Sons in fact was not even paying municipal fee to the Corporation and this chabutra being illegal be removed. Attention has been drawn to the noting (dated 18.11.2014) of the Assistant Engineer (from the departmental file) wherein respondent no.5 (Nirmla Devi) had been asked to submit proof of ownership; on 26.11.2012 this was reiterated; hearing had stood closed on 02.12.2014. Another noting dated 05.12.2014 has been highlighted by the learned counsel for the petitioner (in the departmental file) wherein it had been recorded that Nirmla Devi has not

submitted any documentary evidence to establish her ownership. Noting dated 06.12.2014 (45N) has been highlighted wherein it was recorded that this chabutra in question is different from other municipal chabutras which had been created to align the shops and decision in this case is unrelated to other municipal chabutras. The noting of the Additional Commissioner (46N) dated 22.12.2014 has also been highlighted. On 27.01.2015 removal action by the Engineernig Departmetn had been directed to be taken. These internal noting of the Department have been relied upon by the petitioner to vehemently substantiate his submission that the encroachment by respondent nos.3 and 4 is wholly illegal and disposal of the show cause notice on 05.3.2015 giving protection to this illegal structure by granting a status quo in favour of respondent nos.3 and 4 being an arbitrary decision of the Department is liable to be set aside. It has failed to consider the facts of the case in the correct perspective and although the earlier notings (relied upon by the petitioner and highlighted supra) have been noted in this order; yet the Assistant Commissioner who is only of the rank of a Deputy Health Officer had gone on to grant a status quo of this chabutra stating that no further action should be taken till the finalization of the redevelopment plan by the PWD as this chabutra finds mention at serial No.287 of the record of the

Corporation. Submission is that this order is wholesomely arbitrary.

3 Learned counsel for petitioner has also drawn attention of this Court to a judgment delived by an earlier Bench of this Court in WP(C) No.4133/2005 _Chandani Chowk Sarv Vyapar Mandal & Ors. Vs. MCD_. It is pointed out that on 03.10.2005 an interim direction had been given directing the Municipal Corporation to ensure that illegal encroachments by shopkeepers in Chandani Chowk cannot be given the status of a legal chabutra or a takhat. The Corporation has been directed to carry out a survey and according to the survey to demolish the illegal structures; that writ petition was finally disposed of on 04.02.2009. Leanred counsel for the petitioner points out that after the disposal of this petition the illegal structure of respondent nos.3 and 4 had in fact been identified by the Corporation and this is clear from the internal noting of their departmental file highlighted supra. It was in this background that the show cause notice dated 26.3.2013 was issued to respondent nos. 3 and 4. This show cause notice disposed of on 05.3.2015 had not taken into account the earlier decisions of the Department and even the subsequent endorsements in their departmental file. At the cost of repetition, it is pointed out that this illegal structure which is on a pavement/footpath being the property of the Corporation does not give

any legal sanctity to respondent nos.3 and 4 to carry out their trade; not only is it a nuisance but also not being protected by any legislative mandate; it is liable to be demolished. It is additionally pointed out that respondent no.5 claiming herself to be the owner of this chabutra even after ample opportunity to put forward documentary proof to establish her ownership had failed to do so; this was also noted by the Corporation. The prayer made in the petition accordingly be acceded to. Counter affidavit has been filed by all the respondents.

4 The stand of respondent nos.1/North DMC is reflected in their counter affidavit. The stand of respondent no.1/North DMC is that a detailed survey had been conducted of the area by the erstwhile Municipal Corporation of Delhi qua the chabutras existing on Government/Municipal land. A survey report had been filed along with the affidavit of the then Municipal Corporation on 18.02.2006 in WP(C) No.3133/2005. A joint inspection of the site had been conducted by the officers of the Licencing and Enforcement Department as also the Land and Estate Department on 15.3.2013. It was observed that a Piyau, a Jalebi Shop and a Kulfi Shop had existed under the collanade on the foothpath since long and this has been entered in the Immovable Property Register of the then Municipal

