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

+ FAO(OS)No.161/2017 and CM No.19754/2017

% Date of decision : 31st May, 2017

DEEPAK ARORA & ORS Appellants
Through: Mr. J.P. Sengh, Sr. Adv. with
Ms. Prema Priyadarshini and
Ms. Manisha Mehta, Advs.

versus

PUBLIC WORKS DEPARTMENT & ORS... Respondents
Through: Mr. Peeyoosh Kalra, ASC,
GNCTD/R-1 with Mr.
Sudhinder Tripathi, Ms. Sona
Babbar and Ms. Swati, Advs.
Mr. Devender Mar, Adv. for
Mr. Sanjeev Sagar, Adv. for
DDA/R-2.
Ms. Saroj Bidawat, Adv.
for R-3 & 4.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The instant appeal assails an order dated 8th May, 2017 passed by the ld. Single Judge in CS(OS)No.174/2016 refusing to grant ad-

interim injunction which was sought in I.A.No.4548/2016, filed by the appellants as plaintiffs therein, under Order XXXIX Rules 1 & 2 of the CPC.

2. So far as the narration of facts which led to the filing of the suit as well as the present appeal are concerned, to the extent necessary, the same are briefly noted hereafter. The plaintiffs are the owners of different portions of property of what is described as Krishna Park Extension and New Mahavir Nagar, Outer Ring Road, New Delhi-110018. They claim under registered documents of title dating back to the year 1973 and have claimed that they have built-up residential and commercial properties thereon.

3. So far as the origin of the litigation is concerned, the same relates back to the year 1997 when W.P.(C)No.2006/1997 came to be filed. In this writ petition, the persons who filed the writ petition included some of the appellants/plaintiffs before us. In this writ petition, the petitioners had assailed a letter dated 25th April, 1997 which had been issued by the Public Works Department of the GNCTD stating that the petitioners were in illegal possession of land which forms part of a road and that such possession had to be removed. The letter was issued in view of project for road widening.

4. We find that so far as the land in question is concerned, it is recorded in the order dated 11th December, 2003 that the land was acquired in terms of “*award No.20/73-74 and was placed at the disposal of the PWD Department on 2.7.1975. The area was declared*

as a developmental area but in terms of notification dated 13.7.1987 the area was denotified as a developmental area. Ld. counsel for the petitioner referred to the notification in terms whereof the area was denotified. The denotification is limited to the issue of the developmental area and the land as such acquired was never denotified”.

5. Interestingly, while disposing of the writ petition on 11th December, 2003, the court had noted that the “*the project for road widening and the apathy of the respondent department has resulted in a situation where this project is a stand still for the last six years*”.

6. It is undisputed that unauthorized developments in the area cropped-up which came to be known as the Krishna Park and the New Mahavir Nagar. These were the subject matter of regularization by the authorities. The regularization plan was approved by the Delhi Development Authority.

7. It is also not disputed and stands noted in the order dated 11th December, 2003 that the regularization plan showed a 200 feet wide road which had to be constructed. The order notes that at the stage of regularization, there was not really much of a problem of encroachment on that road, which had stated to have arisen only subsequently.

8. Even on 11th December, 2003, the court had noted that alignment of the road was such that only a few properties were being affected and other properties sought to be demolished were not to be

affected by the road widening. Finally, the writ petition came to be disposed of with the following observations :

*“In my considered view all that required to be done is that a **survey has to be made and whatever falls within the road widening has to be removed.** It has to be appreciated that **the land in question in fact was acquired and the question whether any one has taken compensation or not as raised by learned counsel for the petitioner is immaterial for the present proceedings.** **The regularization plan itself envisages a particular width of the road and the bottlenecks cannot be created in the said project.***

*There is also an **element of public interest involved as traffic create bottlenecks in the area in question.** It may also be noticed that the **photographs show that the properties are being used for commercial purpose.** **The regularization was for a residential user.** It is not clear as to whether this commercial user is as per authorization given by an authority and as per any modified user plan. If it is so no further direction is required. But in case there is commercial user contrary to the prescribed under then it would call for forthwith action by the concerned authorities. The respondents No.2 and 3 which are the concerned respondents are thus directed to carry out a **survey of the area within a maximum period of two months** taking the basis as the regularisation plan and **proceed thereafter for the construction of the road by removing all the structures which fall within the road widening project.** The petitioner can supply necessary documents within 15 days.*

(Emphasis by us)

9. The manner in which the matter of road widening could be held up is writ large from the record of the litigation placed before us. Making a grievance that the direction for the survey had not been carried out, the petitioners who had filed the earlier writ petition again challenging the action of the authorities by way of a second writ petition being ***W.P.(C)No.313-19/2005, Amrit Lal Ghai & Ors. v. DDA & Ors.*** In view of the submissions made by the petitioners, initially on the 11th of January 2005, the court had directed the respondents to maintain *status quo* with regard to the proposed action on the properties of the petitioners and called upon the respondents to make available the report of the survey.

