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

+ W.P.(C) 3752/2018, CM No. 14896/2018

HIRONMAY KANDAR AND ANR

..... Petitioners

Through: Mr. Ashok Kumar Singh, Sr. Adv.
with Mr. Sanjeev Kumar & Mr.
Abheeshek Bhagat, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Dhanesh Relan, SC for DDA
with Ms. Gauri Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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23.04.2018

1. The present petition has been filed by the petitioners with the following prayers:-

“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to allow this petition and;

a) *Issue an appropriate writ, direction or order in the nature of mandamus or prohibition or any other appropriate writ or direction restraining the respondents from arbitrarily and whimsically demolishing the property of the Petitioners i.e H.No. B-29 & B-29-A, Plot No.6, Block-B, New Ashok Nagar, Delhi-110096, Part of Khasra No. 393/264//1 situated i the area of Village Saroda Banger, total area measuring 252.6 sq. yds;*

b) AND OR pass any other order/orders, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case."

2. It is the case of the petitioners and contended by Mr. Ashok Kumar Singh, learned Senior Counsel appearing for them that the land owners of village Chilla Saroda Banger, Delhi sold their lands by carving into big and small plots and over the years more than 2000 houses were built on the said land and many persons started residing there having electricity connection, water connection. During the said period, an unauthorized colony came into existence as B-Block, New Ashok Nagar, Delhi.

3. He states, the petitioners are owners of property bearing No. B-29 and B-29-A, Plot No.6, Block-B, New Ashok Nagar, Delhi-96 falling in Khasra No. 393/264//1 total admeasuring 252.6 sq. yds. He states, the property previously numbered as Plot B-6/A and after the regularization the new number has been given as B-29. He has drawn my attention to page 214 of the paper book to contend that initially one Sharda Ram sold the land admeasuring 1500 sq. yds in the aforesaid khasra to four persons namely D.C. Das, Mulgi T. Kesri, P.K. Roy and Ashit Kumar Roy. According to him, Mr. P.K. Roy, has on the basis of Agreement to Sell and General Power of Attorney and by giving possession sold the agricultural land measuring

350 sq. yds in the aforesaid khasra number in the said village in favour of Dr. K.D. Shome. Dr. K.D. Shome in turn had executed a General Power of Attorney and Agreement to Sell in favour of Mr. Sukhdev Kumar and Mrs. Neelam Kumar with respect to land measuring 350 sq. yds (Plot No. – 29) in the aforesaid khasra number. He also states, Mr. Sukhdev Kumar and Mrs. Neelam Kumar have further executed a General Power of Attorney, Agreement to Sell, Affidavit, Will and Possession Letter in favour of Mr. Ombir Singh Panwar with respect to property bearing No. B-29, Plot No.6 admeasuring 252.6 sq. yds. In this regard, he draws my attention to page 237 onwards of the paper book. It is stated by Mr. Singh that the petitioners have bought this property from Mr. Ombir Singh Panwar by referring to page 112 of the paper book, which according to him, are the Affidavit, General Power of Attorney, Agreement to Sell dated October 06, 2016 by which property No.29A (Plot No.–46), measuring 143 Sq. Yds. sold in favour of the petitioner Hironmay Kandar. Similarly, Ombir Singh Panwar sold to the petitioner No.2 plot numbered as B-29 (Plot NO.6) to an extent of 109 sq. yds. in the aforesaid khasra number in the same manner. Mr. Singh by referring to Page 58, which is an order dated September 4, 2012 would submit that the Govt. of NCT issued orders regularising

colonies as per boundaries finalized, which consist of New Ashok Nagar as well. Any dispute with regard to boundary requires filing of petition before the Board and no such petition has been filed in that regard in this case.

