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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd June, 2020
Date of decision: 16th July, 2020

+ W.P. (C) 3390/2020 & CM APPLs. 12032-33/2020

SHAKINA

..... Petitioner

Through: Mr. Pawan Bindra, Mr. Sanjeet
Kumar and Mr. Sumant De,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arun Birbal, Advocate.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. The Petitioner has filed the present writ petition against the Delhi Development Authority (*hereinafter*, “DDA”) seeking an order restraining DDA from taking any coercive steps, as also a right of hearing before the Special Task Force (*hereinafter*, “STF”).

Petitioner’s Case

2. The case of the Petitioner is that she is an original resident and owner of property bearing No. T-2, Village Begumpur, Malviya Nagar, New Delhi-110017, forming part of Khasra No.110 (Old Khasra No.222/60) (*hereinafter*, “property”). She states that the property was inherited by her from her father. The entire basis of the writ is an order dated 23rd April, 2019 passed by a Id. Division Bench of this Court in W.P.(C) No.4649/2017. The said writ petition was filed by one Mr. Fazruddin, who

is alleged to be a neighbour of the Petitioner, against the DDA. The Petitioner was Respondent No.3 in the said writ petition in which notice was issued on 4th December, 2018 and the DDA was directed to keep any coercive action in abeyance till the next date. As per order dated 23rd April, 2019, the Id. Division Bench, while finally disposing off the said writ, had directed the STF to take a considered view in the matter. Interim order dated 4th December, 2018 was continued till the time the STF took a decision as to the status of the property.

3. However, despite this order of the Id. Division Bench, the Petitioner's case is that she was made aware of a Whatsapp message, circulated on 1st June, 2020, as per which the DDA was taking action to demolish the property. Hence, the reliefs sought in the writ petition are as under:

“a) Pass such orders/direction in the nature of Mandamus thereby directing and the restraining the Respondent not to take any coercive step till the order dated 23.04.2019 is complied in its true letter and spirit; and

b) Pass such and further order thereby granting the Petitioner the right to be heard by the STF as and when the issue of status of the property in question i.e. T-2, village Begum Pur (Khasra No.110), New Delhi; and

c) Pass such and further orders thereby directing the Respondent to follow the Order dated 04.12.2018 & 23.04.2019 in its true letter and spirit; and

d) pass such other or further order or orders as Your Lordships may deem fit and proper.”

Procedural History

4. This writ petition was first heard on 8th June, 2020, on which date

demolition by the DDA had already begun. In view of the fact that Id. counsel for the DDA was to seek instructions in the matter, the demolition was stayed until the next date.

5. On 9th June, 2020, the DDA placed on record various documents to argue that the property was located in Khasra No.110 and the said land was acquired by the DDA way back in the 1970s, which acquisition was upheld by this Court. It was also argued that the Petitioner was merely an encroacher and, accordingly, dismissal of the writ was prayed of. Copies of the documents filed by the DDA were supplied to the Petitioner. Detailed oral submissions have been made by the parties. A series of written submissions with several documents attached therewith, have also been exchanged and placed for the Court's consideration.

6. On 11th June, 2020, an application has been filed by one Sh.Jagan S/o Sh. Musaddi Khan seeking impleadment. However, on the said date, the impleadment application was not on record. Submissions were briefly heard and the intervenor was directed to transmit the same to the Court Master through email. On the next date, i.e., 22nd June, 2020, when judgment was reserved, none appeared for the intervenor. In any event the request for impleadment on the ground that the land in question is allegedly the ancestral land of the applicant and his family members cannot be entertained in the present writ petition which is only concerned with one portion of Khasra no.110 i.e., the '*property*'. Accordingly, the impleadment application, being CM No..../2020 (to be numbered), is dismissed.

Submissions

7. Mr. Pawan Bindra, Id. counsel appearing for the Petitioner, submits that the orders of the Id. Division Bench dated 4th December, 2018 and 23rd

April, 2019 ought to be complied with in letter and spirit. He contended that a '*considered view*' by the STF would mean that a reasoned order would have to be passed by the STF. Ld. counsel submitted that the minutes of the 42nd meeting of the STF, dated 17th January, 2020, would show that insofar as this property is concerned, the only direction passed by the STF was to upload a copy of the stay order passed by the Id. Division Bench of this Court. There was no decision taken, let alone a considered decision, with respect to demolition. Hence, the demolition action was argued to be contrary to the order of the Id. Division Bench.

