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

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Judgment delivered on: 20.11.2017

+ **LPA 665/2016**

JAL KAUR EDUCATIONAL SOCIETY AND ORS..... Appellants

Through : Mr Rakesh Tiku, Senior Advocate
with Ms Aarushi Tiku, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through : Mr Rajiv Bansal, Senior Advocate
with Mr Dhanesh Relan, Ms Akshita
Manucha, Ms Kanika Singhal, Ms
Mahika Bhanto, Mr Hitesh and Ms
Vasudha Trivedi, Advocates for the
DDA.
Mr Satyakam and Mr Akshay
Agarwal, Advocates for GNCTD.
Mr S.D.Windlesh, Advocate for UOI.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

LPA 665/2016 & CM No.44472/2016(direction)

1. The unsuccessful appellants had approached the Court under Article 226 of the Constitution of India claiming that the land in question (plot Nos.225-A, 225-B and 225-C, Lado Sarai Extension) is immune from any action. In view of the fact that it is part of a Colony awaiting regularization, the Appellants had relied upon the application made by the

Lado Sarai Extension Residents Welfare Association to the authorities in 2004 seeking regularization of the Colony/locality. According to the application, the Colony comprised of 2500 plots.

2. The Single Judge declined to grant relief.

3. Counsel for the appellants urges that the findings of the Single Judge are contrary to the facts on the record. It is submitted that over-emphasis in the findings in the trial proceedings (RFA No.579/2010 decided on 09.07.2013) – which had recorded that, according to the petitioners/Appellants, lands were at Lado Sarai Village rather than Lado Sarai Extension, as was claimed by them before the Court in these proceedings, bound them down to that statement.

4. It was submitted that the mere description, in the earlier proceedings did not, in any manner, precluded the Appellants from asserting the real facts, which they brought to the notice of the Single Judge on the basis of the record. The record highlighted here was not only the copies of the receipts evidencing the application for regularization but also the list of occupants/residents.

5. Counsel further relied upon the fact that these lists were part of the Government of NCT's record and copies were provided under the Right to Information Act, 2005. Learned counsel submitted that in fact, though in the earlier civil proceedings, the findings recorded are that the possession was taken by the respondents pursuant to the acquisition proceedings, entire possession of the acquired land were not taken and that half the acquired land could not be taken possession on account of existing construction. Learned counsel also submitted that the benefit of the National Capital

Territory of Delhi Laws (Special Provisions) Act, as made applicable by amendments in 2014, would apply and grant benefit to them.

6. Learned senior counsel for the Delhi Development Authority (DDA) highlighted that the findings in the Regular First Appeal are conclusive and could not have been re-visited. In those proceedings, the Court, firstly, held that the possession of the petitioners' lands was taken and that compensation had been in fact received by the predecessor-in-interest; secondly and more importantly, it was held that the petitioners' claim was that they were residing in Lado Sarai not in Lado Sarai Extension. These findings, it was re-emphasized, precluded the Appellants from not contending to the contrary.

7. That the petitioners/appellants had claimed to be residents of Lado Sarai Extension is evident from their averments in the Writ Petition {W.P.(C) No.4853/2013}. The further materials on record include copies of the receipt issued by the Government of NCT of Delhi to the Lado Sarai Extension Residents Welfare Association on 28.12.2004 (application No.00483). The application states that the area of the Colony approximately is 57,000 sq. metres and it comprised of about 2500 plots. Furthermore, the application, which is accompanied by a List of Plots and the residents, is a matter of record that this list included plot No.225 at Serial No.207. The names of all the petitioners/appellants are also reflected in that list.

8. No doubt, there is a discrepancy in the sense that in the present proceedings, the petitioners assert that three plots (plot Nos.225-A, 225-B and 225-C, Lado Sarai Extension) with a total/aggregate area of 1800

sq.yds., is involved, however, it can be seen that the plot No.225 is comprised of 4200 sq.yds.; this discrepancy is, in the opinion of the Court, minor. The description of the property, in the opinion of the Court – or its mis-description *per se* cannot be a bar for entertaining the proceedings as appears to have been an interpretation placed by the learned Single Judge. What was claimed in the previous civil proceeding was an injunction. Having regard to the pleadings on the record and the respondent assertion that possession had been taken over and further more that the land was acquired under the relevant laws, the petitioner could not have asserted civil right and claimed an equitable remedy of injunction.

9. In the circumstances, unless there was a specific issue as to the location, description and area of the property (which itself appears to be the case on the record). The mere description or mis-description cannot preclude concerned party, i.e. the petitioners for now claiming a different relief in the writ proceedings. In these circumstances, the petitioners' contention that they reside in Lado Sarai Extension could not have been disputed; the Court is also alive to the fact that the first Appellant/petitioner in fact has established and is running a School since 2002, which appears to have been recognized by the appropriate authorities, i.e. by the Municipal Corporation of Delhi.

10. The appellants had relied upon the decision of the Division Bench in *Banwari Lal Sharma versus Union of India*, LPA 858/2004 decided on 28.05.2013). The Court took note of the provisions under the National Capital Territory of Delhi Laws (Special Provisions) Act, referred above, and held that in view of the statutory mandate under Section 3(1), the State and other public agencies could not disturb the existing *status quo* for the

time the Statute existed and was in force. Similar orders have been made in other decisions – notably in *Narender Kumar Nagpal & Anr. versus Delhi Development Authority & Others*, W.P.(C) No.4831/2005 decided on 23.03.2012 by a Single Judge, which too concerned Lado Sarai Extension.

11. In view of the above discussion, the Appeal has to succeed; it is accordingly allowed. The respondents shall, for the duration of the existence of National Capital Territory of Delhi Laws (Special Provisions) Act, not take any precipitative action towards dispossessing or in any manner removing the petitioners' constructions from the lands they are in possession of.

12. The Appeal is allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

NOVEMBER 20, 2017

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