
(2017) 01 DEL CK 0047

In the Delhi High Court

Case No : W.P.(C) No. 31 of 2017 and C.M. No. 193 of 2017

Indra Vikas Samiti

APPELLANT

Vs

State Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 — Section 3(ii)

Citation : (2017) 1 ADDelhi 713 : (2017) 236 DLT 698 : (2017) 161 DRJ 505

Hon'ble Judges : Mr. Manmohan, J.

Bench : Single Bench

Advocate : Mr. Ashok Bhasin, Sr. Advocate with Mr. Bhuvanesh Sehgal, Advocate, for the Petitioner; Ms. Shobhana Takiar, Mr. Arun Birbal with Mr. Sanjay Singh, Advocates for DDA and Dr. Brahm Dutt with Mr. Vivek Kumar, Advocates, for the Respondent; Mr. Ravinder Sethi, Sr. Advocate, Amicus Curiae with Mr. Puneet Sharma, Advocate, for the Respondent; Mr. Udit Gupta, Advocate with Ms. A. Madhavi, Dy. Director, Social Welfare Department, for the Respondent Nos. 1 and 3

Final Decision : Dismissed

Judgement

Mr. Manmohan, J.(Oral) - Present writ petition has been filed seeking quashing of the demolition order dated 23rd December, 2016 issued by respondent no.1 as well as for completing the process of regularisation of the petitioner-societies colonies in a time-bound manner.

2. Mr. Ashok Bhasin, learned senior counsel for the petitioners points out that the provisional registration certificates have been issued to the petitioner-societies. He submits that the petitioner-societies are protected under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (hereinafter referred to as "the Act"). In support of his submissions, he relies upon Section 3(1)(c) read with Section 3(2)(i) & (ii) of the Act. The said sections are reproduced herein below:-

"3. Enforcement to be kept in abeyance.-(1).....

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(c).....orderly arrangements pursuant to guidelines and regulations for regularization of unauthorised colonies, village abadi area (including urban villages) and their extensions, as existed on the 31st day of March, 2002, and where construction took place even beyond that date and up to the 1st day of June, 2014;

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(2).....

(i).....as on the 1st day of January, 2006 in respect of encroachment or unauthorized development;

(ii).....in respect of unauthorised colonies, village abadi area (including urban villages) and their extensions, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 1st day of June, 2014, mentioned in sub-section (1).?

3. Mr. Bhasin places reliance upon the Division Bench judgment of this Court in *Banwari Lal Sharma v. UOI & Ors.*, LPA 858/2004, decided on 28th May, 2013, wherein it has been held as under:-

"11. 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 LPA No. 858/2004 Page 10 immunity to those who have occupied such public spaces unauthorisedly, the court cannot proceed to direct enforcement of its orders if they conflict with such legislation.

12. 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.?

4. Since the demolition action had been initiated in pursuance to the order passed in the contempt petition being Cont. Cas(C) No. 224/2004, the present writ petition was directed to be listed along with the said contempt petition. It is pertinent to mention that the aforesaid contempt petition has been filed alleging wilful disobedience of the Division Bench order dated 30th July, 2003, wherein it was held that the public property in Tahirpur leprosy complex cannot be unauthorisedly occupied.

5. Mr. Brahm Dutt, learned counsel for the petitioner in Cont.Cas(C) No. 224/2004 refers to survey report dated 17th July, 2009 prepared by the SDM, Seemapuri to contend that the names of the petitioner-societies are not even mentioned therein and, therefore, according to him, the petitioner-societies are fictitious inasmuch as they are not situated within the Tahirpur leprosy complex. He extensively refers to the said survey report to contend that only 194 houses out of a total of 1810 houses in Tahirpur leprosy complex were found legally occupied. He emphasises that as many as 1614 houses were found to be illegally occupied in the entire complex. He repeatedly contends that the illegal occupants are sheltered by local politicians and Govt. officials. The relevant observations of the SDM, Seemapuri in the said survey report are reproduced herein below:-

