

\$~55

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

+ CM(M) 429/2017

ANKUR MUTREJA Petitioner

Through: Petitioner-in-person

Versus

GNCTD & ANR Respondents

Through: Mr. Gursharan Singh, Adv. for R-1.

Mr. D.K. Devesh, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.08.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 4th March, 2017 in MCA No.34/2016 of the Court of District & Sessions Judge (East), Karkardooma Courts, Delhi] of dismissal of the appeal filed by the petitioner / plaintiff against the order dated 5th March, 2016 of the Court of Additional Senior Civil Judge (ASCJ) of dismissal of the application of the petitioner / plaintiff under Order XXXIX Rules 1&2 Code of Civil Procedure, 1908 (CPC).
2. The counsel for the respondent no.1 Government of NCT of Delhi (GNCTD) and the counsel for the respondent No.2 East Delhi Municipal Corporation (EDMC) have been appearing on advance notice.
3. The petitioner, appearing in person, was partly heard on 3rd August, 2017 and the remaining arguments have been heard today.

4. The suit, from which this petition, arises was instituted by the petitioner / plaintiff for permanent injunction, restraining the respondents /defendants no.1 & 2 from granting any Certificate of Regularization of Gagan Vihar Extension Colony, Delhi, till the time the unauthorized wall on the “Northern Side” of the vacant space obstructing the internal road of Gagan Vihar Extension Colony, Delhi is demolished. The plaint in the suit was accompanied with an application for interim relief to the same effect.

5. It is *inter alia* the case of the petitioner / plaintiff that the boundaries of the unauthorized colony of Gagan Vihar Extension, Dehi fixed by the respondent no.1 GNCTD are not in accordance with the prescribed procedure and that the petitioner / plaintiff, in tune with the prescribed procedure, has approached the Board for Development of Unauthorized Colonies and which is seized of the matter and till the dispute as to the boundaries of the said unauthorized colony is adjudicated by the said Board, the Certificate of Regularization should not be issued.

6. The learned ASCJ declined the interim order sought by the petitioner / plaintiff reasoning i) that the plaint does not disclose any *locus standi* of the petitioner / plaintiff to institute the present suit; in the plaint, it is merely stated that the alleged illegal boundaries fixed by the GNCTD are prejudicial to the interest of the petitioner / plaintiff, without pleading as to how prejudice has been caused to the petitioner / plaintiff; ii) that the Regulations for Regularization of Unauthorized Colonies only recognize role of Residents Welfare Association (RWA) in the process of regularization; the petitioner / plaintiff being one of the residents of the unauthorized colony of Gagan Vihar Extension, if has any grievance, has to approach the RWA; iii)

that the order of fixation of boundaries by the GNCTD which is challenged is only an interim order and the Government is yet to take a decision thereon; iv) that it is quite possible that ultimately the boundaries may be fixed as desired by the petitioner / plaintiff; v) that the petitioner / plaintiff had also pleaded that the “North Wall” is unauthorized and should be demolished but the Regulations nowhere provide for removal of unauthorized construction before the issuance of Certificate of Regularization; vi) that the application filed by the petitioner / plaintiff before the Board for Development of Unauthorised Colonies would be considered and decided; and, vi) that thus the petitioner / plaintiff had failed to make out a *prima facie* case in his favour and the balance of convenience and the ingredients of irreparable injury were also against the petitioner / plaintiff.

7. The learned District Judge in appeal preferred against the aforesaid order has reasoned i) that the main grievance of the petitioner / plaintiff was with respect to the “North Wall” which according to the petitioner / plaintiff was unauthorized; ii) that the petitioner plaintiff had earlier instituted a civil suit challenging the regularization of unauthorized colony and seeking demolition of the said North Wall and a similar application for interim relief was filed in that suit also; and, iii) that the fate of the said application for interim relief was not known.

8. The counsel for the petitioner / plaintiff has before this Court drawn attention to the site plan filed by the petitioner / plaintiff at page 67 of the paper book where the actual boundary as shown in Survey layout Plan drawn by the RWA, as claimed by the petitioner, as well as the boundary as fixed by the GNCTD have been shown.