Corporation of Delhi at serial no.43, Register no.54 of the City Zone having an area of 9 sq. yards. The Wilson Survey Report supplied by the Land and Estate Department also confirmed that a Kuan and a tree were in existence since 1911-12. The Health Trade Licence for running an eating house on this property i.e. the property bearing No.1469/1 was issued to respondent no.3/Panna Lal in the year 1961-62 which has been renewed up to 31.3.2013. On 26.12.2012 a notice had been given to respondent no.3 for carrying out eating preparations in an unhealthy and unhygienic condition for which a reply was received. This show cause notice had now been disposed of on 05.3.2015 granting status quo to the aforenoted property. The further stand of the Corporation is that Kulfiwala/respondent no.4 was found temporarily putting up a metal box on a table at the site in question for which encroachment/removal action has been taken. It is reiterated that Panna Lal and Sons running the Jalebi Shop is old and had been entered in the IPR Register of the Corporation and as per the sketch site plan prepared of the site this structure has been on the colonnade. The Wilson Survey Report supplied by the Land and Estate Department also confirmed the existence of the tree and kuan since the year 1910-11. It was further stated that the plan for the redevelopment of the road infrastructure in Chandani Chowk is being looked after by the second respondent i.e. the PWD.

5 The stand of respondent no.2 (the PWD) is that it has no control on the roads at Chandani Chowk i.e. H.C.Sen Road. It is stated that the redevelopment plan of entire Chandani Chowk area is under consideration and the same shall be finalized in one or two months. This stand of respondent no.2 is noted.

6 Respondent no.3 is Panna Lal and Sons. He is running the Jalebi shop. His stand is that this property is completely authorized by the Corporation. The Corporation has duly recognized the identity of this property and is a part of the record of the Corporation. This chabutra shop was in existence much prior in time than the coming into force of the Municipal Corporation Act, 1957 as also Master Plan of the year 1962. The Wilson Survey report of the Municipal Committee reflected that there was a well/Piyau and a tree in existence at that point of time. Copy of the Wilson Survey Report and Immovable Property Register of the Corporation has been highlighted to substantiate this stand. It is further pointed out that the respondent had sought permission from the Corporation for setting up a wooden plank in front of the chabutra shop which permission has been granted to him on 12.4.1960. He has been depositing the fee. Chandani

Chowk is a “super area”. Unless and until a redevelopment plan is prepared a status quo qua this property including the chabutra of the present respondent has to be maintained. The additional stand of respondent no.3 is that two suits had in fact been filed by the predecessors-in-interest of the petitioner against the predecessors-in-interest of respondent no.3 and in both the suits evidence had been led. Specific issues had been framed and both the suits which were suits for mandatory injunctions had been dismissed; categorical findings had been returned in the said suits that the petitioner/predecessor-in-interest of the petitioner had failed to prove that the chabutra in question was a public land or that it belonged to the Corporation. Submission is that both the suits in which judgments had been delivered on 30.4.1962 (in suit No.78/139 of 1960-6 and suit No.87/831 of 1960/67 judgment delivered in 1969; the case of the predecessors-in-interest of the petitioner had failed; these suits have attained a finality.

7 The stand of respondent no.4 who is running a Kulfi Shop which is behind the shop of respondent no.3 is also the same. It is pointed out that respondent no.4 also enjoys the same status as that of respondent no.3 and he cannot be removed till a redevelopment plan is finalized by the respondent Corporation. It is stated that the ancestors of respondent no.4 had been

running this shop since the year 1947 and since 1957 when the Municipal Corporation Act came into force the answering respondent is selling Kulfi from here. It is reiterated that the Immovable Property Register maintained by the MCD makes a reference to this property; in fact the father of deceased respondent no.4 has been a tenant in these premises bearing Municipal No.1469, Gail Sangyan, Fountain, Chandani Chowk since the year 1947.

8 Respondent no.5 (Nirmla Devi) has filed her counter affidavit; her stand is that she had purchased this property through a duly registered sale deed of 2011 from its erstwhile owner. She had thereafter leased out this chabutra to respondent nos.3 and 4; their status cannot be disturbed; from the order (dated 05.3.2015) passed by the Assistant Commissioner disposing of the show cause notice had granted them a status quo protection. It is pointed out that ancestors of respondent no.5 were owners of various properties including property bearing No.1469/1 1469/2, 1470, 1471, 1472 situated near H.C.Sen Marg, Fountain Chowk, Chandani Chowk. Respondent no.5 belongs to the old and reputed "Halwai Ghantewala" family of Chandani Chowk and enjoys an extremely good reputation. The ground floor this property bearing no.1470/2 had been sold on 02.8.1978 vide a registered sale deed to M/s Niroz Restaurant. The first floor of the property bearing

