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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 08 March 2022

+ W.P.(C) 12/2019 & CM APPLs. 39/2019, 32967/2020

SHRI ROSHAN LAL

..... Petitioner

Through: Mr.Kamlesh Kumar Mishra, Adv.

versus

D.D.A (DELHI DEVELOPMENT AUTHORITY) Respondent

Through: Ms.Prabhsahay Kaur, Adv.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)**

1. The petitioner challenges the order of 19 September 2014 passed by the Appellate Authority in proceedings initiated under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971¹**. The Appellate Authority has affirmed the order of eviction as framed by the Estate Officer in terms of the provisions made under Section 5 of the Act. It has essentially found that the petitioner here claimed an interest in the public premises by virtue of being a member of the **Delhi Peasant Multipurpose Society Limited²**. Admittedly the lease that was executed by the **Delhi Development Authority³** in favour of the Society had come to an end by efflux of time. The Authority thereafter proceeded to direct it to

¹ Act

² Society

³ Authority



hand back possession of the leased land. Since its numerous members including the petitioner failed to vacate the subject premises, proceedings under the Act came to be initiated and which ultimately culminated in the passing of eviction orders by the Estate Officer. It is in the aforesaid background that the Appellate Authority came to hold that since the petitioner claimed a right to occupy and cultivate the land constituting the subject premises only through the Society, no right stands vested in him to continue to occupy the public premises.

2. It becomes apposite to note that the writ petition has been styled as having been instituted by “Shree Roshal Lal (deceased) through his brother Raj Kumar”. Admittedly, the proceedings under the Act were initiated against the deceased cultivator. He is stated to have died on 06 May 2018. It is the case of the petitioner that he has been occupying the land in question where the widow of the erstwhile cultivator also resides. It is in the aforesaid background and on an assertion that the petitioner was also a member of the Society that the present writ petition has been preferred. It becomes necessary to note that the institution of the present writ petition on behalf of a dead individual cannot possibly be countenanced. However, since the petitioner claims to be an agriculturist of meagre means and the present matter was duly entertained way back in 2019, the Court does not choose to non-suit him on this technical ground. The Court thus proceeds on the basis that the writ petition is being pursued by the brother of the original cultivator asserting a right to possess the land in his own right.

3. When the writ petition was initially entertained, a learned Judge taking note of the orders passed in the W.P.(C) Nos. 2 and 3 of 2019 had



provided that till 08 January 2019, status quo in respect of the petitioner's land would be maintained. The said order reads thus:-

“2. For the reasons stated in the orders dated 2nd January, 2019, passed in W.P.(C) Nos.2 & 3 of 2019, it is directed that until 8th January, 2019, status quo shall be maintained in respect of the petitioner's land, as existing at the time of passing this order, i.e. 4:20 PM on 4th January, 2019.”

4. In order to appreciate the challenge addressed in this petition, it would be necessary to notice the following salient facts.

5. The petitioner claims to be a member of the Society and states that the land in question had been in the cultivatory possession of his predecessors in interest since pre-Independence. It is his case that the land was being tilled by his forefathers from time immemorial and in any case prior to the promulgation of the **Delhi Land Reforms Act, 1954**⁴. The petitioner claims to have been in continuous possession of the land for decades and of having paid rent to the Society periodically. The Authority claims title over the land by virtue of being the successor to the **Delhi Improvement Trust**⁵ in whose favour a lease had come to be executed by the Secretary of State for India on 31 March 1937. The Trust is stated to have allotted 13,344 bighas falling in seven villages for a period of five years to the Society. The lease is stated to have been extended firstly in 1956 and again in 1961. It was ultimately determined on 31 July 1967 and 06 October 1967. Since vacant possession of the land was not handed over to the Authority, proceedings under the Act came to be initiated in 2004. Orders of eviction were thereafter passed and as in the present case were

⁴ 1954 Act

⁵ Trust



also affirmed by the District Judge in appeal. Insofar as the present petition is concerned it may be noted that the Estate Officer passed an order of eviction on 22 June 2015. That order as in all other similar cases was affirmed in appeal.

