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

% Decided on: 10th March, 2023

+ W.P.(C) 14578/2022 & CM APPL. 44665/2022

KASTURI LAL VIG (DECEASED) THROUGH HIS LEGAL
REPRESENTATIVE & ANR. Petitioners

Through: Mr. Rajesh Yadav, Senior
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versus

GOVERNMENT OF NCT OF DELHI &
ANR. Respondents

Through: Mr. Santosh Kumar Tripathi,
Mr. Arun Panwar, Mr.
Prduyman Rao, Mr. Kartik
Sharma, Advocates for GNCTD
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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. This matter is taken up today as 09.03.2023 was declared a holiday.
2. The present writ petition has been filed on behalf of the petitioners for quashing/setting aside of the conditional order dated 12.07.2013 passed by the Learned Revenue Assistant, Mehrauli, New Delhi in *case no. 319/RA/MEH/2003*, titled as ***Gaon Sabha Sultanpur***

Vs Kasturi Lal. By way of the said conditional order, the petitioners had been directed to convert the land bearing khasra no. 83 (4-16), 84/2 (4-12), 91 (4-16) and 92 (4-16), total measuring 19 bighas situated in Village Sultanpur, New Delhi to agricultural use within a period of three months in view of provisions of Section 82(2) of the Delhi Land Reforms Act, 1954 (DLR Act). The petitioners have also prayed for quashing/setting aside judgment dated 17.12.2018 in case no. 7732/315/RA/HK/MEH/1999/250-55 titled as *Gaon Sabha Sultanpur Vs Kasturi Lal*, passed by the learned Sub Divisional Magistrate (SDM)/Revenue Assistant (RA), Mehrauli, New Delhi whereby the conditional order dated 12.07.2013 was made absolute and order for vesting the subject land in Gaon Sabha, Sultanpur was passed under Section 81 of the DLR Act.

3. The petitioners filed an appeal before the learned Collector under section 185 of the DLR Act, challenging the judgment dated 17.12.2018 passed by the learned RA. However, the said appeal was dismissed by the learned Collector (South) on the ground that the appeal was not maintainable against an ex-parte order in view of Appendix VI Rule 16 of the Delhi Land Reform Rules, 1954.

4. The challenge to the aforesaid judgments has been made in the present writ petition on the ground that the proceedings under the DLR Act were vitiated being a nullity, after village Sultanpur was declared as a Low Density Residential Area (LDRA) in urban extension vide notification dated 18.06.2013, issued by Ministry of Urban Development (Delhi Division) making modifications in Master Plan of Delhi (MPD)-2021, in exercise of powers conferred by Sub-

section (2) of Section 11-A of the Delhi Development Act, 1957.

5. The proceedings under Section 81 of the DLR Act were initiated in respect of the land of the petitioners on the basis of Halka Patwari Report dated 19.09.2002, wherein it was alleged that the houses in khasra no. 83 and kothi at khasra no. 84 were being built up in contravention to the plans sanctioned by the Municipal Corporation of Delhi (MCD), resulting in use of agricultural land for non-agricultural purposes.

6. Subsequently, notice dated 23.09.2002 was issued by the learned SDM/RA to the petitioners. After the petitioners filed their reply dated 20.12.2002 to the said show cause notice, the learned RA dropped the proceedings against the petitioners under Section 81 of the DLR Act vide order dated 05.02.2004.

7. The said order dated 05.02.2004 was challenged by the respondent no. 2/Gaon Sabha, Sultanpur before the learned Deputy Commissioner/Collector (South), Saket, which remanded back the matter to the learned RA with direction to decide the matter afresh. Subsequently, the matter was taken up again by the Court of learned RA. As per the case of the petitioners, no notice was received by the petitioners from the Court of learned RA (Mehrauli) after remanding back of the matter. Thus, the petitioners could not cause appearance before the learned RA, Mehrauli, which passed a conditional order dated 12.07.2013 thereby holding that the land in reference was being used for non-agricultural purposes. The petitioners were directed to convert the land in reference to agricultural use within three months. Subsequently, the conditional order dated 12.07.2013 was made

absolute vide judgment dated 17.12.2018, vesting the land in question in Gaon Sabha. Thus, the present writ petition has come to be filed for quashing and setting aside the conditional order dated 12.07.2013 and the final order dated 17.12.2018 passed by the learned RA, Mehrauli.