No.1470/2 was sold vide a sale deed dated 30.7.1979 to Mr. Harinder Kumar Mehta. It is reiterated that two suits filed by the predecessor-in-interest of the petitioner when evidence had been led were dismissed; they had failed to prove that the subject-matter of the present petition was an illegal encroachment. Copies of both the judgments dated 28.7.1969 passed by Shri S.S.Kanwar, Sub Judge, First Class, Delhi and judgment dated 30.4.1962 passed by R.K.Agnihotri, PCS, First Class, Delhi have been relied upon. The recognized plan of 1950 prepared by the Delhi Municipal Committee with regard to property bearing nos.1469/1, 1470 and 1471, Fountain, Chandani Chowk has been relied upon to substantiate that the predecessors-in-interest of respondent no.5 are recognized owners of these properties. The property tax receipts in the name of the original owners have also been placed on record to substantiate the submission that respondent no.5 is the owner of the aforenoted property and had validily leased it out to respondent nos.3 and 4 who are now operating a Jalebi and Kulfi shops from the aforenoted place.

9 Arguments have been heard. Record has been perused.

10 Record shows that the petitioner has purchased a shop bearing No.1470/2, H.C.Sen Road Fountain, Chandani Chowk, vide a sale deed

dated 25.11.2011 from his predecessor namely Bharat N. Malik and Anu Malik. Two earlier sale deeds dated 25.7.1978 and 30.7.1979 had been executed by erstwhile owners i.e. Vinod Kumar and others in favour of Niroz Restaurant and Harinder Kumar Mehta respectively qua the ground floor and first floor of this property i.e. property bearing No.1470/2 (measuring 31 sq. yards) situated at Gali Sangyan, Fountain, Chandani Chowk, Delhi. Petitioner derived his title thereafter. The title of the petitioner is not better than that of his predecessor. Admittedly, what the petitioner had purchased was a shop measuring 25.91 sq. yards. There was a municipal chabutra inside the shop forming a part of the shop which was not the subject matter of this sale deed. The area of the shop of the petitioner is now 37 sq. yards. The contention of the petitioner all along has been that this chabutra which is a part of his shop is a recognized municipal chabutra as per the record of the Department.

11 Record shows that at the time when the petitioner purchased this property; respondent no.3(Jalebiwala) and respondent no.4 (Kulfiwala) were already running their trade from there. It is the case of the petitioner himself that this trade of respondent nos.3 and 4 was being carried out by the said

respondents since prior to 1960. Contention however being that this chabutra does not have a recognized identity.

12 Before answering this issue (which in fact is largely the premise on which this petition had been structured) it would be necessary to advert to the inter se litigations between the predecessors-in-interest of the petitioner and the predecessors-in-interest of the respondents.

13 The first litigation was a suit of the year 1962. This suit was decided by the Court of Mr.R.K.Agnihotri, Sub-Judge, Delhi; suit No.78/139 of 1960/61 titled as "Thakur Dass & Ors (who were predecessors-in-interest of the petitioner) versus Panna Lal and Sons. This was a suit for permanent and mandatory injunction. Issue no.4 related to the site in question; the issue which had to be answered by that Court was whether site under the chabutra was a part of the public street or not. The Court on 30.4.1962 held that the plaintiff who had alleged this fact had failed to prove it. This issue was decided against him.

14 The second suit was a litigation of the year 1969. This suit was also decided by Sub Judge, First Class, Delhi (Mr. S.S.Kanwar); suit No.87/731 of 1960/67 titled "Thakur Dass and Others Vs. The MCD and Panna Lal and Sons" was a suit for mandatory injunction. Evidence was led by the

respective parties. The grievance of the petitioner was that not only is this chabutra illegal but the fan and the wooden plank fixed by the predecessors-in-interest of respondent no.3 and 4 was a nuisance. This suit of the plaintiff was also dismissed; the plaintiff had failed to prove these averments.

15 There was yet another litigation filed inter se the parties. This suit (Suit No.319/1980) was filed by Panna Lal and Sons against Vinod Kumar i.e. the predecessor-in-interest of the petitioner. This suit was compromised on 08.1.1982. Statements of the respective parties was recorded and it was agreed that the respondent (in shop no.1469/1) would not be evicted without due process of law.

16 Learned counsel for respondents no.3 -4 rightly point out that all efforts of the petitioner to declare the status of this site in question as illegal have failed. This Court notes that this chabutra has been given municipal number as 1469/1. The municipal record of the Corporation of the year 1950 also reflects the status of this property (no.1469/1). The status of this property was thus recognized by the Corporation as way back as in the year 1950.