6. It further transpires from the record that various other writ petitions by members of the Society asserting similar rights came to be preferred before this Court seeking a restraint against the respondents from dispossessing cultivators and occupants who had been members of the Society from the land in question. The challenge mounted on identical lines formed part of a batch of writ petitions led by **Sunil Kumar and another vs. Delhi Development Authority**⁶. The Court upon considering the challenge as raised proceeded to hold thus:-

“30. The admitted and undisputed facts are that the leases were created in favour of the Societies for its members and, therefore, the appellants and writ petitioners can claim their right of occupation in respect of the land in their possession and occupation, only through the Societies and, therefore, the appellants and writ petitioners in Group 'A' cases are bound by the order of this Court in RFA No.250/1971 which was disposed of by this Court in terms of undertaking of DDA to take action only as per the provisions of the PP Act. It is pertinent that the Society agreed to the undertaking of DDA and did not press its appeal. It cannot now turn around and challenge the action of DDA under the PP Act while earlier they did not oppose the undertaking of DDA to resort to the provisions of the PP Act for getting them evicted from the land in their occupation. Alternatively, since the appellants/ writ petitioners withdrew their RFA, and the original judgment was against them, they are bound by the same. However, since the appellants and writ petitioners have raised this plea, we propose to deal with it on merits as well.

32. From reading the provision of Section 4(5)(d) of the Punjab Tenancy Act, it is apparent that this Act is not applicable to the leases executed by the Government relating to Government unoccupied lands, where the same has been allotted for the purpose of sub-letting it. It is an

⁶ LPA 479 of 2013



undisputed fact that the land in dispute was unoccupied land, leased out to the Societies for use of its members and the Societies were precluded from sub-letting it.

40. The argument of the appellants and writ petitioners, that since the Societies had sub-leased the property to its members, therefore, they were the tenants of the Societies and their tenancy rights were protected under the State law governing the tenancy rights, has no merit. From the facts on record, it is apparent that the land was allotted to the Societies for its members. If the rights of the Societies in question were not protected by the said two Punjab Acts, the sub-lessees thereunder could obviously not claim a higher or greater protection. The appellants/ writ petitioners derived their rights only from the two Societies, and thus, their rights are subject to the limitations which bound the said Societies. Pertinently, the appellants and writ petitioners have even failed to produce any evidences on record at the appropriate forum to prove that they were paying rent to the Societies, or that they were the tenants of the Societies. Our attention is not drawn to any document which was proved on record to sustain their contention that individual tenancy rights were created in favour of the appellants and writ petitioners by the DDA. The appellants and writ petitioners have failed in their attempt to prove that they were tenants on the land in question.

46. Section 2(e) of the PP Act defines the 'public premises' which reads as under:

“2. Definitions. – In this Act, unless the context otherwise requires (e) "public premises" means-

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) in relation to the [National Capital Territory of Delhi], -

(i) XXX XXX XXX

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;”

47. Admittedly, the land in question was Government property from the very beginning i.e. even at the time when the lease was created. The PP Act became operative with effect from 16.09.1958. It empowers the owner of the "public premises" to get the "unauthorized occupants" of the public premises evicted through the special mechanism devised under the PP Act. Section 2(g) of the PP Act defines "unauthorized occupation" as under: -

“2(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises



after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

48. On determination of the lease of a Government property, all of those who are occupying it become unauthorized occupants. The Supreme Court in **Ashoka Marketing** (supra), explained the meaning of unauthorized occupation used in PP Act and held as under:-

*“30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the Public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. **The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law.**” (emphasis supplied)*

50. Thus, on determination of the lease by efflux of time, or otherwise, the appellants and writ petitioners became unauthorized occupants occupying the Government land. The Supreme Court **Ashoka Marketing** case (supra) even went to the extent of holding that PP Act has overriding effect in respect of Government land over State laws dealing with tenancy rights, such as the DRC Act.

