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

+ **W.P.(C) 5459/2017**

RESIDENTS WELFARE ASSOCIATION (REGD)

AND ORS

..... Petitioners

Through: Counsel for the petitioners
(appearance not given).

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC with Mr
Satya Prakash Singh, Advocate for R-
1/UOI.

Mr Shadan Farasat and Mr Ahmed
Said, Advocates for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.07.2017

CM No.22956/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 5459/2017 & CM No.22955/2017

2. The petitioner no.1 is the registered Residents Welfare Association (RWA) of residents of Block D, Neb Sarai, New Delhi and the other petitioners are members of the petitioner no.1, RWA. The petitioners have filed the present petition, *inter alia*, praying as under:-

“a. To allow the present writ petition and pass an order in the nature of mandamus directing thereby respondent no.4 not to demolish built up houses of the petitioners which are built-up on khasra no.435 measuring 4 bigha

15 biswas out of 15 bigha 5 biswa of Village Neb Sarai, Tehsil Saket, District South, New Delhi till the approval of respondent no.1 to 3 is taken as per provision of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 and

- b. To pass orders and direction in the nature of mandamus directing thereby respondent no.4 to abide with the terms and condition of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 and not to demolish built up houses of the petitioners which are built up on khasra no.435 measuring 4 bigha 15 biswa out of 15 bigha 5 biswa of Village Neb Sarai, Tehsil, Saket, District South, New Delhi which are squarely protected under the said provisions of law, and
- c. To pass necessary orders and direction in the nature of mandamus directing thereby respondent no.4 to abide by the policy framed by respondent no.1 and 2 for regularization of unauthorized colonies till the issue of regularization of unauthorized colonies is decided by the respondent no.1 to 3 and till then not to demolish built up houses of the petitioners which are built up on khasra no.435 measuring 4 bigha 15 biswas out of 15 bigha 5 biswa of Village Neb Sarai, Tehsil Saket, District South, New Delhi.”

3. The petitioners are essentially aggrieved by the notice dated 27.06.2017 (hereafter 'the impugned notice') issued by the Government of NCT of Delhi, Department of Forests and Wild Life, whereby the respondents have informed the residents occupying the land comprised in Khasra no.435 (which falls within the forest area) of Village Neb Sarai to remove all constructed structures at their own costs within a period of seven days failing which the same would be demolished on 05.07.2017. The impugned notice was issued pursuant to the decision taken at the meeting

held on 21.06.2017 under the chairmanship of the District Magistrate (South) for, *inter alia*, addressing the problem of water logging.

4. It is stated that Block D, Neb Sarai is an unauthorised colony and it falls (either entirely or partially) within Khasra 435; however, the petitioners claim that they have made an application for regularization of the colony and their application is under consideration.

5. The learned counsel for the petitioners states that the impugned notice is wholly contrary to law. He sought to support this contention on the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (hereafter 'the Act') and the fact that the petitioners have made an application for regularization of the colony.

6. He also referred to Section 2(c) of the Act which defines the expression "*encroachment*" to mean "*unauthorised occupation of Government land or public land other than streets, lanes, footpath and parks, by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use*". On the strength of the said definition, he contended that at the highest, the residential structures built by the petitioners would fall within the definition of encroachment and in terms of Section 3(3) of the Act, no action in respect of such encroachment could be taken. He also referred to the provisions of Section 4 of the Act and contended that the structures constructed on forest land are not excluded from the purview of the said Act.

7. Mr Shadan Farasat, learned counsel for respondent nos.2 to 4 has countered the submissions made on behalf of the petitioners. He referred to

the Notification dated 04.04.1996 whereby the land comprised in Khasra no.435 at Village Neb Sarai was declared to be forest land in compliance with the order passed by the Supreme Court in ***M. C. Mehta v. UOI & Ors. (W.P.(C) No.4677/1985)***.

