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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 8th May, 2023

+ W.P.(C) 5819/2023

ASHA COMMUNITY HEALTH AND DEVELOPMENT
SOCIETY

..... Petitioner

Through: Ms. Shivani Khandekar, Mr. Gokul
Holani and Ms. Ankita Gupta,
Advocates (M: 9711141990).

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD OF NCT OF
DELHI & ANR.

..... Respondents

Through: Mr. Anuj Chaturvedi, Advocate for
DUSIB (M: 9810473166).
Mr. Akshay Kumar Tiwari, Mr.
Anupam Pandey, Advocates; Mr.
Balram, Sr. Engg NHAI, for R-2 (M:
9773534961)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Asha Community Health Development Society, which is an NGO running various *Basti Vikas Kendras* (BVK) across Delhi in slum areas and *Juggi Jhopadi Bastis*. The Petitioner claims to be having approximately 91 centres across West, East, Central and South Delhi.
3. The case of the Petitioner is that suddenly on 27th April, 2023, bulldozers had arrived at the premises of the Petitioner's BVK at Chaderpuri Railway Line at Kailas Nagar, Gali No. 17, Chandrapuri, Gandhi Nagar for demolition of the same. It is the case of the Petitioner that no notice was

issued to the Petitioner prior to the said demolition. The Petitioner was allotted the premises by DUSIB for running the BVK and, accordingly, the challenge is to the fact that demolition was sought to be carried out without notice. The Petitioner has also prayed for staying the demolition or in the alternative for allotment of an alternate site or premises in the Chandrapuri slum area for the Petitioner.

4. Ld. Counsel for DUSIB submits that the demolition action has to be carried out by NHAI for construction of the Delhi-Dehradun Expressway which is a national infrastructure project. BVK is located on government land and no right can be claimed by the Petitioner.

5. On behalf of the NHAI, ld. Counsel submits that the conditions of allotment of BVK itself make it clear that the Petitioner organization would have no claim on the land and is also not entitled to compensation whatsoever. The said terms of allotment are set out below:

“5. The user organization will vacate the BVK whenever required for official work/ any government work without any demur. The organization will have no right to claim any kind of compensation whatsoever”

6. Ld. Counsel for the Petitioner relies upon an affidavit of Mr. Godfrey Martin dated 16th October, 2003 belonging to the Petitioner in respect of another BVK as per paragraph 13 of which any dispute arising in respect of the interpretation or performance of terms and conditions of the agreement would have to be referred to a sole arbitrator. She also relies upon a ld. Division Bench order dated 29th August, 2018 in **LPA 495/2018** titled **Rajeev Neelu Kachwaha Charitable Trust (NGO-Swati) v. Delhi Urban**

Shelter Improvement Board & Ors. wherein the Court has observed that the allotment to the Kendra is co-terminus with the existence of *Jhuggis* in the area and thus protection was granted to a similarly placed BVK.

7. On the other hand, Id. Counsel appearing for DUSIB has also submitted that the land actually belongs to the Railways and DDA. He further submits that there are two other *Mohalla* Clinics in the area and one GNCTD dispensary. Thus, the local population and residents would not be inconvenienced in terms of medical facilities.

8. On behalf of NHAI, Id. Counsel submits that the said area has been taken over by NHAI by paying more than Rs.3 crore to the DDA. The area is being used for construction of elevated corridor connecting Delhi and Dehradun and is a part of the Bharat Mala Project. He has handed over an enlarged sketch of the area to show how the land where the BVK is located will be utilised for constructing heavy piers for the elevated corridor.

9. It is his submission that there would be large scale construction activity taking place in the area and the BVK cannot continue to function as it would impede construction activity. He relies upon the judgment of the Supreme court in *N.G. Projects Limited v. Vinod Kumar Jain and Ors.* AIR 2022 SC 1531 where, in respect of infrastructure projects, the Supreme Court has observed that stay of construction ought not to be granted even under Article 226. He further submits that once the construction activity is over, the NHAI intends to reconstruct the BVK as per the existing specification and the Petitioner may run the BVK so long as it is ready to prove that it has proper agreement with DUSIB for running the Kendra.

10. The Court has heard Id. Counsel for the parties. As per the writ Petitioner, the land was allotted to the Petitioner for running BVK vide letter

dated 23rd November, 2004. The agreement in respect of the said allotment has not been placed on record. Photographs of the premises have been placed on record. The sketch which has been shown also identifies the manner in which land where the Kendra is located would come in the way of the construction of the elevated corridor.

11. The Supreme Court in *N.G. Projects Limited (supra)* has observed as under:

“21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction Under Article 226 of the Constitution of India.”

12. Moreover, the terms on which the allotment of the land by DUSIB, to the Petitioner is itself unclear as the land is stated to be belonging to DDA/ Railways.

13. In these overall circumstances, the Court is not inclined to grant stay on the construction of the elevated corridor and demolition of the BVK. Accordingly, the following directions are issued:

- i) The Petitioner shall vacate the Kendra after taking all its belongings on or before 14th May, 2023.
- ii) From 15th May, 2023 onwards, the NHAI is free to carry out its demolition/construction activity in the area.
- iii) A meeting shall be held on 10th May, 2023 between the officials of DUSIB, NHAI, DDA/Railway so as to identify the terms and conditions of allotment to the Petitioner and also agree upon the

schedule for reconstruction of the BVK, post the completion of the construction of the elevated corridor. Parties shall draw up minutes of meeting and adhere to the same. A copy of the Minutes may also be placed on record within two weeks.

14. The present petition is disposed of in the above terms. Liberty to mention granted, if so needed. All the pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

MAY 8, 2023
mr/sk