52. There is no dispute to the fact that the lease in favour of the Societies stood determined in the year 1967. The claim of the appellant's and the writ petitioner's that they were tenants of the Societies, and were paying rent to them was also rejected. The appellants and writ petitioners have also failed to bring to the notice of this Court any evidence to prove their



contention that they were tenants under the Societies. The facts show that the lease was created in favour of the Societies for the use of its members only and, therefore, on determination of the lease, the Societies as well as the persons claiming through the Societies became unauthorized occupants of land.

56. Admittedly, the eviction orders of Estate Officers under the PP Act against some of the occupants of public premises claiming their rights through Jheel Khuranja Cooperative Milk Producers Society Limited were upheld by the Coordinate Bench of this Court in **Smt. Dhan Kaur** (supra). Similarly, the eviction orders passed under the PP Act by Estate Officers against some of the occupants of public premises, claiming their rights through Delhi Peasants Cooperative Multipurpose Society Limited, were upheld by the Coordinate Bench of this Court in **Brij Pal** (supra) in *LPA No 810/2015*, decided on 17.11.2015. These two orders of Coordinate Benches of this Court - in respect of property allotted to Jheel Khuranja Cooperative Milk Producers Society Limited and Delhi Peasants Cooperative Multipurpose Society Limited relate to the same properties which were allotted under the same agreements to these Societies, though were in occupation of some other members of these Societies (other than the appellants and the writ petitioners before us), are binding on us on the principles of constructive *res judicata* and also on the principle that the similarly placed persons should be treated alike. The appellants and the writ petitioners before us are similarly placed persons and the earlier findings given in respect of similarly placed persons are also binding on them.

57. Thus, we find no illegality or infirmity in the impugned orders. The appeals and the writ petitions have no merit and are hereby dismissed along with the pending applications with no order as to costs.”

7. The challenge to the aforesaid judgment of this Court came to be negatived by the Supreme Court in terms of the orders passed on Special Leave Petition Number 5253/2018, which reads as follows: -

“Permission to file the Special Leave Petitions is granted.

Heard the learned Counsel appearing for the parties.

We see no reason to interfere with the impugned orders passed by the High Court.

Accordingly, the Special Leave Petitions are dismissed.

Pending applications filed in the matters stand disposed of.

However, considering the fact that initially the petitioners were in authorised occupation after the leases have expired, and further considering that they are performing agricultural operations in the said



properties, we give them time till December, 2019 to vacate possession, on the usual undertaking being given before the Registry of this Court within a period of four weeks from today.”

8. As is manifest from a reading of the aforesaid order, while the Supreme Court refused to grant leave, it accorded protection to the individual members of the Society till December 2019. It was further provided that all the petitioners would have to submit an appropriate undertaking in this respect before the Supreme Court. By a subsequent order passed in Miscellaneous Application Nos. 2567-2569/2019 moved in S.L.P. 33490-33492/2016, the Supreme Court while dealing with the prayer of members of the Society for being accorded further time to hand over vacant possession, extended the same upto 31 March 2020. That order reads as follows: -

“Time to vacate the suit land(s) is extended upto 31.03.2020. It is made clear that no further extension shall be granted under any circumstance. The miscellaneous applications are disposed of accordingly.”

9. In order to complete the narration of facts, it would also be pertinent to note that the Review as well as Curative Petitions preferred against the judgment in **Sunil Kumar** have since come to be dismissed. Resultantly, the judgment in **Sunil Kumar** subject to the liberty accorded by the Supreme Court to vacate the land by 31 March 2020 has for all purposes attained finality. A reading of the present writ petition as framed establishes that the petitioner had merely sought protection in terms identical to that made by the Supreme Court. This is evident from the averments taken in paragraphs 12 to 15 of the writ petition which read as follows: -

“12. That Hon'ble Supreme Court has dismissed the SLPs vide order dated 20.03.2018 In SLP(C) no.5253/2018 titled Shiv Shankar & Others versus Delhi Development Authority & Another but has, subject to the petitioners



therein filing an affidavit of undertaking to, on or before December, 2019, vacate and hand over peaceful vacant possession of the property in their respective possession and with respect to which orders of eviction have been passed, granted time to those petitioners to vacate the premises by then.