"During the course of survey the team also was asked to reflect upon the present physical status within the societies as well as in the entire Tahirpur Complex. The team observed that misuse of Tahirpur Complex is rampant & wide ranging. While one moves from the main road from the Tahirpur red light Gandhi Ashram starts. From the corner of Gandhi Ashram one can see shops, repair garages, schools and other commercial activities on the front side of the Leprosy Complex and this continues till the complex ends. There are about upto 100 illegal/unauthorized shops in this belt. It has been reported that the shops in the outer periphery were initially toilets which later have converted into shops on the front side. The Panchayats and other individuals are earning a hefty amount either as rent or through the sale of these shops.

There are also some societies within the complex which are more notorious than others. One such society Kasturba Kusth Ashram is famous for ordering of ? Hukka Pani Band? for those who dare to defy the dictates of the Panchayat or its leaders. They have many times disconnected the electricity and water connections of the persons defying their orders and it has been seen that no authority has been able to help those, whose ?Hukka Pani? was ordered to be closed. Within the Kasturba Kusth Ashram, there were dozens of illegal factories run by outsiders. The samiti was getting a huge amount as rent and protection fees from these factories. During the mid of 2008, some of the factories were

sealed by SDM Seemapuri and some other, there after, shut themselves.

Likewise, there are even mobile towers within the complex and on enquiry it has been told that they have put there by the mobile companies with the consent and permission of the Panchayat and the Social Welfare Department has hardly any say in the matter. The rent, it has been told was being collected by the Panchayat within whose complex the tower was standing.

Even inside the complex, the misuse is so much that it is difficult to even feel that we are in the Leprosy Complex or some where else. There are shops restaurants, factories, offices and other commercial establishments run not only by leprosy affected persons but by healthy outsiders. These healthy outsiders are paying a handsome amount to the Panchayats of various Societies and also to their Pradhans.

It has also been told that the houses within the complex are sold & transferred freely but with the consent of respective Panchayat. In lieu of giving their consent, the Pradhans get a good share of booty in the process. The transfer or sale, in which the Pradhans are not taken into confidence, never materialises.

The houses are also given on rent and in most cases to healthy outsiders. Thus, the complex today has more healthy people than the leprosy affected ones for whom this complex was initially started.

During the last 3-4 years crores of rupees have reportedly been spent by the Social Welfare Department for improvement of roads, water pipe lines, electricity connections, laying of sewers, repairing of houses, etc. The money has clearly been spent on healthy people apart from the persons afflicted with leprosy. As a word of advise, it is proposed that any amount in future may only be spent after seeking that it is not going to those who do not deserve it.

During the course of survey of land about 43 photographs of the complex have been taken and they have been annexed as part of this report with the purpose that the photographs can, sometimes, speak better than the words.

In the interim report the number of legal occupancy was shown 425. However, during the course of analysis of the data and other material it was observed that the residents of Kasturba Kusht Ashram & Shanti Kusht Ashram did not have possession letter. It has been clarified by the official of the Social Welfare Department that the people residing in these two ashrams had themselves occupied the houses before any possession letter was issued. As a matter of policy, therefore, it has been decided that all those who did not have possession letters have been shown as illegal occupants.

It could be observed from the above table that there are total 1810 tenements which include 1077 tenements built by Social Welfare Department, DDA & Other agencies. Thus, out of 1810 tenements only 1077 are legally built and the rest i.e. 733 are totally illegally constructed. Out of 1077 tenements that have been built legally, 870 tenements have illegal or unauthorized construction in them.

Unauthorized construction that has been carried out in the legally built tenements is either by way of additional floors or by way of extension of the unit itself over the open space. This is indeed surprising and also guides as for future. It shows that any amount to be spent in future on the repair of the legally built houses should be given only to those houses which have no illegal/unauthorized construction in them.

