
(2013) 05 DEL CK 0094
In the Delhi High Court
Case No : LPA 858 of 2004

Banwari Lal Sharma

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Constitution of India, 1950 — Article 14
National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 — Section 3,
3(1), 3(2)

Citation : (2013) 05 DEL CK 0094

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : P.S. Bindra, for the Appellant; Sumit Bansal, Ajay Monga and Mr. Ateev Mathur, Advocates for Resp-5, Ms. Latika Choudhary, proxy for Mrs. Avnish Ahlawat, Advocate for GNCTD, Mr. Ajay Verma, Advocate for DDA and Mr. Gaurang Kanth, Advocate for MCD, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The present Letters Patent Appeal challenges the judgment and order dated 04.08.2004 of the learned Single Judge, whereby CM Nos. 370/04 and 3467/04 in WP(C) No. 959/99 and WP(C) No. 892/04 and 906-69/04, filed by the Village Sahoorpor Extn. Residents Welfare Association (the fifth Respondent here), were disposed of. It is contended that the effect of the impugned judgment is to suspend and reverse the judgment and order dated 11.11.2003 of another learned Single Judge in WP (C) No. 959/99. The relevant facts are that WP (C) No. 959/99 was filed by one Shri Banwari Lal Sharma (the appellant herein) who resides in Village Sahoorpor, Mehrauli. He alleged that the land comprising Khasra no. 92 in the village had been illegally encroached upon. His contention was that the land in question, had been transferred to the Forest Department in the year 1988. The alleged encroachers were not impleaded in the writ petition originally. The petitioner sought a direction to the respondents (Union of India and the State authorities concerned), to remove the unauthorised

occupants on the said land and to develop and maintain the same as a wild life sanctuary. Based on two notifications (dated 09.10.1986 and 03.11.1987), the learned Single Judge concluded that the land had not vested in the Forest Department, but was to be used by the Gaon Panchayat for maintenance and development of forest and trees or any other work of public utility for the purposes of Delhi Land Reforms Act, 1954. Accordingly, the learned Single Judge, vide judgment and order dated 11.11.2003, allowed the writ petition and directed the Development Commissioner of the Department of Forests to remove the encroachment and to ensure that the land is utilized for forest and trees or for public utility within a period of four months. An application (CM No. 370/04) was thereafter filed by the appellant herein, seeking that the direction in the order dated 11.11.2003 should be complied with. The application was disposed of by order dated 14.1.2004; a direction restraining any construction on the site was made; the Development Commissioner was directed to demolish all existing structures on the land within one week. Another application (CM 3467/04) was filed pointing out to the Court that other writ petitions (WP (C) No. 892/04 and 906-69/04) were filed by the fifth respondent herein, wherein an order against demolition and dispossession had been secured. It was then directed that both the writ petitions be taken up together. This was done on 04.08.2004 when the Court directed that the order dated 11.11.2003 passed in WP(C) No. 959/99 be suspended for a period of six months for a decision on whether the colony is to be regularized or not. Therefore, this appeal has been preferred.

2. In an earlier order this Court had, on 19.07.2005, directed that before taking a decision regarding regularization, it was also necessary to decide about the permissibility of the use of land upon regularization. Through other orders, this Court issued directions for investigations in relation to the area in and around the Sahoorpor Extension colony. The report of The Economic Offences Wing was also made part of the record, which apparently vindicates the stand of the appellant herein.

3. In October 2004, the Government of NCT of Delhi issued a public notice inviting applications from the welfare associations to be regularized. The fifth respondent submitted an application. Thereafter, a list of 1432 unauthorized colonies was prepared by the Government of NCT of Delhi, where the fifth respondent's colony was at serial no. 1030. In October 2005, the Director of Authorized Colonies Cell filed an affidavit where he stated, inter alia, that the Government of India had issued revised guidelines on 10.2.2004 by which the cutoff date had been extended from 31.3.1993 to 31.3.2002.