8. Mr Shadan Farasat also referred to a notification issued by the Delhi Development Authority on 24.03.2008 and drew the attention of this Court to paragraph 3.3 (a) of the said notification, by virtue of which any unauthorized colony/part of colony falling within the notified reserved forest area was excluded from the scope of the regularization policy. He referred to the decision of the Coordinate Bench of this Court in ***Freedom Fighters Social Welfare Association v. Union of India & Ors.: 2011 SCC OnLine Del 1318*** and submitted that no protection was available to the petitioners in respect of lands, which fell within the reserved area. He also drew the attention of this court to paragraph 3 of the said decision where this Court had noted that the petitioner therein had relied on the revenue records indicating the land in question to be to be “Gair Mumkin Makaanat.” He submitted that the petitioners in this case also claim that the land in question is reflected as such in the revenue records and, therefore, no action can be taken. However, this Court had rejected the said contention in the aforementioned decision. He also referred to the decision of the Division Bench of this Court in ***Shree Hazur Baba Sadhu Singh Ji Maharaj Trust v. Union of India & Ors.: 2011 SCC OnLine Del 4710*** whereby the Division Bench had upheld the aforesaid decision in the case of ***Freedom Fighters Social Welfare Association*** (*supra*).

9. He drew the attention of this Court to the Minutes of the Meeting held

at the office of the Sub-Divisional Magistrate (Saket) on 21.06.2017 in which the decision to remove the unauthorized encroachment on Khasra no.435, Neb Sarai was taken.

10. The Supreme Court in the matter of *M. C. Mehta v. UOI* (supra) had in the order dated 25.01.1996 passed directions for preservation of the Ridge area and unequivocally held that no cultivation or construction could be permitted in such area. Thereafter, by an order dated 13.03.1996, the Supreme Court held that the lands in question (which were surplus Gaon Sabha lands) were forests and could not be utilised in any manner and thus issuing a notification to secure the area was a simple formality. The court also requested the Lieutenant Governor to issue the necessary notification.

11. Pursuant to the aforesaid directions/observations, the Notification dated 04.04.1996 was issued whereby the land comprised in Khasra No.435 was vested with the Forest Department. The said area also forms a part of the Southern Ridge and is a protected area.

12. On 23.06.2017 a meeting was held under the chairmanship of the District Magistrate to, *inter alia*, consider the issue of water logging. The said meeting was attended by officers from several departments including the Forest Department. In the said meeting, the issue of encroachment of the said land was considered and it was decided to remove the encroachment since part of the said land was a water body and removal of encroachment was considered necessary to enable the natural return of water flow. The relevant extract of the minutes of the said meeting are set out below:-

"It was noted that Khasra no.435, Neb Sarai which is

forest land and is a *johad* area needs to be cleared of encroachment and land filling on priority. Encroachment and dumping of *malwa* by local residents on the said land is one of the main issue because of which water is not drained from this area.

Forest Department was thus directed to conduct removal of unauthorized encroachment on Kh.no. 435, Neb Sarai which is a water body, to enable natural return of water flow in the area. Notices to be issued by Forest Department immediately & demolition to be conducted on 05.07.2017. Forest Department to process the required equipment from I&FC such that *malwa* be removed and desilting be done for the Forest land."

13. The courts in several cases have pointed out the necessity of preserving and rejuvenating the water bodies.

14. It is also apparent from the documents handed over that the land in question is a reserved forest land and thus any encroachment on the same needs to be countenanced expeditiously.

15. The contention advanced by the petitioners that the encroachments on the said land are protected under the Act is unmerited. In terms of Section 3(3) of the Act, all encroachments are protected from any action pursuant to notices issued by any local authority. The term local authority as defined under Section 2(d) of the Act does not include the Forest Department or the Government of NCT.

16. Although, by virtue of Section 3(2) of the Act, status quo as to certain encroachments or unauthorised developments as on 01.01.2006 is to be maintained, the same plainly does not extend to forests as no such use is permitted under the Forest (Conservation) Act, 1980. Further the Act was

enacted in public interest so that no hardship is caused to the public until revision of Master Plan. The same has little relevance in the context of Forest lands, which must be preserved. More importantly, the provisions of the Act cannot be read as protecting unauthorised encroachments, which are necessarily required to be removed for protecting the water bodies and preserving the natural flow of water, which is necessary to preserve and provide the basic necessity of life. Further is necessary to address the issue of water logging as that brings the functioning of the city to a standstill, causes loss to property and exposes its residents to outbreak of diseases. The encroachment by petitioners cannot be protected at the cost of the other residents of the city. This is neither the object nor the import of the Act.

17. In the aforesaid facts and circumstances, this Court is not persuaded to accept that the impugned order/notice dated 27.06.2017 passed by respondent nos.2 to 4 needs to be interfered in any manner.

18. The petition and the pending application are disposed of.

19. Order *dasti*.

VIBHU BAKHRU, J

JULY 07, 2017
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