8. In response, the respondent in its affidavit has taken the objection that the present petition is a misuse of the process of law, as the petitioner has approached this Court despite the fact that he has an alternative remedy under the statute to challenge the impugned order before the learned Financial Commissioner under the DLR Act.

9. It is further submitted on behalf of the respondents that the proceedings under Section 81 of the DLR Act were initiated against the petitioners in the year 2003 for misuse of agricultural land for non-agricultural purposes. The notification of 2013 regarding LDRA is prospective in nature and hence the same is not applicable retrospectively in the present case.

10. It is the case on behalf of the respondents that the petitioners deliberately did not appear before the learned RA after remand of the matter. Therefore, the Court of RA, Mehrauli, New Delhi was constrained to pass the final order, thereby vesting the land in the Gaon Sabha. The illegal act committed by the petitioners by converting the agricultural land into residential property without any permission from the competent authority, cannot be condoned as the petitioners have deliberately defied the provisions of DLR Act, even before notification of village Sultanpur as LDRA. The petitioners being violator of the law of land cannot claim immunity under the LDRA policy. Thus, the respondents pray for dismissal of the present

writ petition.

11. I have heard learned counsels for the parties and have perused the record.

12. Once the Village Sultanpur was declared as LDRA in urban extension vide notification dated 18.06.2013, continuation of any proceedings under the DLR Act on the basis of a conditioner order that was passed only subsequently on 12.07.2013, was fallacious. The effect of issuance of the LDRA notification dated 18.06.2013 was that the DLR Act had ceased to apply from the date of issuance of the said notification, to the lands situated in Village Sultanpur, where the land which is subject matter of the writ petition is situated.

13. Thus, where the proceedings under the DLR Act were still continuing and were yet to attain finality, such proceedings do not warrant continuation once the area has been urbanised or declared as DLRA, which has the effect of recognising the use of the land for non-agricultural purposes. The purpose of DLR Act is to safeguard and protect the agricultural lands. However, when such land ceases to be agricultural in nature, there is no question of protecting the said lands for agricultural purposes. Hence, continuation of any proceedings under the DLR Act thereafter, is an irregularity.

14. In the present case, no final order of ejectment of vesting was passed by the Revenue Authority on the relevant date when the area was declared as LDRA vide notification dated 18.06.2013. On the date when the said notification dated 18.06.2013 was issued, on that date there was no conditional or final order of ejectment or vesting. The conditional order came to be passed only subsequently on

12.07.2013, by which time the DLR Act had already ceased to apply to the subject land. Thus, the proceedings subsequent to 18.06.2013 were a nullity, as neither final order of ejectment and vesting had been passed, nor any conditional order had been passed as on that date. As noted above, the conditional order came to be passed after the notification dated 18.06.2013, on 12.07.2013. Accordingly, all proceedings subsequent to 18.06.2013 were a nullity, being without jurisdiction.

15. It is settled law that when a decree or order is passed by Court without jurisdiction over the subject matter, it is a nullity. An order passed by such Court is non-est. The defect of jurisdiction strikes at the authority of the Court to pass a decree, which cannot be cured even by consent or waiver of the party. In the present case, the learned Revenue Assistant/Deputy Commissioner were *coram non judice*, and the impugned orders were a nullity.

16. The Gazette notification dated 18.06.2013 declared 23 villages as Low Density Residential Area (LDRA) in urban extension. Modification was made in the Master Plan of Delhi, 2021 (MPD, 2021). As per the said notification, an approved layout/scheme falling in the said villages shall be deemed to have been approved under Clause 3(4) of Development Code of MPD, 2021. The said notification is reproduced as under:’

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MINISTRY OF URBAN DEVELOPMENT
(DELHI DIVISION)
NOTIFICATION
New Delhi, the 18th June, 2013
S.O.1744(E).-Whereas certain modifications which the

Central Government proposed to make in the Master Plan for Delhi-2021 as mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice {addendum) vide S.O. No. 34 (E) dated 3.1.13 (in supersession of Addendum issued vide Public Notice S.O. No. 2871 (E) dated 11.12.12) by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within ninety days from the date of the said notice.