13. That in the similar manner these petitioners do not want to pursue these petitions and withdraw these petitions and will remain bound by the eviction orders subject matter of each of the petitions, but seek time to vacate as granted by the Supreme Court;

14. that the petitioner herein is willing to file affidavits of undertakings in this regard, undertaking to, on or before 31st December, 2019 vacate and hand over vacant peaceful physical possession of the entire premises in their possession/occupation and/or with respect to which eviction order has been passed, to the respondent DDA and not to deal with the said premises in any other manner whatsoever and not to alienate, encumber or part with possession thereof to anyone else;

15. The petitioner herein wishes to state that they be treated along with the similarly situated farmers as in the other cases and their petition be also disposed of In terms of the first two sets of farmers.”

10. It is thus evident that the petitioner essentially sought protection in accordance with the orders of the Supreme Court noted above and thus could have asserted a right to be permitted to occupy the land upto 31 March 2020 only. However, despite the unequivocal stand taken by the petitioner and which consequently bound him to hand over vacant possession latest by 31 March 2020, the interim protection accorded when the writ petition was originally entertained on 04 January 2019 has continued to operate and the petitioner has remained in occupation of the land in question till date.

11. The Authority in terms of its reply which has been tendered in these proceedings has while advertng to the litigation which ensued additionally made the following significant disclosures. It asserts that the land over which the petitioner claims cultivatory rights was entrusted to the Trust in terms of a Nazul agreement executed in its favour on 31 March 1937. As



was noted above, the respondent Authority is the successor of that Trust. It is also not disputed *inter partes* that the lease agreement as executed in favour of the Society came to an end by efflux of time on 14 June 1966 and that it was thereafter called upon to hand over possession. It is further submitted that since the members of the Society failed to vacate the subject land, proceedings under the Act came to be instituted. The Authority asserts that no right inheres in the petitioner to retain possession of the subject land once the rights of the Society over the same came to an end.

12. The Authority further apprises the Court that the land in question falls in the Yamuna Riverbed Zone 'O'. It has referred to the various orders passed by the Supreme Court and the High Court commanding authorities to remove all illegal and unauthorised encroachments from Zone 'O' of the Yamuna Riverbed. The record reflects that the task of rejuvenating the Yamuna river and its surroundings embankments also formed subject matter of consideration of the National Green Tribunal. It is disclosed that as per the Seven Phase Plan approved by the Tribunal, the Authority has completed the work of development between the Old Railway Bridge to ITO Bridge on the western side of Yamuna situate in Bela Inderpat revenue estates. It is stated that a plan to develop the Asita Park has also been duly approved and is to be implemented upon the land in question. It is pointed out that the interim order passed in this writ petition has seriously hampered and impaired the completion of a project duly sanctioned and approved by the Tribunal and one which is of vital public importance.

13. Mr. Mishra, learned counsel appearing for the petitioner, has submitted that his forefathers have been in possession of the property in **W.P.(C) 12/2019**



question since prior to the promulgation of the 1954 Act and that consequently the right of the petitioner to possess and cultivate the land cannot be interfered with nor can the petitioner be treated to be an encroacher over the land or an unauthorised occupant. Mr. Mishra has referred to the material placed along with the writ petition to contend that the petitioner had been regularly paying rent to the Society and would be liable to be recognised as a bhumidhar of the land in his own right by virtue of having been in occupation thereof from prior to the promulgation of the 1954 Act. Learned counsel has also referred to the provisions made in **The National Capital Territory of Delhi Laws (Special Provisions) Act 2007⁷** to contend that the aforesaid enactment clearly injuncts and restrains the respondents from taking any coercive action even in cases where public land may have been unauthorisedly occupied. According to Mr. Mishra, the provisions of the 2007 Act protect the right of the petitioner to retain possession and the action of the respondents is wholly arbitrary and illegal.