4. He by drawing my attention to Page 196 of the paper book, which is a copy of the written statement filed by respondent / DDA in the suit filed by the petitioners before the Karkardooma Court, New Delhi would submit that respondent / DDA has incorrectly stated that plaintiffs (petitioners herein) are successors by way of GPA executed by Mr. Ombir Singh Panwar, who is also a GPA holder of Mrs. Neelam Kumar, the real sister of Subhash Chander Chauhan and Subhash Chander Chauhan has encroached upon the DDA land who was earlier removed from the site through a demolition programme carried out on February 12, 2014. According to him, the judgment of this court in *W.P.(C) 4919/2011 Ms. Meeta Chakraborty & Ors. v. Govt. of NCT of Delhi and Ors.* on which reliance is placed by Mr. Relan was a judgment rendered by the court without considering the judgment passed by the Coordinate Bench of this court in the case of *Harijan Kalyan Samiti Regd. & Ors. v. Govt. of NCT of Delhi & Ors. W.P.(C) 5200/2008* and *W.P.(C) 5201/2008* decided on February 24, 2010 and as such is per incuriam. He relied upon the judgment of the Supreme

Court in the case reported as *Sundeep Kumar Bafna vs. State of Maharashtra and Anr. 2014 (16) SCC 623* in support of his submission. He also relied upon the provisions of National Capital Territory Delhi Laws (Special Provisions) Act, 2011 and National Capital Territory Delhi Laws (Special Provisions) Amendment Act, 2017 to contend that the petitioners are entitled to the benefit of the said Act, the protection under which has been extended till December, 2020. He seeks the prayer as made in the writ petition.

5. On the other hand, Mr. Dhanesh Relan, learned Standing Counsel for the respondent has drawn my attention to page 214 which is a Sale Deed executed by one Sharda Ram in favour of four persons, including one Mr. P.K. Roy with regard to land measuring 1500 Sq. Yds. According to him only, Mr. P.K. Roy had executed Agreement to Sell and General Power of Attorney in favour of one Dr. K.D. Shome to the extent of 350 Sq. Yds. in Khasra No. 393/264/1. He states that Dr. K.D. Shome had further executed a GPA and agreement to sell in favour of Sh. Sukhdev Kumar and Mrs. Neelam Kumar. Mr. Sukhdev Kumar in turn executed a GPA along with Agreement to Sell, Affidavit, Will etc. in favour of Mr. Ombir Singh Panwar. It is through Panwar, the petitioners are claiming their ownership.

He states, even Ombir Singh Panwar had executed a GPA, Agreement to Sell, Affidavit and Will in favour of the petitioners to the extent of 143 Sq. Yds. and 109 Sq. Yds. respectively. He states, in view of the judgment of the *Suraj Lamps and Industries vs. State of Haryana and Anr. AIR 2012 SC 206* no right has accrued to the petitioners. That apart, he states the issue in the present petition is covered by the judgment of the Coordinate Bench of this court in the case of *Ms. Meeta Chakraborty and Ors. (supra)*, wherein Mr. Subhash Chander Chauhan was also a petitioner, who was claiming ownership with regard to property in Block-B. He has taken me through various paragraphs of the judgment in support of his contention that the petition having been dismissed by the court on clear findings in Paras 18 and 20, which Judgment has been upheld by the Division Bench, vide order dated September 17, 2013 in LPA 630/2013, this Court needs to dismiss this petition. He states, even the Review Petition filed by the petitioners therein was rejected by the Division Bench. According to Mr. Relan, even in the Suit filed by Mr. Subhash Chander Chauhan with regard to B-26, the application under Order XXXIX Rule 1 and 2 CPC was dismissed. Later Subhash Chander Chauhan withdrew the Suit. He has also taken me through the written statement filed by DDA in the Suit filed by Mr.