2. Whereas, objections/suggestions received with regard to the proposed modifications have been considered by a Board of Enquiry and Hearing, set up by Delhi Development Authority and also approved at the meeting of the Delhi Development Authority.

3. Whereas, the Central Government has, after carefully considering all aspects of the matter, decided to modify the Master Plan of Delhi-2021.

4. Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021 with effect from the date of publication of this Notification in the Gazette of India.

Modification:

A new para at 4.2.2.1 (D) is inserted after para 4.2.2.1 (C) as under:

4.2.2.1 (D) LOW DENSITY RESIDENTIAL AREA

The majority of Farm Houses in the urban extension areas are located on lands where ground water has already been severely depleted or close to such depletion. Further, intensification of residential density and heavy additional load on civic infrastructure such as water supply, Drainage, Sewerage, Parking, etc. is highly undesirable in such areas from environmental considerations. Therefore, Villages containing existing farm houses clusters are notified as "Low Density Residential Area" (list of village at Annexure-1). Low Density Residential Plots are also allowed in the village

falling in Green belt (List of villages in Green Belt at Annexure-II).

.....”

17. Hence, it is clear that the use of the petitioners’ land became residential after the issuance of the notification dated 18.06.2013 declaring the area where the land of petitioners is situated, as LDRA. It was not an agricultural land anymore and was not governed by the DLR Act.

18. After modification in MPD, 2021 under Section 11A of the Delhi Development Act, 1957 (DD Act), vide notification dated 18.06.2013, there is no manner of doubt that Village Sultanpur is an urban village. This Court in the case of *M/s. Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs Sh. Satyabir @ Satbir And Ors.*, reported as 2016 SCC OnLine Del 761 has held that a notification for urbanisation need not only be through notification under Section 507 of the DMC Act. It was held that once a notification is issued applying a zonal plan issued pursuant to the Master Plan, showing that the subject lands are covered under the zonal Plan issued by the DDA, in such a situation, the lands ceased to be the lands covered under the DLR Act because the issuance of notification results in the lands becoming part of Delhi Town. Thus, it has been held that once a land is subject matter of a zonal plan issued under Section 11 of the DD Act, it is beyond the purview of the DLR Act. Thus, in the said judgment of *M/s Shree Neelpadmaya Consumer Products Pvt. Ltd.* (supra), it was held as follows:-

“22(i). The issue is that whether there exists a notification issued in the Official Gazette declaring the subject land as falling within Delhi town and New Delhi town? On behalf of the defendants, it is argued that the land which is the subject matter of the Act can be urbanized only if notification is issued under Section 507 of the Delhi Municipal Corporation Act, 1957 and which admittedly has not been issued so far as the said village and suit lands are concerned and hence it is argued that once the land is not urbanized because a notification is not issued under Section 507 of the Delhi Municipal Corporation Act, the land in question continues to be the subject matter of the land falling under Section 3(13) of the Act and hence the land governed by the Act and hence the Agreements to Sell dated 25.9.2006 are hit by the provision of Section 33 of the Act.

22(ii) In response to the argument urged on behalf of the defendants, counsel for the plaintiff has argued that it is not necessary that notification which is talked of in the later part of Section 3(13) of the Act has necessarily to be a notification only under Section 507 of the Delhi Municipal Corporation Act, 1951 inasmuch as even a notification issued by the Central Government under Section 11 of the Delhi Development Act, 1957 declaring an area to be the subject matter of a master plan or a zonal plan of the Delhi Development Authority, has the effect that such a land with respect to which a master plan or a zonal plan or an area plan is prepared (and which will entitle thereafter the DDA to treat such area as development area for being developed as per the master or zonal plan etc) shows that by such notification lands no longer will remain the subject matter of the Act inasmuch as such lands are part of urbanization. Reliance is also placed in this regard upon paras 19 and 24 of the judgment of a learned Single Judge of this Court in the case of Gur Pratap Singh v. Union of India 2004 (111) DLT 25, and by which paras, the learned Single Judge has held that once a particular area is a subject matter of the notification under the Delhi Development Act by notifying the master plan or zonal plan then such land becomes urbanized

and hence is out of the scope of application of the Act and Section 3(13) of the Act. These paras 19 and 24 read as under : -

“19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.