4. The appellant's counsel urged that the impugned judgment proceeded on the erroneous presumption that the petitioners in WP (C) No. 959/99, WP (C) No. 892/04 and WP (C) No. 906-69/04 agitated for a common cause and were represented by a common counsel and that the prayer in CM 3467/04 was for extension of time to carry out the mandate of the order dated 11.11.2003 till WP (C) No. 892/04 was disposed of. It was submitted that the learned Single Judge

could not have overridden the previous direction to clear encroachments. It was also submitted that the investigation report had clearly revealed that the lands which are sought to be regularized are public in nature and character, and have to be maintained as open places or parks. Diversion for any other purpose would be contrary to the Master Plan, and contrary to Article 14 of the Constitution of India.

5. Counsel for fifth respondent relies on the Master Plan of Delhi - 2021 which has been notified; it contemplates regularization of both private and government land. Specifically, counsel relied on:

In all unauthorized colonies whether on private or public land, regularization should be done as per the government orders issued from time to time. It must be ensured that for improvement of physical and social infrastructure, the minimum necessary/feasible level of services and community facilities are provided.

It was also pointed out that the Union Cabinet in its meeting held on 8.2.2007 approved a proposal for regularization of unauthorized colonies in Delhi. It is also submitted that the official respondents have issued a provisional regularization notification, after which the matter is beyond controversy.

6. This Court notices the Provisional Certificate of Regularization dated 17.9.2008, by which it was recorded that the fifth respondent's unauthorized colony fulfilled the requirements of Clause 4 of the Regulations for Regularization of unauthorized colonies in Delhi, (notified by the Government of India vide notification no. S.O. 683(E) dated 24.03.2008 and amended by notification NO. S.O. 1452 dated 16.06.2008). Such provisional regularization was made final by the order dated 04.09.2012 of the Urban Development Department of the Government of NCT of Delhi.

7. Counsel for the fifth respondent submitted that their colony had been regularized in terms of the order issued by the state government, and as such there is nothing left to be decided in the appeal, especially since there is no challenge to the policy of regularization or the order doing the same. Reliance was also placed on the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, the earlier version of which had been in force since December 2007. This version will remain in force till 31.12.2014. Counsel pointed out Section 3(2) which requires status quo to be maintained in respect of unauthorised colonies which came into existence in Delhi before 31.3.2002. He contended that section 3(2) acts as a bar for courts to direct dislocation of such colonies. Their colony at Sahoarpur has been in existence at Khasra no 92 since December 1990 (as per the Application for Regularisation that was submitted and found to be in compliance with the requirements of Clause 4 of the Regulations for Regularisation of Unauthorised Colonies in Delhi).

8. The relevant provisions and extracts from the Statement of Objects and Reasons of the 2011 Act are reproduced hereunder:

The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011:

WHEREAS there had been phenomenal increase in the population of the National Capital Territory of Delhi owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment or unauthorised developments which are not in consonance with the concept of planned development as provided in the Master Plan for Delhi, 2001 and the relevant Acts and building bye-laws made thereunder;

AND WHEREAS based on the policy finalised by the Central Government regarding regularisation of unauthorised colonies, village abadi area and its extension, the guidelines and regulations for this purpose have been issued;

AND WHEREAS in pursuance of the guidelines and regulations necessary steps are being taken for regularisation of unauthorised colonies which, inter alia, involve scrutiny of layout plans, assessment of built up percentage existed as on the 31st day of March, 2002, identification of mixed use of streets, approval of layout plans, fixation of boundaries, change in land use and identification of colonies not eligible for regularisation;

Provisions of the Act:

3. (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, feasible strategies and make orderly arrangements 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 (including urban villages), 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) orderly arrangements for relocation and rehabilitation of slum dwellers and Jhuggi-Jhompri clusters in the National Capital Territory of Delhi in accordance with the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 and the Master Plan Delhi Act 7 of for Delhi, 2021 to ensure its development in a sustainable, planned and humane manner; 2010.