Subhash Chander Chauhan wherein it has been categorically stated that land in Khasra No. 393/264 MIN was acquired by the Government vide Award No. 39/82-83, the physical possession thereof has been handed over to DDA by LAC on October 1, 1982. For the development of this land, it has been placed at the disposal of the DDA. According to him, the plaintiff therein was an unauthorized encroacher of the land and the unauthorized structures raised thereupon were removed on February 12, 2014 during demolition programme carried out with the help of local police. He has shown me the photographs at page 568 to show that the structures have been demolished. He states that the land is lying vacant under the possession and jurisdiction of the DDA. Similarly, it is his endeavour to point out in the suit filed by the petitioners, a new case of adverse possession has been set up by the petitioners herein which is untenable. He states, for selling agricultural land, NOC was required to be taken from the revenue authorities. He draws my attention to page 712 of the paper book wherein it has been stated that complaints against unauthorized encroachment and constructions were made to the police department on December 5, 2016, December 9, 2016 and January 6, 2017. But the encroachment of the unauthorized construction on DDA land was not stopped. He states the petitioners are not entitled to the

protection under the National Capital Territory Delhi Laws (Special Provisions) Act, 2011 and the amendment thereof. He seeks the dismissal of the writ petition.

6. Mr. Ashok Kumar Singh, learned Senior Counsel in his Rejoinder states, the petitioners are not concerned with Subhash Chander Chauhan. According to him, the property having been constructed, the petitioners shall be entitled to the benefit of the Special Act of 2011 and amendment thereof of 2017 and the respondent cannot exercise the right of demolition in the teeth of the Act(s).

7. Having heard the learned counsel for the parties, and perused the documents pointed out by Mr. Singh and Mr. Relan it is clear that the petitioners are claiming to be the owners of the property on the strength of the GPA, Agreement to Sell, Affidavit and the Will executed by Mr. Ombir Singh Panwar. The same is relatable to Plot No. B-6. There is no dispute, as noted from the judgement of this court in the case of ***Ms. Meeta Chakraborty and Ors. (supra)***, that the said writ petition was also relatable to B-6, I agree with the submission made by Mr. Relan in which Mr. Subhash Chander Chauhan had also sought his impleadment by representing to be the owner of the property No. B-30 (Plot No. B-6) as

represented by the petitioners herein (i.e. B-6). In fact, Writ Petition of Ms. Meeta Chakraborty and Ors. was also filed relatable to Block-B. I note the Coordinate Bench of this Court in the said writ petition reproduced the counter-affidavit filed by DDA. In that at Page 418, against Subhash Chander Chauhan, the address is noted as B-6. It is also noted that it is through “*unregistered and undated POA of Plot of Land and not constructed*”. So, it is clear that in so far as B-6 is concerned, there was no construction. The same follows with respect to B-33. The Coordinate Bench from Para 13 to Para 21 has held as under:

“13. Having heard learned counsel for the parties, the admitted position that emerges is that petitioners neither have any registered title documents nor any approved plan/drawing or any sanctioned plan of any building from any statutory authority.

14. Further, New Ashok Nagar is an unauthorised colony, which from the prayer clause of the present writ petition is pending regularization. Though a provisional regularization certificate has been placed on record but no final registration certificate has been produced.

15. Admittedly, the petitioners’ construction do neither fall within the definition of Jhuggi or Jhuggi Jhopri Basti under the Delhi Urban Shelter Improvement Act 2010 nor have they been declared in a notification by the Board as Jhuggi Jhopri Basti.

16. In any event, from a perusal of the photographs on record at pages 23 and 24 of the paper book, it is apparent that there are no jhuggi jhopri clusters in New Ashok Nagar. From the

photographs it seems that very palatial and large structures have been constructed on Government land.

17. In view of the diametrically opposite stand taken by the parties with regard to the show cause notice as well as practicability of construction of public road, this Court is of the view that the same cannot be adjudicated in writ proceeding as they are disputed question of facts.

18. Since the averment of the respondent-DDA that land in question has been acquired for construction of a proposed Master Plan Road of forty-five meter wide has not been disputed, this Court is of the view that the protection under the Act, 2011 would not be available to the petitioners. Section 4 of the Act, 2011 reads as under:-

—4. Provisions of this Act not to apply in certain cases.—During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—

(a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;

(b) removal of slums and Jhuggi-Jhompri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area (including urban villages) and their extensions in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”

(emphasis supplied)

19. The order dated 4th September, 2012 issued in pursuance to Regulations for Regularization of Unauthorised Colonies in Delhi framed under Section 57 of Delhi Development Act, 1957 would not be applicable in view of its Regulation 3.3 which states that unauthorised colonies which pose hindrance in the

provision of infrastructure facilities or fall in the area of right of way of existing or proposed master plan roads amongst others cannot be considered for regularization.