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24. Section 53(3) of the DDA Act makes it clear that once a permission for development under this Act has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission, approval or sanction is required under any other law for which permission has not been obtained. Thus, in view of the mandate by the DDA and accepted by the MCD, there would be overriding effect of this mandate, even if the Land Reforms Act was to apply.”
(underlining added)

23. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under

Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of Guru Pratap Singh (supra) and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.

24. *I may note that the plaintiff has proved the zonal plan Ex.PW 5/1 and the notification Letter dated 4.6.2010 as Ex.PW 5/2 and these documents clearly show that the entire village Goela Khurd and wherein the suit land is located is the subject matter of the zonal plan issued under the Delhi Development Authority. As per the aforesaid discussion, as also the ratio of the learned Single Judge in Gur Pratap Singh (supra), once the land is the subject matter of a zonal plan issued under Section 11 of the Delhi Development Act, the land is beyond the purview of the Act. It is also therefore immaterial as to what is the deposition made in this regard by the witness PW-5, inasmuch as, the arguments urged on behalf of the defendant that PW-5 has stated in cross-examination dated 1.2.2013 that it is not known as to*

whether khasra numbers of village Goela Khurd fall or do not fall in the “dotted or the recreational area” inasmuch as Ex.PW 5/1 and Ex.PW 5/2 show that the entire area of village Goela Khurd is a part of the zonal plan. As long as the village Goela Khurd is the subject matter of the zonal plan Ex.P5/1 that it is sufficient for the entire area of village Goela Khurd to be urbanized land, hence the subject land is situated and become an area which is notified for urbanization resulting in taking the same out of rural areas which are the subject matter of the Act. Also, in my opinion, once a particular area falls within the zonal development plan issued by the DDA under Section 11 of the Delhi Development Act, thereafter calling the same by any description, whether rural or otherwise cannot take away the effect that the said land is very much part of notification issued for development of the area which is the subject matter of the zonal plan and hence the subject matter of issuance of a notification falling in the later part of Section 3(13) of the Act taking such land as outside the operation of the Act.”

19. The respondents have taken the objection that the present writ petition is not maintainable as the petitioners have alternate efficacious remedy available by way of filing an appeal before the Financial Commissioner. As regards the said objection of the respondents, the same is liable to be rejected. It has been held time and again that exclusion of writ jurisdiction on the ground of alternative remedy, is a rule of discretion and where writ petition pertains to challenge to orders or proceedings, passed without jurisdiction, such writ petition can be entertained, even though alternative remedy may be available. Thus, Supreme Court in the case of **Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others**, has held as follows:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

20. In view of the aforesaid, it is considered appropriate to entertain the present writ petition. It would not be justified to relegate the petitioners at this stage to file appeal before the appropriate authorities as per alternative remedy available, when the matter pertains to an order that has been passed without any jurisdiction and authority. It is noteworthy that the said order has already been held by this Court to be a nullity.

21. In view of the aforesaid detailed discussion, when the land in question ceased to be governed by the DLR Act, any orders passed pursuant to proceedings under Section 81 of the DLR Act, when

proceedings were still at nascent stage, were clearly without any jurisdiction and non-est. Thus, the conditional order dated 12.07.2013 in case no. 319/RA/MEH/2003 and the final order dated 17.12.2018 in case no. 7732/315/RA/HK/MEH/1999/250-55 passed by the Learned Revenue Assistant, Mehrauli in the case tilted as ***Gaon Sabha Sultanpur Vs Kasturi Lal***, are declared as illegal and without any jurisdiction. Similarly, the judgment/order dated 01.09.2022 passed by the Learned Deputy Commissioner/Collector (South) in case no. 22/2019, ***Kasturi Lal Vig deceased (through LRs) & Anr. Vs Gaon Sabha Sultanpur*** is also declared to be illegal and a nullity, having been passed without any jurisdiction. Consequently, the aforesaid orders are hereby set aside.

22. The present writ petition is allowed in the aforesaid terms.

MARCH 10th, 2023

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MINI PUSHKARNA, J