8. On the other hand, Mr. Arun Birbal, Id. counsel appearing for the DDA, submitted that the Petitioner has concealed material facts from this Court. He submitted that the entire land was acquired by the government vide Award No. 1409 dated 31st October, 1962. The same was then placed with the DDA. The Petitioner had challenged the said acquisition in W.P. (C) No. 7589/2000, which petition was dismissed by a Id. Division Bench of this Court on 13th November, 2002. The said order also records that possession of the land vests with the DDA as on 3rd January, 1968. The DDA further argued that the Petitioner is an encroacher who had filed a civil suit, being CS SCJ No. 82902/2016, seeking an injunction from being dispossessed, which was dismissed on 20th February, 2018. An appeal against the said order, being RCA No. 18/2018, was also filed, in which an application for interim relief was refused in view of the order passed by the Id. Division Bench, dated 23rd April, 2019.

9. It was further urged by the DDA that the order dated 23rd April, 2019, which is relied upon by the Petitioner, was passed in W.P. (C) No. 4649/2017, a writ petition filed by one Mr. Fazruddin, an alleged neighbour

of the Petitioner. It was further submitted that it was only the Petitioner in WP (C) 4649/17 who was permitted to raise a grievance before the STF vide order dated 23rd April, 2019, in accordance with the scheme, however the Petitioner herein was not given any liberty of being heard before the STF. The DDA relies upon the minutes of the 35th meeting of the STF to argue that the STF considered all the relevant documents. As per the DDA, in this order, the Id. Division Bench merely directed that the STF take a considered view as to the status of the property. Accordingly, the STF examined the matter in its 35th meeting dated 19th September, 2019 and in its 36th meeting dated 4th October, 2019. Id. counsel submits that a perusal of the minutes of these two meetings would show that the STF had taken a considered view in this matter by directing the Commissioner (LM) to pass a recommendation and the DDA to take necessary action as per the same. On 17th October, 2019, the Commissioner (LM) passed an order directing demolition. According to the Id. counsel for the DDA, no further orders were required to be passed by the STF.

10. Reliance was also placed on a judgment of this Court in ***Atul Singh Gandas & Anr v. Lieutenant Governor of GNCTD & Ors [WP(C) No. 3386/2011, decision dated 17.04.2014]*** to argue that even if a provisional regularisation certificate existed, the same would be of no legal consequence. Reliance is also placed on two decisions of this Court in ***Baba Balbir Singh v. DDA [RFA No. 96/2018, decided on 5th February, 2018]*** and ***Balwan singh v. DDA [W.P.(C) 8262/2010, decided on 6th January, 2011]***.

11. It was further submitted by Id. counsel for the DDA that the property does not belong to Begumpur village. In fact, the map of Begumpur village

shows that the property is outside the unauthorised colony. Ld. counsel also submitted that the Petitioner herein had filed objections to the map of Begumpur village and sought rectification and this fact has been concealed before this Court. It is further submitted that the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2009 relied upon by the Petitioner does not give any entitlement to stop the demolition as the said statute merely recognises and regularises transactions of immovable properties based on power of attorney, agreements to sell, Will, possession letter and other documents. The said statute also became operative only from December, 2019.

12. In response, Mr. Pawan Bindra, ld. counsel, relied upon a series of documents dating back to 1978 to make the following submissions:

- i. That the village has been de-notified in 1978.
- ii. That the order of the ld. Division Bench dated 23rd April, 2019 has not been complied.
- iii. That as per the Zonal Development Plan for Zone 'F' (South Delhi-I), there is no approved layout-plan for the village
- iv. Reliance is also placed on various RTI replies to argue that the redevelopment plan for the village is under process and hence the demolition would be contrary to law
- v. That the land does not vest with the DDA but is under the jurisdiction of the South Delhi Municipal Corporation (*hereinafter, "SDMC"*)

13. Mr. Bindra further submitted that a hearing should be given by the STF to the Petitioner and that unilateral action cannot be taken by the STF. It is further submitted that the Petitioner's children have applied under the

PM-UDAY scheme, which confers rights in unauthorised colonies. Thus, the DDA would have no jurisdiction over the property. Reliance is placed on the provisional certificate of regularisation dated 17th September, 2008 granted to the Petitioner, which, as per the Petitioner, has merged with the Final Certificate of Regularization in 2019.

Analysis & Findings

14. This Court has heard the ld. counsel for the parties and perused the three sets of written submissions filed by the Petitioner and the two sets of written submissions filed by the DDA.