14. Controverting the aforesaid submissions, Ms. Kaur, learned counsel appearing for the Authority, would contend that the instant writ petition is clearly in abuse of the process of Court. According to Ms. Kaur, undisputedly the challenge raised in the present petition stands conclusively settled in light of the judgment rendered by the Court in **Sunil Kumar**. According to learned counsel, the entire controversy was lent a quietus once the special leave petitions as well as the review and curative petitions came to be dismissed. Ms. Kaur submits that as per the petitioner's own case, all that was originally claimed was a right to continue to occupy the land in

⁷ 2007 Act



accordance with the terms set down by the Supreme Court. Learned counsel submits that the writ petition as preferred was premised solely upon the orders of the Supreme Court with the petitioner virtually conceding that he could not claim a right to be in occupation of the premises beyond 31 March 2020. It is in the aforesaid backdrop that Ms. Kaur would urge this Court to dismiss the writ petition. It was lastly submitted that the various submissions addressed today and founded on a perceived interpretation of the 1954 and 2007 enactments are thoroughly misconceived, stand conclusively answered against the petitioner and deserve to be outrightly rejected.

15. Ms. Kaur, learned counsel has also drawn the attention of the Court to a recent judgment rendered by a learned Judge in **Yamuna Bank Kishan Bachao Morcha v. State of NCT of Delhi**⁸ where the Court observed as follows:-

“22. At the outset it is to be mentioned that all the questions raised by the petitioner in the instant writ petition have been conclusively answered by this Court while deciding the batch of LPAs which have been dismissed by this Court vide order dated 31.01.2018. The receipts filed by the petitioner shows that the cultivators therein form a part of the land called as the Bela Estate. Material on record indicates that there was an agreement entered into between the Secretary of the State and Delhi Improvement Trust (DIT) on 31.03.1937 by which the Bela Estate, which has been shown as Nazul land, had been given to DIT on lease. DDA is the successor of DIT and on termination of the lease, the members of the petitioner Society have become encroachers and are, therefore, identically situated to the petitioners in LPA 479/2013, LPA 481/2013, LPA 482/2013, LPA 482/2013, etc., which were filed before this Court in 2013 and are, therefore, fully covered by that judgment. The said judgment states as to how DDA can be the owner of the land and how the members of the Delhi Peasants Co-Operative Multipurpose Society Ltd to which the petitioners are paying money have become encroachers. The

⁸ 2022 SCC Online Del 372



petitioner is only seeking to re-agitate the same issues which have been decided by this Court in a batch of LPAs being LPA 479/2013, LPA 481/2013, LPA 482/2013, LPA 482/2013, etc., way back in 2013.

25. The petitioner has not been able to establish any semblance of right on the property. Other than filing few receipts which shows that money has been paid to the Delhi Peasants Co-Operative Multipurpose Society Ltd. in Bela estate, which is a Nazul land, does not confer any right to the petitioner especially when the Delhi Peasants Co-Operative Multipurpose Society Ltd. has already failed in its attempt and the members of the petitioner/Society have been held trespassers by the Division Bench in LPA 479/2013 and other connected matters and the SLP, review and curable petitions arising out of the said order have been dismissed by the Apex Court.

26. The writ petition shows that the petitioners are growing crops of Radish, Brinjal, Potato, etc. which is clearly prohibited by the order of the National Green Tribunal. The National Green Tribunal by order dated 13.01.2015 has observed as under:-