10. These writ petitions came to be finally disposed of by the Id. Single Judge by an order dated **7th October, 2015**. So far as the survey is concerned, on behalf of the Government of NCT of Delhi on 7th October, 2015, the court was clearly informed as follows:

“3. Mr. Naushad Ahmed Khan, learned additional standing counsel appearing for Government of NCT of Delhi states that the mandate given by HMJ Sanjay Kishan Kaul in the order dated 11th December, 2003 has been complied with inasmuch as a survey has been carried out in accordance with the regularisation plan by TSM method. He points out that there is encroachment by the petitioners in the form of commercial shops on 200 ft. wide road shown in the regularisation plan dated 22nd April, 1983.”

(Emphasis by us)

11. So far as the contention of the petitioners that no regularisation plan is considered, in para 4 of the above order dated 7th October, 2015, the court noted thus :

*“4. Since both parties had not produced the **regularisation plan dated 22nd April, 1983**, they were directed to place on record the same. Today in Court, they have **handed over a copy of the said plan duly signed by learned counsel for petitioners and respondent** – Govt. of NCT of Delhi **along with footnote and same is taken on record in** W.P.(C)No.313-19/2005. In the opinion of this Court, the location of K-145 is irrelevant to the issue of **construction of ring road which is shown independently on the plan.**”*

(Emphasis by us)

12. We find that the Id. Single Judge has also extracted the above portions of the order dated 11th December, 2003 in W.P.(C)No.2006/1997. With regard to the contention of the petitioners that there was no regularisation plan, the Id. Single Judge in the order dated 7th October, 2015 has clearly observed as follows :

*“7. Learned Judge had also pointed out that there was also an **element of public interest** involved in the present proceedings.*

*8. Consequently, this Court is of the opinion that the **issue raised in the present writ petitions are barred by principles of res judicata.***

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10. As construction of Ring Road which is a major infrastructural project has been delayed because of the pending petitions, all respondents are directed to cooperate with each other and are directed to complete the construction of 200 ft. wide road in accordance with the regularisation plan immediately. In the event any demolition is to be carried out for construction of the said road, respondents are directed to take action in accordance with law.”

(Emphasis supplied by us)

13. It is apparent from the above that so far as the contention of the petitioners that there was no regularization plan which had to be followed, the same stands affirmatively rejected by the two aforesaid judgments of the ld. Single Judge, one in W.P.(C)No.2006/1997 and the second in W.P.(C)Nos.313-19/2005.

14. Mr. J.P. Sengh, ld. Senior Counsel for the appellants has placed heavy reliance on the following observations in the order dated 7th October, 2015 :

“9. As far as the factual disputes, i.e., whether survey is in accordance with the regularisation plan or whether petitioners or Anand Kunj Society or Gujrawalan Society have encroached upon the public land, this Court is of the view that they are in the nature of disputed questions of fact which cannot be adjudicated in the present proceedings.”

15. In our view, in para 9 of the order dated 7th October, 2015, the ld. Single Judge has merely noted the objections on behalf of the

petitioners without accepting the same. He has merely noted the same pointing out that the contention of the petitioners raised a factual dispute and that if they sought to press the same, that could not be adjudicated in the writ petition. Para 9 nowhere dilutes the categorical finding in para 7 that the said issues have attained finality as barred by principles of *res judicata*.

16. In our view therefore, so far as the issue of a regularization plan having been cleared by the Delhi Development Authority is concerned, there is no manner of doubt. In this regard, we may also advert to the plan which has been placed as Annexure A-18 to the present appeal.

17. This plan which has been prepared by the Delhi Development Authority, City Planning Wing, Unauthorised Colony Division and has been signed by Mr. Chandra Ballabh, Deputy Director (C.P.). The plan contains the following noting :

“1. THIS LAY OUT PLAN WAS RECOMMENDED FOR APPROVAL BY THE TECH. COMM. IN ITS MEETING HELD ON 22-1-83 SUBJECT TO 9 GENERAL CONDITIONS FOR APPROVAL OF UNAUTHORISED COLONIES.

2. LAY OUT PLAN APPROVED BY AUTHORITY VIDE RESOLUTION NO.78 DATED 22-4-83 PLACED IN FILE NO.267/DD/CP/83 SUBJECT TO 9 GENERAL CONDITIONS FOR APPROVAL OF UNAUTHORISED COLONIES.”

18. The orders of the Id. Single Judge were not assailed any further and stand accepted by the appellants. The finding therein contained with regard to the regularization plan therefore, has attained finality.

19. It appears that thereafter, the plaintiffs filed CS(OS)No.174/2016 seeking a decree for mandatory and permanent injunction as well as declaration requiring the Public Works Department of the GNCTD not to dispossess the appellants/plaintiffs from the properties at the Krishna Park Extension and New Mahavir Nagar, Outer Ring Road, New Delhi-110018 as well as the declaration that the notices dated 8th of March 2015 issued by the defendant no.1 were void and illegal.