15. The only issue which this Court is required to consider in this case is whether the order dated 23rd April, 2019 passed by the Ld. Division Bench, has been complied with and whether the Petitioner is entitled to any relief in this petition. The order dated 23rd April, 2019 reads as under:

“This matter pertains to unauthorized construction in the property bearing Khasra No.110, Village Begumpur, Malviya Nagar, Delhi as indicated in the writ petition.

*In matters relating to unauthorised construction, this court has, by detailed order dated 20.09.2018 made in Writ Petition (Civil) No. 1807/2018 titled **Devender vs. Government of NCT of Delhi & Ors.** (and connected matters) taken note of the fact that the Hon'ble Supreme Court is seized of the issue of unauthorised construction in Writ Petition (Civil) No. 4677/1985 titled **M.C. Mehta vs. Union of India & Ors.**, in which case the Apex Court has passed various directions, including those contained in orders dated 24.04.2018 and 18.07.2018. In the backdrop of that matter the Ministry of Housing & Urban Affairs (“MHUA”) of the Government of India has*

vide Office Memorandum No. O-33011/1/2006-DDI dated 25.04.2018 constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Bye Laws and Master Plan for Delhi-2021 relating inter alia to construction activity and land-use in Delhi. Vide another Office Memorandum dated No. O-33011/1/2006-DDI 23.05.2018 the MHUA has also formulated an action plan for monitoring construction activities in Delhi and for fixing responsibility in case of violations of the Unified Building Bye Laws and the Master Plan.

The Special Task Force comprises 15 members from various municipal, civic, revenue and law enforcement agencies of Delhi; and even has its own dedicated website and mobile application to facilitate making of complaints. The Special Task Force is therefore a specially constituted agency to address grievances relating inter-alia to unauthorised construction; and an aggrieved person may avail the alternate, efficacious remedy before the Special Task Force.

In view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise extraordinary jurisdiction in matters relating to unauthorised construction; and we would therefore dispose of the present petition, granting liberty to the petitioner to raise the grievance before the Special Task Force so constituted, in accordance with the scheme and procedure formulated under the aforesaid two Office Memorandums.

Interim order passed by us on 4.12.2018 in C.M. No.50649/2018 shall continue till the Special Task Force takes-up the matter and forms a considered view as to the status of the subject

property.

This petition is disposed of in the above terms.”

16. A perusal of the above order shows that the Id. Division Bench recorded the background of the constitution of the STF by the Supreme Court and has observed that it is not appropriate for the Court to exercise extraordinary jurisdiction in relation to matters concerning unauthorised construction. Accordingly, the Id. Division Bench passed the following directions:

- i. That the Petitioner therein would be permitted to raise a grievance before the STF which was constituted in accordance with the scheme and procedure formulated under the two office memorandums mentioned in the order.
- ii. Until the STF takes a considered view in the matter, the order directing that no coercive action would be taken pursuant to letter dated 22nd November, 2018, was to continue to remain operational.

17. The stand of the Petitioner is that the Petitioner has not been given a hearing and hence, the STF has not taken a considered view of the matter. The stand of the DDA is the exact opposite i.e., that the STF has taken a considered view over the course of several meetings and that the Petitioner is merely an encroacher who does not deserve any indulgence from this Court.

18. In order to appreciate whether the STF has taken a considered view in the matter or not, this Court deems it appropriate to analyse the various minutes of meetings of the STF:

***Court Case WP (C) 4649/2017 & CM No.5049/2018: Fazruddin Vs DDA & Ors.
regarding encroachment/unauthorized construction on Khasra No.110 Begampur on
DDA Land.***

Meeting Details	Particulars
35 th Meeting dated 19 th September, 2019	Dy. Dir., LM (SEZ) vide letter no. F11(92)2018/LM/SEZ/DDA dt. 24.06.2019 and 28.08.2019 has request Commr. (Plg.) to take up the matter with STF in pursuance to order dated 23.04.2019 in which the Hon'ble Court has passed the order that the "interim order passed by Hon'ble Court on 04.12.2018 to continue till the Special Task Force take up the matter." <u>As per the copy of the note forwarded to STF, the land Khasra No.110 is acquired land of DDA vide award no.1049 and physical possession was taken on 23.11.1962. It was directed to take necessary action as per recommendation of Commissioner (LM) in accordance with the law</u>
36 th Meeting dated 4 th October, 2019	ATR to be submitted by DDA before next STF meeting.
37 th Meeting dated 30 th October, 2019	CLM, DDA informed that demolition programme was fixed for 17.10.19 but could not be carried out. The programme will be fixed again. ATR will be submitted in the next ...
38 th Meeting Agenda	The matter was on the Agenda, however, the Minutes are not on record. The relevant Agenda item reads as under: "AR awaited from DDA"
39 th Meeting Agenda	The matter was on the Agenda, however, the Minutes are not on record. The relevant Agenda item reads as under: "Dy. Director/LM/SEZ vide report uploaded on 13.11.2019 on STF web-portal reported that demolition program was fixed for 17-10-2019 for removal of unauthorized encroachment from Khasra no 110 of village Begampur as per order of Hon'ble High Court but it was not carried out due to insufficient police force and resistance from public. Demolition program will be fixed again. Chairman, STF directed to take action without delay and submit the ATR."
40 th Meeting Agenda	The matter was on the Agenda, however, the Minutes are not on record. The relevant Agenda item reads as under: "It was informed that part new construction has been removed and demolition programme shall be re-fixed after 5.12.19 for old construction. ATR awaited from DDA."
42 nd Meeting dated 17 th January, 2020	It was informed that there is a stay from Court and were directed to upload the document.

