



\$~81(Appellate)

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

+ CM(M) 869/2022 & CM APPL.37445/2022, CM
APPL.37446/2022

MR.GURJIT SINGH TALWAR Petitioner
Through: Mr. Ruchin Midha, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

..... Respondents
Through: Mr. Ashim Vachhar, Standing
Counsel for DDA with Mr. Kunal Lakra,
Adv.
Mr. Puneet Yadav, ASC for R-2/MCD

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **29.08.2022**

1. This petition, under Article 227 of the Constitution of India, assails order dated 5th August 2022, passed by the learned Additional District Judge (“the learned ADJ”) in RCA DJ 8729/2016 (***Ganesh Chawla & Anr. v. DDA and Ors.***). By the said order, the learned ADJ has rejected the petitioner’s request to adjourn the aforesaid appeal *side die* awaiting the outcome of proceedings stated to be pending before this Court, relating to regularisation of properties situated at Sainik Farms, one of which is occupied by the petitioner and forms subject matter of controversy in the appeal.

2. RCA DJ 8729/2016 assailed judgment dated 15th March 2013, passed by the learned Civil Judge, whereby Suit 427/2006, instituted

CM(M) 869/2022



by the petitioner along with one Ganesh Chawla against the Municipal Corporation of Delhi, DDA and the SHO PS Ambedkar Nagar, was dismissed.

3. The petitioner claimed, in the suit, to be in lawful possession of land situated at Khasra No. 436, Village Khirki, General Cariappa Marg, Tehsil Mehrauli, New Delhi (“the suit property”), and to have constructed a residential dwelling house on the said property in 1998 where he continues to reside till date.

4. The petitioner sought, by the suit, to assail attempts of the defendants in the suit to demolish the suit property. As such, the petitioner sought a decree of perpetual injunction restraining the defendants in the suit (MCD, DDA and PS Ambedkar Nagar) from demolishing the suit property as well as the structures existing thereon without following due process of law.

5. As earlier noted, the suit stands dismissed by the learned Civil Judge *vide* judgment dated 15th March 2013.

6. RCA DJ 8729/2016 has been preferred by the petitioner, assailing the said order dated 15th March 2013, of the learned Civil Judge.

7. The said appeal continues to remain pending before the learned ADJ.



8. In the aforesaid appeal, the petitioner moved an application praying that the appeal be adjourned *sine die*, as matters relating to regularisation of properties situated at the Sainik Farms, which included the suit property in the occupation and possession of the petitioner, were pending before this Court in WP (C) 6455 of 2015 (***Ramesh Dugar Convener Area Development Committee Sainik Farms v. SDMC & Ors***). It was also sought to be contended that the properties situated in the Sainik Farms area were subject matter of proceedings envisaged by The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 (“The NCTD Act”) which, according to learned Counsel for the petitioner, protects the petitioner’s occupation of the suit property at least till 31st December 2023.

9. The aspect of whether the petitioner’s occupation of the suit property stands protected by the NCTD Act till 31st December 2023 is not relevant to the issue of adjournment of the proceedings before the learned ADJ *sine die*. This Court does not, therefore, express any opinion on the said issue and, if the petitioner is entitled to any such protection, it shall be open to the petitioner to canvass the said contention before the learned ADJ who would take a view thereon.

10. Indeed, the main contention advanced by learned Counsel for the petitioner by way of challenge to the impugned order and, therefore, to justify the prayer that the proceedings in RCA DJ 8729/2016 should be adjourned *sine die*, is that the issue of regularisation of the Sainik Farm colony, of which the petitioner’s



residential unit is situate, is presently pending before this Court in a number of litigations, *inter alia*, before the court of Hon'ble the Chief Justice of this Court in WP (C) 6455 of 2015.

11. The learned ADJ has declined the request and adjourned the matter *sine die*. He has, in the impugned order, observed that, in case any favourable binding orders are passed by this Court or even at the executive level, of which the petitioner would be entitled to take benefit, there would be no embargo on his doing so at that stage. A fresh cause of action would, in such a situation, enure in favour of the petitioner.

12. In exercise of the jurisdiction vested in this Court by Article 227 of the Constitution of India, this Court is not expected to sit in appeal or even in judicial review over the order under challenge before it. The following passage, from the judgment of the Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd.*¹, in fact, proscribes the Article 227 Court even from examining the correctness of the order under challenge:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors

¹ (2003) 3 SSC 524



of law in the decision.”

13. The impugned order dated 5th August 2022 is clearly discretionary in nature. There is no proscription, in law, on the learned ADJ continuing with the proceedings in RCA DJ 8729/2016, especially as there is no judicial order, passed by this Court, or any court hierarchically superior to the court of the learned ADJ, interdicting continuance of the said proceedings.

14. The mere fact that WP (C) 6455 of 2015 may be pending before this Court, involving regularisation of the properties situated at the Sainik Farms, could not be legitimately cited as a ground to insist that RCA DJ 8729/2016 should be adjourned *sine die*.

15. As the learned ADJ has correctly observed, the petitioner would be at liberty to avail of the benefit of any favourable order or decision which may be passed by any forum, judicial or administrative, which could aid the petitioner in the cause that he seeks to prosecute in appeal before the learned ADJ. All rights of the petitioner, therefore, stand reserved and protected in that regard.

16. This Court is presently concerned only with the issue of whether the decision of the learned ADJ, declining the request for adjournment the RCA DJ 8729/2016 *sine die*, calls for interference in exercise of supervisory jurisdiction vested in this Court by Article 227 of the Constitution of India.

17. No perversity, in the decision of the learned ADJ, can be said to



exist. As such, no case for interference with the decision of the learned ADJ under Article 227 of the Constitution of India exists either.

18. This petition is, therefore, devoid of merit and is accordingly dismissed. Needless to say, this order merely examines the issue of whether the learned ADJ was bound to adjourn the proceedings before him *sine die* as requested by the petitioner. In my view, no such compulsion, in law, existed.

19. This order shall not, however, preclude the petitioner from taking of all pleas that he seeks to urge before the learned ADJ or, indeed, before this Court, in the proceedings for regularisation of the Sainik Farm colony, if the law permits the petitioner to do so.

20. This Court does not express any opinion on the merits of RCA DJ 8729/2016 or of the judgment dated 15th March 2013, passed by the learned Civil Judge which is subject matter of challenge therein.

21. With the aforesaid observations, the petition is dismissed, without any order as to costs.

C. HARI SHANKAR, J.

AUGUST 29, 2022/dsn