9. The argument of the petitioner / plaintiff before this Court also is, that till the Board for Development of Unauthorised Colonies decides the dispute raised by the petitioner / plaintiff qua the boundary, the Certificate of Regularization cannot be issued. On being asked as to under which provision the petitioner has approached the Board, the petitioner / plaintiff draws attention to the order dated 4th September, 2012 of the GNCTD which provides as under:

“In case anybody is aggrieved with the fixation of boundary, he shall file a petition before the Board for Development of Unauthorized Colonies constituted by the Government of NCT of Delhi vide order F.No.1-33/UC/UD/Policy/2004/Pt.F.II/11730-11746 dated 20.06.2007 for adjudication.”

10. The counsels for the respondents have argued that the petitioner / plaintiff since then has applied for amendment of the plaint and which application is pending and the petitioner / plaintiff is now giving up the relief with reference to the “Northern Wall” aforesaid. It is argued that once the plaint is amended, the petitioner / plaintiff would be entitled to *de novo* apply under Order XXXIX Rules 1&2 CPC.

11. The petitioner / plaintiff states that the amendments are only clarificatory and there is no substantial change in the plaint.

12. I am also of the view that the amendment sought would not have a bearing on the interim relief as claimed in the application and against denial whereof this petition has been preferred and thus it is not deemed expedient to dispose of this petition with liberty to the petitioner / plaintiff to apply again for interim order on the basis of amended plaint.

13. I have however enquired from the petitioner / plaintiff as to how the petitioner / plaintiff, being only one of the residents of the unauthorized colony which has sought regularization, can stall the process of regularization and which regularization affects all the residents of the said unauthorized colony.

14. Though from the language of the order dated 4th September, 2012 reproduced above, it appears that at this stage it cannot be said that the petitioner / plaintiff is barred from approaching the Board for Development of Unauthorized Colonies but without perusing the order dated 20th June, 2007 referred to therein, the said question cannot be decided. There is merit in the reasoning given by the learned ASCJ that it is only the RWA which is to be heard in the context of regularization and the petitioner / plaintiff being one of the residents only would have no *locus standi*.

15. The suit from which this petition arises is filed by the petitioner / plaintiff as an individual and as a resident of the colony and the petitioner / plaintiff cannot be granted interim order affecting the other residents of the colony and who are not even parties to the suit.

16. I have requested the petitioner / plaintiff to point out the paragraph in the plaint pleading the prejudice which would be suffered by the petitioner / plaintiff.

17. The petitioner / plaintiff states that save for stating that the petitioner / plaintiff would suffer prejudice as a resident, no further particulars have been given.

18. It is not as if the property of the petitioner / plaintiff would be outside the regularized colony, if the boundary which is proposed by the respondent

no.1 GNCTD is finalized. The petitioner / plaintiff admits that the property of the petitioner / plaintiff would still be within the regularized colony. The area between the two lines drawn on the site plan at page 67 aforesaid is shown by the petitioner / plaintiff as vacant space / internal road till the “North Wall” and the counsels for the respondents stat that with respect to the remaining area a dispute is already pending in another proceeding in another Court.

19. It is not even the plea of the petitioner / plaintiff that the occupants of the land are part of the colony of Gagan Vihar Extension, Delhi.

20. The petitioner / plaintiff today states that the subject land is “no man’s land” and nobody is in occupation thereof and is being used as internal road.

21. The concept of regularization of unauthorized colonies was not to expand the unauthorized occupation but to regularize the area unauthorizedly occupied. What the petitioner / plaintiff appears to be wanting in the garb of regularization is, including other lands also within the colony and which, at least at this interim stage, cannot be said to be apposite.

22. Moreover, it is not also justified to withhold the process of regularization of the entire colony at the instance of one resident thereof.

23. Petitioner / plaintiff has at this stage cited para 36 of ***Bangalore Medical Trust Vs. B.S. Muddappa*** AIR 1991 SC 1902 on the aspect of *locus standi*.

24. Supreme Court, in judgment supra was concerned with the concept of *locus standi* in the context of a Public Interest Litigation (PIL). The suit filed by the petitioner / plaintiff, from which this petition arises, is not by way of PIL.

25. There is thus no merit in the petition. No ground for interfering with the concurrent orders of the Courts below, not finding the petitioner /plaintiff entitled to interim relief during the pendency of the suit, is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017
'gsr'..