19. A perusal of the above shows that after the order of the Id. Division Bench, the STF has considered the matter on several occasions. It was conscious of the fact that this was acquired land. It was also conscious of the fact that the possession of the land was given to the Government way back in the 1960s. The STF decided that the unauthorised construction and encroachment ought to be removed and directed the Commissioner to take action in accordance with law. Repeatedly the '*Action Taken Report (ATR)*' is called for. The attendance sheet filed by the DDA shows that in the 35th meeting, all the relevant parties i.e., the PWD, the EDMC, the SDMC, the NrDMC, the ASI and relevant officers from the DDA etc., were present with all the records. Thus, there can be no doubt that the STF took a considered view in the 35th meeting itself. Thus, the only question is whether the STF was to give a hearing to the Petitioner, which, admittedly, it did not do.

20. The Petitioner has asserted her right in the civil suit filed. In the said suit, the reliefs sought were for permanent and mandatory injunction. A perusal of the final judgement of the Id. Senior Civil Judge in CS SCJ No.82902/2016 titled *Shakina v. DDA* shows that specific issues were framed as to whether the Petitioner was entitled to a mandatory/permanent injunction against the DDA. In the final decision dated 20th February, 2018, the Court has arrived at the following findings:

- i. That the Petitioner had filed an earlier civil suit in 1997 being CS No. 809/1997. The said suit, which sought for declaration and permanent injunction in respect of Khasra No.110, was withdrawn by the Plaintiff on 22nd January, 2001 without liberty to file a fresh suit on the same cause of action.
- ii. Another writ petition, being W.P. (C) No. 7589/2000, was thereafter

filed by the Petitioner, challenging the acquisition of the property, which was dismissed by a Id. Division Bench of this Court vide order dated 13th November, 2002, on the ground that it was belated and without any merit and substance.

- iii. The Petitioner's father filed a writ petition, being W.P. (C) No. 1407/2000, challenging the DDA's decision to construct a park over the property. Vide order dated 26th March, 2008, this petition was also dismissed and the DDA was allowed to convert the land into a park, while ensuring that the graves situated on the property are not demolished and the same are treated with respect.
- iv. In the suit, the DDA had exhibited a copy of its notification dated 3rd January, 1968 under Section 22 (i) of the DD Act, 1957 vide which the property was placed at the disposal of the DDA for the purposes of development.
- v. The Plaintiff had not filed any records to show that she was still in possession and ownership of the land. The *khasra-girdawari* pertaining to 1980 till had not been exhibited during the Plaintiff's evidence and, hence, the Court held that the same could not be read in favour of the Plaintiff. The Plaintiff was thus found to have failed to prove on record her continuous undisturbed possession over the property.
- vi. The property was clearly acquired vide Award No.1409. As per the award, compensation was not to be paid to anyone till the clear title of ownership was established. The award further mentioned that though Field No. 110 was recorded to be a graveyard in the revenue record, a physical inspection revealed that it was being used for purposes other

than a graveyard.

vii. Even if the village was de-notified, it has not been released from acquisition and since the Plaintiff's writ challenging the acquisition has been dismissed, the acquisition has attained finality. Thus, the suit was dismissed by the Trial Court.

21. On appeal, an application was filed by the Petitioner under Order 41 Rule 5 CPC seeking an order restraining the DDA from taking any coercive action with respect to the property. This application was, however, dismissed in view of the order dated 23rd April 2019, passed by the 1d. Division Bench.