20. Along with the suit, the plaintiff had filed I.A.No.4548/2016 praying for interim injunction. No ex-parte interim injunction was granted to the plaintiff.

21. The suit came to be listed before the Id. Single Judge on the 8th of April 2016 when on a *prima facie* consideration of the matter, the Id. Single Judge noted the orders passed in the writ petitions and then proceeded to make the following observations :

*“2. During the course of hearing counsel for the plaintiff was asked to show as to where each of the plaintiffs’ land exists as per the regularization plan filed but this could not be pointed out to the Court. Also, it is **an undisputed fact that the public authorities can act in terms of the regularisation plan for road widening, and today counsel appearing for the defendant no.1/public authority states that defendant no.1 will act only and only in accordance***

with the regularisation plan of road widening the outer Ring Road at Krishna Park Extension and Mahavir Nagar, New Delhi.

3. At this stage, it is agreed that the defendant no.1 can carry on the work of road widening except that defendant no.1 can carry on the work of road widening except that defendant no.1 will act specifically in accordance with the regularisation plan and will do the public work of road widening as per regularisation plan prepared which will deal with the dimensions of the road width of the outer Ring Road at Krishna Park Extension and Mahavir Nagar, New Delhi. It is ordered accordingly.”

(Emphasis supplied)

22. The application I.A.No.4548/2016 was considered by the Id. Single Judge on the 8th of May 2017 when it was once again contended on behalf of the plaintiffs that the regularisation plan had not been produced before the court and that no survey, as directed by the Id. Single Judge by the order dated 11th of December 2003, had taken place. In this regard, the Id. Single Judge in the order dated 8th of May 2017 had observed as follows :

“2. The counsel for Delhi Development Authority (DDA), with reference to the site plan at internal page 12, running page 43 of the documents filed on 3rd May, 2017 and which site plan today for identification is marked Exhibit C-1, states that the encroachment qua which demolition action is intended is at point A,B&C put today on Exhibit-C-1.

3. *The counsel for the plaintiffs states that the same has already been demolished.*

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10. *At this stage, the counsel for the plaintiffs states that the properties which are required to be demolished be identified.*

11. *The counsel for PWD states that the said properties are identified in the site plans filed at page 19 to 26 of the PWD's documents.*

12. *The counsel for the plaintiffs states that the site plans have been set aside vide order dated 9th February, 2017 in this suit.*

13. *I have enquired from the counsel for DDA, whether the proposed demolition of properties identified in the site plans at pages 19 to 26 supra is in accordance with the exercise done pursuant to the orders in this suit.*

14. *The counsel for **DDA states that the site plans** at pages 19 to 26 are **in accordance with the survey** carried out by **the DDA in conjunction with the Revenue Authorities in** pursuance to the orders in this suit.*

15. *Once that is so, the properties also stand identified.*

(Emphasis by us)

23. It is noteworthy that the notices impugned were in terms similar to the notices which were the subject matter of W.P.(C)No.2006/1997.

24. We note that the Id. Single Judge also rejected the contention of the plaintiffs that properties identified as per the earlier survey stood

set aside by the order dated 9th February, 2017, holding that the counsel for the petitioners was misconstruing the order. It was observed that in para 20 of the order dated 7th October, 2015 in the earlier W.P.(C)Nos.313-19/2005, it was observed that the properties *qua* which the demolition action was being sought to be thwarted, was outside the boundaries of the unauthorised colony which was regularised. The Id. Single Judge thereafter relied upon the order dated 8th April, 2016 passed in the suit ordering that the PWD could carry out the work of road widening in accordance with the regularisation plan.

25. In view of the above, we are unable to agree with Mr. J.P. Sengh Id. Senior Counsel for the appellants that no regularisation plan is forthcoming on the record. Ld. Senior Counsel would seek to contend that what was being produced before the court was in the nature of lay out plan. It is undisputed before us that the colony was a completely unauthorized colony.

26. A lay out plan which is required to be prepared for the approval of the authorities normally comes into existence before colony is developed. In the present case, the colonies in question were admittedly, completely unauthorized, i.e., developed without sanction any layout plan. These developments were the subject matter of the regularisation. Therefore, plan placed before the authorities and before us clearly notes the details of the developments which were the subject matter of calling the plan and “*layout*” plan cannot change it to

a plan whereby regularization was effected.

27. In view of the above, the appellants have failed to make out any case for grant of any interim relief.

28. As was noted in the judgment dated 11th December, 2003 that the public project of road widening even at that stage was delayed for over 6 years. Today it is 14 years further down the line, that is to say, the road widening of the major public road has been delayed by over 20 years.

29. For all these reasons, we find no merit in this appeal which is hereby dismissed.

The pending application also stands dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MAY 31, 2017

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