17 The Wilson Survey Report of the year 1910-11 had also been summoned in the Court. The same has been perused. Photocopies of the

same were already on record. Sheet No.131 reflects that a well/Piyau, tree and a platform are depitcted therein. At serial no.5393 of column (f) a well and tree have been shown; column (g) shows the platform. Thus the identity of this property stands established as being more than a century old.

18 The Register of Immovable Property (IPR) has also been scrutinized. The present property i.e. Properties No.1469-1470 are described in their location; the properties are at Chandani Chowk, Fountain; on the western side of the Kotwali. In column-3 of the said Register the "Settlement and Jamabandi" number in the District Nazul Register refers to Sheet No.131 of the Wilson Survey Report. Going back to this sheet no.131 (the Wilson Survey Report), what has been depicted at the site has already been noted supra; it is a well/piyau, a tree and a platform, meaning thereby that as way back as 1910-1911 not only was the well/piyau and a tree depicted at this site but a platform was also evident. The extract of the traced plan in the IPR also clearly shows the chabutra/platform along with the piyau/well and the tree. It is also not the case of any person that this Register has been tampered with or that the Register has not been read correctly.

19 The evidence of the platform in the Wilson Survey Report is thus corroborated by the Immovable Property Register (IPR) of the Corporation.

This platform is none other than this chabutra. This municipal chabutra has also been given an identification i.e. no.1469/1 which in turn dates back to 1950 and finds mention in the record of the Corporation.

20 The communication dated 18.5.1961 addressed by Basant Lal/Karan Dewan (predecessors-in-interest of respondent no.3) raising objection to the house tax assessment for the year 1961-62 for property No.1469/1, Fountain, Chandani Chowk, reflects the status of this property as in 1961. The licence issued by the Health Department of the Municipal Corporation of Delhi in favour M/s Panna Lal and Sons (respondent no.3)-Annexure R-14 having a validity period up to 31.3.1962 to run the trade of sale of articles of food and drink is a part of the record. This licence was again renewed by a subsequent order dated 20.4.1985 issued under Rule 6 (2) of the Delhi Food Adulteration and Prevention Act. Ramakant was also included as a partner of M/s Panna Lal and Sons and licence in favour of both of them was renewed in the year 1996-67 which is evident from annexure R-15; by virtue of which fee of Rs.77/- had been paid to the Corporation. Subsequent licence fee payments dated 19.9.1968, 17.4.1969, 29.4.1988, 19.4.1989, 20.8.1995, 12.10.1995, 04.6.1997 area also a part of the record. House Tax was also paid vide receipt dated 30.06.2012 by respondent No.3 qua this

property i.e. bearing no. 1469/1, Fountain, Chandani Chowk. Admittedly, some of these payments received by the Department date back to the sixties. The objections raised to the assessment order also dates back to the year 1961 meaning thereby that up to the year 1961 it can safely be presumed that respondent no.3 was functioning from the aforenoted juncture.

21 Respondent no.4 has also filed documents to substantiate his payment of licence fee. The tehbazari receipts are marked as Annxure R4/9 (colly.) the electricity bill is annexure R4/15 and the house tax receipts are annexure R4/16.

22 The concept of a "municipal chabutra" has been recognized in legal parlance. In WP(C) 4133/2005 *Chandani Chowk Sarv Vyar Mandal Vs. MCD* a Bench of this Court while dealing with the alleged nuisance value created by these chabutras in the Chandani Chowk area while holding that the shopkeepers and the allottees of these chabutras cannot be categorized as trespassers or encroachers had inter alia noted as under:

"67. *In the conspectus of the above facts and having regarding to the foregoing discussion, I am of the view that all the shopkeepers and allottees of chabutras in Chandani Chowk cannot be characterized as trespassers or encroachers. This finding is on the basif of the admitted facts namely that* *the MCD has been recovering both chabutra fee as well as takhatbandi fee from many of them. As a consequence, the MCD could not have taken a unilateral decision to remove all the takhatbandis without WP(C) No.4133/2005 and connected matters considerarting whether they had been permitted at any stage. If the impugned notice is to be read as confined to only those allottees who had encroached beyond the chabutra and into the pavement, such notice perhaps may have been sustained as one under Section 322. However, the terms of the notice are sweeping and broad. They encompass all alike. The impugned notice treats all alike, thus resulting in equal treatment of unequals. It ignores the possibility of existence of some allottees who are using the chabutras legally.* "