20. Consequently, as the land in question is required for construction of proposed Master Plan Road of forty-five meter wide which constitutes a public project, neither Section 3(2) of the Act, 2011 nor the Order dated 4th September, 2012 offers any protection to the petitioners.

21. Accordingly, present writ petition and pending applications are dismissed. Interim orders stand vacated.

The judgment also reveals the court has also noted a similar fact as was contended by Mr. Singh that provisional regularization certificate has been issued. In Para 18, the Coordinate Bench has held that the land in question has been acquired for construction of a proposed Master Plan Road of forty-five meters wide. The court held the said aspect has not been disputed and as such the protection of Special Laws of 2011 shall not be available. That apart in Para 19 it was held that the order of September 4, 2012, on which reliance was placed by Mr. Singh also, would not be applicable in view of Regulation 3.3 which states that the unauthorized colonies, which pose hindrance in the provision of infrastructure facilities or fall in the area of right of way of existing or proposed master plan roads amongst others cannot be considered for regularization. The court finally dismissed the writ petition. The Division Bench in its order dated September

17, 2013 page 506 has rejected the appeal on the following findings:

1. Having heard learned counsel for the appellant and the respondent who appears on advance copy of the appeal being served, we find no case made out to interfere with the impugned order dated July 23, 2013 for the reason the policy decision notified regularizing unauthorized colonies in Delhi contains a term that said land which is required for a Master Plan Road, Railway Line, Sewerage Line or Trunk Water Supply shall not be treated as having been regularized. The same is evident from condition No.3.3(b) of the policy, which reads as under:-

3.3 The following type of colonies or part thereof would not be considered for regularization.

a.

b. Unauthorized colonies/part of colonies/habitations which pose hindrances in the provision of infrastructure facilities or fall in the area of right of way (ROW) of existing or proposed railway lines, master plan roads and major/trunk water supply and sewerage lines.?

2. The fact which needs to be noted is that the colony New Ashok Nagar, New Delhi has been illegally developed by land grabbers. Land acquired for public purposes, before it could be used for the public purpose came under illegal occupation. In Delhi, thousands of hectares of land have likewise been illegally colonized and the Government has not only turned a blind eye to said illegal acts but has conferred legitimacy on the same by regularizing these illegal colonies, but subject to exceptions.

3. The land which is sought to be re-claimed and in respect of which the appellants have a grievance constitutes the

right of way on a proposed Master Plan Road, and since the regularization policy does not regularize any illegal structure on said land, we agree with the view taken by the learned Single Judge that no relief can be granted to the writ petitioners who are appellants before us.

4. The appeal is dismissed in limine.”

8. The said conclusion, it must be held was with regard to Plot No. B, which is also the plot in the case in hand, as according to Mr. Singh during submissions had been initially numbered as B-6/1, further, re-numbered B-29 and B-29A. In any case, the Coordinate Bench of this Court and the Division Bench having dismissed the writ petition and the appeal, the present petition should also have the same fate. That apart even in the Suit filed by Mr. Subhash Chander Chauhan, the application under Order XXXIX Rule 1 and 2 CPC was dismissed. The plea of Mr. Singh that the judgment of the Coordinate Bench of this Court was per incuriam by relying upon the judgment in the case of ***Sundeep Kumar Bafna (supra)***, does not appeal to this court, for more than one reason, (i) the said judgment does not pertain to the land in question, and (ii) Division Bench has upheld the judgment of the Coordinate Bench of this court in the case of ***Ms. Meeta Chakraborty and Ors. (supra)***. Suffice to state, the petitioners are not entitled to the relief sought in the petition.

I do not see any merit in the petition. The petition is dismissed.

CM No. 14896/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 23, 2018/ak/jg