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

(c) orderly arrangements pursuant to guidelines and regulations for regularisation of unauthorised colonies, village abadi area (including urban villages) 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 or plan for orderly arrangement 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 and guidelines for redevelopment of existing godown clusters (including those for a storage of non-agricultural goods) required to cater to the needs of the people of the National Capital Territory of Delhi;

(f) orderly arrangements in respect of special areas in accordance with the Building Regulations for Special Area, Unauthorised Regularised Colonies and Village Abadis, 2010 within the overall ambit of Master Plan in force; and

(g) policy or plan for orderly arrangements in all other areas of the National Capital Territory of Delhi in consonance with the Master Plan on its review.

(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 (including urban villages) 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);

(iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorised Regularised Colonies and Village Abadis, 2010; and

(iv) in respect of all other areas within the National Capital Territory of Delhi as on the 8th day of February, 2007, 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, 2014. If-

(a) it is construed prior to the dates specified for different areas as enumerated in sub-section (2);

(b) it conforms to the safety standards as in force or such other safety requirements as may be notified by the Central Government; and

(c) it complies with the directions with respect to safety, if any, issued by the Central Government.

Provided that in case punitive action is required to be taken by any local authority, prior approval of the Administrator of the National Capital Territory of Delhi or the officer authorised by him in this behalf, shall be obtained by the authority or officer concerned.

(4) Notwithstanding any other provision contained in this Act, the Central Government may, at any time before the 31st day of December, 2011, 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.

4. During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:-

(a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;

(b) removal of slums and Jhuggi-Jhornpuri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area (including urban villages) and its extension in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.

9. Counsel for the appellant urged that the regularisation was illegal. It was even urged that the provisions of the 2011 Act should not be enforced by the court as the same are contrary to provisions of the Constitution. However, no specific challenge has been made to the Act. Learned counsel relied on various judgments: Jagpal Singh and Others Vs. State of Punjab and Others, ; Hinch Lal Tiwari Vs. Kamala Devi and Others, State of U.P. Vs. Raghubir Singh, M.C. Mehta Vs. Union of India (UOI) and Others, M.C. Mehta Vs. Kamal Nath and Others, M.C. Mehta Vs. Union of India and others, ; In the matter of Mehta (M.C.) vs. Union of India, 1996(4) SCC 351 Milk Producers Association, Orissa and Others Vs. State of Orissa and Others,

10. The cases cited do not assist the appellant's case. There is no dispute that the land was to be used for some public utility, or for maintenance and development of forest and trees. This is apparent from the report filed in court, pursuant to orders made in the appeal. However, the executive decision to regularise the encroachment of the land had already been made. The regularization was done in accordance with the existing policies. The Court is conscious of the fact that at the stage when the appellant had approached this Court with the writ proceeding, the enactment which is now pressed into service by the respondent was not in existence. Rather than take a nuanced decision about such matters, the official respondents appear to have proceeded to

regularize the existing colony, on public lands, meant to be used as parks or for recreational purposes, and in any event maintained as a green area. That the colony came up, and was regularized later, is a matter of fact. Whilst the necessity to ensure green spaces and open areas cannot be undermined, yet the need to balance the needs of the city's populace which has exploded is a constant and daily challenge to policy makers. The Court, as the protector of citizens' rights, and the organ of state to ensure governance accountability, can no doubt issue directions where there is breach of binding legal norms. However, when the state grants a moratorium from action or affords immunity to those who have occupied such public spaces unauthorizedly, the court cannot proceed to direct enforcement of its orders if they conflict with such legislation.

11. Here, Section 3(2) enjoins that no action can be taken towards demolition or eviction of lands "notwithstanding any judgment, decree or order of any court," and that status quo as on 1-1-2006 "in respect of encroachment or unauthorised development"; and (status quo) "in respect of unauthorised colonies, village abadi area (including urban villages) 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 Section 3(1)" is mandated. The State had decided, in the present case, based on the relevant factors, that the colony was to be regularised. The decision of the government has admittedly been made pursuant to the Regulations relating to regularisation of Unauthorised Colonies in Delhi. In the absence of any specific challenge to the Act or the Regulations, which preclude action by the court, the relief claimed in this appeal cannot be granted. The appeal must therefore fail, and is consequently dismissed.