23 The interim directions contained in the order (dated 15.3.2005) had directed that if persons have encroached upon public street beyond the chabutra or takhatbandi, the MCD had a right to deal with the same under the DMC Act. The stand of the Corporation in that petition was noted and the counter affidavit filed by them on 07.02.2006 has also been made available to the Court. At serial no.287, this chabutra i.e. municipal no.1469/1 has been recognized. It was stated to be in the occupation of Panna Lal and Sons (respondent no.3) and Ramakant (respondent no.4). The size of the chabutra

is 5 feet 10 inches x 9 feet 9 inches. This affidavit was filed in WP(C) 4133/2005 on 07.02.2006. This writ petition was disposed of on 04.02.2009 i.e. three years after the stand of the Corporation had been incorporated; the stand of the Corporation being that a status quo of these chabutras would be maintained till a blue print for the redevelopment of Chandani Chowk area is finalized; only those encroachments/areas which were constructed over and above the chabutra/takhatbandi would be the subject matter of action by the Corporation.

24 It is in this background that the entire controversy inter se the parties has to be viewed.

25 This Court is of the persuasive view that what has come on record is the recognized status of this chabutra/platform having a municipal no.1469/1. It is presently in the occupation of respondent nos.3 and 4 and in fact even as per the case of the petitioner has been in their occupation prior to 1950. The stand of PWD (respondent no2) is also that the blue print of the redevelopment of Chandani Chowk area is likely to be finalized within one or two months; as and when it is finalized the directions contained in the order dated 04.02.2009 (while disposing of WP (C) 4133/2005 would come into operation.

26 The prayer of the petitioner in this petition is that this illegal chabutra be demolished by the Corporation. This is in fact the only prayer made in this petition. This Court is not inclined to answer this prayer in favour of the petitioner.

27 Another vehement submission of the learned counsel for the petitioner is that the question which has further to be decided by this Court as to whether this site in question/chabutra belongs to respondent no.1 or to respondent no.5 (who in turn had leased it out to respondent no.3 and respondent no.4). This Court notes that this is not a title suit. This Court need not delve into the aspect of title. Whether the municipal chabutra was allotted to respondent no.5 (who in turn had leased it out to respondent nos.3 and 4) is a question which this Court is not inclined to go into. This is also not a prayer in this petition. This at best would be an inter se dispute between respondent no.1 and respondent no.5. This chabutra (No.1469) find mentioned at serial No.287 of the list of Municipal Chabutras of the Department. This document is a part of the record.

28 There is also admittedly a municipal chabutra forming a part of the shop of the petitioner. Submission of the learned counsel for the respondent

that the status of the petitioner is no different from that of the contesting respondent is also an argument which cannot be brushed aside casualy.

29 The internal notings of the files of the Department highlighted by the learned counsel for the petitioner do not come to the aid of the petition. These are only departmental notings.

30 A Bench of the Apex Court in Civil Appeal No.9454/2013 *Union of India & Anr. Vs. Asho Kumar Aggarwal* while dealing with the value of notings in departmental files had an occasion to consider such a submission and had inter alia held:

> "*Similarly, while dealing with the issue, this Court in Sethi Auto Service Station v.DDA, AIR 2009SC 904 held:*
>
> *14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.*

*17. In Jasbir Singh Chhabra v. State of Punjab (2010) 4 SCC 192, this Court held:*

*"35..... However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recoding a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous consideration...."*

31 The final order disposing of the show cause notice on 05.3.2015 had after noting all these contentions and counter contentions of the parties decided to grant a status quo to this property i.e. chabutra bearing no.1469/1. This show cause notice had noted that this chabutra structure is a municipal chabutra; it was not an encroachment. It had gone on to hold that the occupancy of respondent no.3 was unauthorized and no fee is being paid by respondent no.3 but even thereafter while noting the order passed in the WP(C) 4133/2005 (04.02.2009) had directed a consideration of a status quo in respect of this structure till the finalization of the redevelopment plan by the PWD. This order (05.3.2015) passed by the Assistant Commissioner of the City Zone, North Delhi Municipal Corporation suffers from no infirmity.

32 This Court notes that this writ petition had been filed in the year 2012. The show cause notice issued to respondent nos.3 and 4 had been disposed of on 05.3.2015. This show cause notice is not the subject matter of the present petition. The only prayer in this present petition being that the chabutra no.4169/1 is illegal and be demolished. At the cost of repetition in view of the detailed discussion supra, this Court is not inclined to grant this prayer in favour of the petitioners.

33 Petition dismissed.

INDERMEET KAUR, J

FEBRUARY 16th, 2017
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