“51. Unauthorised activities are being carried out on the floodplain and at some places they have even encroached up to the riverbed of Yamuna. Agricultural products raised from these areas have shown to be injurious to human health, primarily for the reasons that the river carries very high pollutants, including heavy-metals and acidic elements. One of the studies brought on record which is even supported by the United Nations, is the first to link river contamination with adverse impacts on human health. According to this study, around 23% of children had lead levels in their blood above 10 micro grams - a widely accepted guideline - whose adverse health effects have been noted. The study said high level of lead in blood was eight times more when exposed to the riverbank after Wazirabad in north Delhi, compared to rural areas upstream in Haryana, where river water contamination was found to be less. Heavy metals such as lead are more readily absorbed by children as compared to adults. The resultant disasters would be impairment of motor skills, onset and development of hypertension and may even result in slow cognitive development. Water and soil samples were lifted every 2 km, starting, from Wazirabad Barrage and covered 22 km of the river in the capital. The presence of heavy metals increased after Wazirabad even though every drop of water that flows in the river in Delhi has to be cleaned through Sewage Treatment and Effluent Treatment Plants.



Presence of heavy metals was negligible in Haryana. Hexavalent chromium, said to be hazardous was found to be highest at Old Yamuna Bridge and Indraprastha Estate Power Plant. This is the area where maximum vegetables are grown on riverbed. At this point there is also heavy industrial discharge into the river.

52. Agricultural activities must be carried on as it is essential for our day to day living, but, agriculture produce that will lead to greater harm to human health must be checked and if necessary should also be, stopped. The principle of 'Inter-generational Equity' would require that today 'younger' generation should not be exposed to serious health hazards and thus, it will not only be desirable but essential that such contaminated produce/vegetables are not offered for consumption to the people at large. The Principle of Comparative Hardship would clearly mandate that where the injury is n much; greater in proportion to the benefit that would accrue as a result of such activity, the activity must be stopped in the larger interest of the public and of public health."

28. Since the records show that the members of the petitioner/society are in unlawful occupation, the relief for compensation on the ground of DDA damaging the crop is not maintainable. This writ petition is nothing but an abuse of the process of law and another attempt by the members of the petitioner Society to cling on to the land while they have already been held to be unauthorized occupants and encroachers. The members of the petitioner Society have, therefore, violated the undertaking given to the Apex Court. Since the petitioner claims that their members are farmers, this Court is not imposing costs on the petitioner Society."

16. It must at the outset be noted that the petitioner had approached the Court essentially seeking protection in terms of the orders of the Supreme Court and which would have thus entitled him to retain possession of the subject land only till 31 March 2020. He had unambiguously stated in the writ petition that he was willing to submit an undertaking on lines as envisaged in those orders and it was to this limited extent alone that intervention of the Court was sought. Viewed in that light, it is perhaps not even legally permissible for him to now turn around and assert that his right of occupation either stands perfected under the provisions of the 1954 Act



or seek protection of the provisions of the 2007 Act even if they were assumed to apply. However, since Mr. Mishra has addressed submissions on those lines with great vehemence the Court proceeds to deal with the contentions urged hereinafter.

17. Before proceeding to do so, it becomes necessary to preface the conclusions which follow with the following undisputed facts which are manifest from a perusal of the record. The petitioner has abjectly failed to place on the record any evidence which may have established a right conferred on him or his forefathers to possess the land or claim title thereon. The case of the petitioner also does not rest on any allotment or grant that may have been made by a competent authority in accordance with law. The receipts of payment of periodical rent to the Society cannot possibly be viewed as evidence of title over the land. While the petitioner may have cultivated the land by virtue of being a member of the Society, once the rights of that entity over the land came to be extinguished, no right survived in the petitioner to remain in occupation. To put it differently, the petitioner by virtue of being a member of the Society cannot possibly claim a right superior to that which stood conferred on that body.

18. The Court then proceeds to deal with the submissions addressed by Mr. Mishra based on the provisions of the 2007 Act. In order to adjudge the merits of the contentions addressed, it would be relevant to firstly take note of some of the salient provisions of that enactment. The expression 'encroachment' has been defined therein as follows: -

“2. Definitions.—



(c) “encroachment” means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use;”

19. The 2007 Act proceeds to define “unauthorized development” in the following terms:-

“2. Definitions.—

(i) “unauthorised development” means use of land or use of building or construction of building or development of colonies, village *abadi* area and its extension, carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.”

