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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement delivered on: 19th April, 2017

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W.P.(C) 7857/2014

KHUSHI SEWA SANTHA

..... Petitioner

Through : Mr.Gian Dev Gupta (in person)

versus

**THE COMMISSIONER, SOUTH DELHI
MUNICIPAL CORPORATION & ORS.**

..... Respondents

Through : Mr.Ajay Digpaul, Standing Counsel
for SDMC

Mr.Ajay Verma, Sr. Standing
Counsel with Mr.Sanjeev Sabharwal
and Mr.Vaibhav Mishra, Advs. for
DDA

Mr.Anurag Ahluwalia, CGSC with
Mr.Bhav Arora and Ms.Nisha
Sharma, Advs. for UOI

Mr.Santosh Kr.Tripathi, ASC with
Mr.Rizwan, Adv. for GNCTD

Mr.Sumit Bansal, Ms.Richa Oberoi
and Mr.Prateek Kohli, Advs. for R-5

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S. RAVINDRA BHAT, J.(Oral)

The petitioner claims that rampant unauthorised construction
has taken place in village Arakpur Bagh Mochi established in khasra

No.225. The petitioner represented by its President submits that despite the declaration the essential plan with the area is to be treated as recreational as the DDA and other local authorities have permitted legal encroachment and construction thereupon in the pretext that residents are original 'chulha tax depositors' with the authorities from the imperial times. It is submitted that again in the pretext of creation of uniform and long lasting policy further unauthorised construction by vested and powerful local interest has been permitted. The petitioner points out that the fifth respondent who appears to be the target of the present petition, has intentionally withheld information. Though the order of this Court in a previous PIL 'WP(C) No.2000/2012' has been filed there is no inadvertence in the petition which has suppressed any mention of it. Learned counsel highlights the observations of the Division Bench of this Court in that writ petition dismissing it on 16.01.2013 after noticing the directions in WP(C) No.39214/2002 *Smt. Shakunta Narang vs. DDA and others*. The court had in those proceedings specifically recorded that one Sh.K.L.Narang had made repeated complaints against individuals and not against the encroachments in khasra No.225 and most importantly substantial allegations. It was further stated that the revenue records did not show any tampering at any point of time more than the undue benefits to the family of the present first respondent who was a chulha tax payer. The court also recorded the previous position with regard to the regularization of the structures in the village and policy decisions of the Govt. of India indicated in the affidavit dated

23.11.2012.

The DDA in these proceedings has filed various returns and a status report. In the latest status report, the DDA points out that two types of families reside in village Arakpur Bagh Mochi, they are : the original chulha tax payers and the others who are not tax payers and that as far as first category is concerned, they were permitted preferential treatment accorded to those of permanent villages. The DDA categorically states that late Shrichand was an original chulha tax payer and his descendant resided in the premises. It also brings to the notice of the Court a decision of 1974 that occupation by individual chulha tax payers would be liable to a removal, if it interfered with any village development plan. The status report furthermore recounts the policy of the Ministry of Works and Housing dated 18.07.1983, which conveyed the decision to grant perpetual leasehold rights in occupation of the residents. It further recounts the decision of the learned Governor taken at some point in 2004. Most importantly the DDA placed on record rules of the Ministry of Urban Development dated 17.12.2014 with respect to granting of freehold rights to categories of villagers being chulha tax payers including village Arakpur Bagh Mochi in the following :

“(i) For original Chullah Tax Payers and their descendent and purchasers from the Chullah Tax Payers and their descendants - the rates of Rs.575/- per sq.mtr as decided for unauthorized colonies in the year 2008 should be updated with prescribed interest rate of DDA upto 30.11.2014.

(ii) For the original allottees / their descendants / purchaser from original Allottees occupying land more than the permitted limit - the calculation will be based on PDR basis i.e. the rate of Rs. 3500/- per sq. mtr (cost of acquisition of undeveloped land in the year 2007 i.e. Rs. 1702/- per sq. mtr. plus interest at prescribed rate of DDA upto November 2014) will be charged for the area in excess of the permissible limit.

(iii) For Valmiki category or their descendent – the rates will be as that in (a) above.

2. All three categories as above on the existing occupation may be regularized on "as is where is" basis.

3. As regards the encroachers on the Government Land in these villages the matter will be decided separately.

4. It is directed that DDA should ensure proper identification of the villagers for granting the freehold ownership rights.

5. This issues with the approval of competent authority.

A copy of Letter dated 17.12.2014 is annexed herewith marked as Annexure A-2."

It is further stated that though designated by the development plan as a recreational area, the area is heavily built up and appropriate action if necessary would be taken only in accordance with the decisions of the Ministry of Urban Development. Having regard to this development and the fact that the same issue has engaged the attention of this Court in not less than three previous proceedings including the petition filed by the present petitioner, the Court is of the opinion that no direction is called for.

The writ petition along with pending applications are disposed of.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 19, 2017
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