22. From the above findings it is clear that the Petitioner has clearly failed to establish rights in respect of the land in question. The Petitioner has also filed objections in respect of the map of Begumpur which has been put in the public domain. Thus, there is a serious question as to whether the Petitioner's property is, in fact, part of the unauthorised colony which is supposed to be regularised. All these facts have not, however, been pleaded in the writ petition, which is premised on the order dated 23rd April, 2019. The final order passed in the suit was not filed with the writ petition. The details of the objections filed to the map of Begumpur have also not been filed.

23. The findings of the 1d. Senior Civil Judge are completely binding upon the Petitioner who has filed an appeal against the said judgment which is still pending. Clearly, the Petitioner has availed of several remedies, including a challenge to the acquisition, two civil suits and one writ petition where the Petitioner has appeared as a Respondent. However, in no forum has the Petitioner been granted any relief.

24. The order of the Id. Division Bench dated 23rd April, 2019 is clear i.e., that the STF would be empowered to take a '*considered view*' as to the status of the property. The order of the Id. Division Bench does not disturb the findings of the Id. Senior Civil Judge in CS SCJ 82902/16 against the Petitioner. The land is clearly government land. Repeated proceedings are being filed by persons who are in occupation to somehow prevent the land from being utilised by the government. Petitions ranging from challenges to the acquisition, civil suits, PIL, writ petition(s) etc., have all been filed somehow to deter the authorities from proceeding in accordance with law.

25. The order of the Id. Division Bench was passed in the backdrop of the judgment of *Devender v. GNCTD & Ors. and connected matters [W.P.(C) 1807/2018, decided on 20th September, 2018]* wherein a Id. Division Bench of this Court, while dealing with unauthorized constructions and encroachments had reviewed the various orders passed by the Supreme Court in *MC Mehta v. Union of India, W.P (C) No.4677/1985*. In the said matter, the Supreme Court had supervised the creation of the Special Task Force and also directed the Special Task Force remove encroachments on public streets, public roads, pedestrian streets, etc. An action plan was also drawn up by the Special Task Force for preventing further illegal construction and for removal of unauthorized construction. In view of the setting up of the Special Task Force and the action plan drawn under the supervision of the Supreme Court, this Court in *Devender (supra)* came to the conclusion that it would not be appropriate for it to exercise jurisdiction in these matters. The Task Force was thus the appropriate forum for dealing with all the complaints in accordance with law.

26. A perusal of the STF minutes referred to above shows that the matter has been considered by the STF. The STF has noted that the land was acquired land and the DDA has taken possession of the same way back in 1962. Thereafter the STF has repeatedly called for the ATR – i.e., the Action Taken Report which clearly shows that encroachments were to be removed. The sole instance of the STF simply mentioning in its 42nd meeting that the stay order was not available, cannot obliterate the earlier Minutes where it is clearly recorded that unauthorised construction has been removed and demolition programme is re-fixed after 5.12.19 for old construction. The STF was thus continuously supervising the steps taken. The findings of the Id. Senior Civil Judge being completely binding in nature and in view of the fact that the STF has taken a considered view in the matter, the Petitioner is not entitled to any relief. The only question is whether the Id. Division Bench's order dated 23rd April, 2019 required the Petitioner herein to be given a hearing.

27. The Id. Division Bench's order dated 23rd April, 2019 only permits the Petitioner in WP (C) 4649/17 to raise his grievances before the STF. It does not give any liberty to the Petitioner herein to appear before the STF and raise its grievance. The interim order however enured to the Petitioner, till the STF took a considered decision, which it has in the 35th Meeting on 19th September 2019 and thereafter. From a plain reading of the order dated 23rd April, 2019, liberty is only granted to the Petitioner in the said writ and not to the Petitioner herein. Thus, the grievance of the Petitioner herein that a hearing ought to have been granted is not tenable.

28. However, considering the fact that there is currently a partial lockdown due to COVID-19, two weeks' notice may be given to the

Petitioner by the DDA before directing demolition or removal of encroachments, in order to ensure that the Petitioner is able to find an alternate accommodation and move her belongings before the demolition takes place. It is further directed that the demolition should be carried out in a manner that is respectful of the graves on the property as directed by the Id. Single Judge in W.P. (C) 1407/2003, as follows:

“18. In view of the reasoning given above, I do not find any merit in the present writ petition and the same is accordingly dismissed. However, the respondent-DDA will ensure that the graves are not demolished and proper respect is given to the said graves while constructing and converting the said land to a park. No costs.”

29. The prayers in the writ petition are accordingly liable to be rejected in the above terms. Ordered accordingly. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

JULY 16, 2020
dj/T/A