20. Section 3 which deals with the subject of enforcement action being placed in abeyance until a policy for relocation and rehabilitation is framed reads as under:-

“3. Enforcement to be kept in abeyance.— (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and *Jhuggi-Jhompri* clusters, hawkers and urban street vendors, unauthorised colonies, village *abadi* area and its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:—

(a) policy for relocation and rehabilitation of slum dwellers and *Jhuggi-Jhompri* clusters in accordance with provisions of the Master Plan of Delhi, 2021 to ensure development of Delhi in a sustainable, planned and humane manner;

(b) strategy for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan of Delhi, 2021;



- (c) scheme containing guidelines for regularisation of unauthorised colonies, village *abadi* area and its extension, as existed on the 31st day of March, 2002, and where construction took place even beyond that date and up to the 8th day of February, 2007;
 - (d) policy regarding existing farm houses involving construction beyond permissible building limits; and
 - (e) policy regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.
- (2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, *status quo*—
- (i) as on the 1st day of January, 2006 in respect of encroachment or unauthorised development; and
 - (ii) in respect of unauthorised colonies, village *abadi* area and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1),
- shall be maintained.
- (3) All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December, 2008.
- (4) Notwithstanding any other provision contained in this Act, the Central Government may, at any time before the 31st day of December, 2008, withdraw the exemption by notification in respect of encroachment or unauthorised development mentioned in sub-section (2) or sub-section (3), as the case may be.”

21. It becomes relevant to note that the 2007 Act had essentially taken note of the phenomenal increase of population pressure on the National Capital Territory owing to migration and various other factors. The enactment also takes note of the tremendous pressure caused by the influx of people on existing land and infrastructure and which in turn had led to widespread encroachments and unauthorized developments. In order to



holistically deal with the aforesaid issue, the 2007 Act contemplates the formulation of rehabilitation and relocation schemes and for planned development of the National Capital Territory region. However, it becomes pertinent to note that the encroachments which are sought to be remedied pertain to those existing on public land and where temporary, semi-permanent or permanent structures for residential, commercial or any other use may have come to exist. The unauthorized development which the 2007 Act seeks to remedy also relate to use of land or buildings, developments of colonies, village abadi areas carried out in contravention of sanctioned plans or in violation of the land use as permitted under the Master Plans and the Zonal plans as may have been drawn by the authority or Delhi Municipal Corporation. However, the 2007 Act does not even remotely deal with unauthorized occupation of rural land. The definition of the expressions encroachment and unauthorised development clearly establishes that the enactment in essence seeks to remedy unauthorised development in urban and semi urban areas. Its provisions can by no stretch of imagination be read as according protection to the occupation of the subject land by the petitioner. The submissions addressed on this score consequently stand rejected.

22. The submissions addressed by learned counsel resting on the provisions of the 1954 Act are liable to be negated for the following reasons. The petitioner has woefully failed to prove that his forefathers were or could be recognised to be “proprietors” of the land as contemplated under Section 5 of the 1954 Act. It is also not his case that they were declared bhumidhars either on the commencement of the 1954 Act or any



time thereafter. The submission of Mr. Mishra that the petitioner should be treated as an asami by virtue of being a member of the Society not only defies comprehension, it is also thoroughly misconceived. Even a convoluted interpretation of Sections 5 and 6 would not convince this Court to recognise either the Society, the petitioner or his forefathers as a bhumidhar or asami. It is also not the case of the petitioner that his possession over the land has come to be legitimized under any other provision of the 1954 Act. As the facts noticed above would reveal and establish, his occupation was neither permissive nor did the respondents at any stage of the proceedings recognise him as being a lawful allottee, owner or occupier of the subject land. In any case this Court fails to discern any right that may inhere in the petitioner to remain in occupation of the subject land.

23. Accordingly and for all the aforesaid reasons, the writ petition fails and shall stand dismissed along with all pending applications.

MARCH 8, 2022/bh

YASHWANT VARMA, J.