Out of 1810 tenements the occupancy which could terms as legal is of only 194 households. Thus, out of 1077 houses built by the Government agencies, only 194 houses are legally occupied/possessed today. 79 houses are held by way of succession/inheritance i.e. the same have been taken over by the heirs of the persons to whom the houses were allotted. Such heirs are mostly healthy people and not persons afflicted with leprosy.....?

(emphasis supplied)

6. Learned counsel for GNCTD states that action has now been initiated in the right earnest to remove the non-leprosy affected persons from the Tahirpur leprosy complex. He points out that 21 houses have been sealed since December, 2016. Mr. Udit Gupta, Advocate further submits that the provisional regularisation certificates relied upon by learned senior counsel for the petitioners have no legal sanctity and the same create no right in favour of the petitioners as held by this Court in *Atul Singh Gandas & Anr. v. Lt. Governor of GNCTD & Ors.* W.P.(C) 3386/2011, decided on 17th April, 2014.

7. Mr. Ravinder Sethi, learned amicus curiae refers to paragraphs 4, 5 & 7 of the writ petition to contend that the petitioners are nonleprosy affected persons. Paras 4, 5, & 7 of the writ petition are reproduced herein below:-

"4. That the members of the Petitioner Societies consist of more than hundreds of families, which settled down in the Tahirpur Complex around the year 1985 and have been living in the said Complex ever since i.e. for the past 25-30 years. That the entire membership comprises of illiterate people, belonging to the lowest strata of the society, who are not only economically backwards and are below the poverty line (BPL), but are engaged in downtrodden activities such as rickshaw pulling, daily wage labourers, beggars, medical dresser, hawkers, vegetable sellers etc. That by virtue of their poor economic condition and also their nature of work, these people are living on a hand-to-mouth basis and are constantly struggling to provide their families with even the bare minimum necessities of life. Apart from these members, there are several other indigent families that are living in the same area/neighbourhood/vicinity, and thus, any coercive action of the Respondent Authorities will not only directly affect the members of the Petitioner Societies, but will also render the said indigent people homeless.

5. That owing to their illiteracy and poor financial condition, the said residents were being unable to look after their interests and in such circumstances, a few residents came together and formed the Petitioner Societies, in order to promote

the development and upliftment of the residents of the said area. That the Petitioner Societies have been constantly working towards the betterment and improvement of its members, as well as the non-members, that are residing in the Tahirpur Complex.

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7. That in compliance with the procedure laid down in the said Regulations, as Petitioner Societies submitted their respective Applications to the Respondent Nos. 1 and 2, seeking regularization of their colonies. It is pertinent to mention herein that the said colonies not only consist of members of the Petitioner Societies, but also include nonmembers, all of whom are Below Poverty Line (BPL). That after submissions of the said Applications, the Petitioner Societies were even provided Provisional Regularization Certificates by the Respondent No. 1. That the Petitioner No. 1 Society i.e. Indra Vikas Samiti, was granted a Provisional Registration Certificate dated 17.09.2008, bearing Registration No. 1577, whereas the Petitioner No. 2 Society i.e. South Indian Society, was granted a Provisional Registration Certificate dated 17.09.2008, bearing Registration No. 1576. That the Provisional Certificates specifically state that said Certificates are subject to scrutiny of the documents, with regard to the conditions of the Regulations, and only those colonies that fulfil the said conditions, shall be considered for final regularization. Moreover, the Provisional Certificates further state that the final boundary of the Colony would be fixed by the Respondent No. 1, after completing the requisite formalities.?

8. Mr. Sethi submits that the prayer to process the regularization of the petitioner-societies is not maintainable. He states that if the mischief is not nipped in the bud, the purpose and rationale behind dedicating a large chunk of land for rehabilitation of leprosy patients would be lost.

9. Having heard the learned counsel for the parties, this Court is of the opinion that Section 3(1)(c) read with Section 3(2)(i) & (ii) of the Act offers no assistance to the petitioners inasmuch as the land in question has been dedicated for a specific public project, namely, rehabilitation of leprosy affected patients. This Court is of the view that the protection under the Act would not be available to the petitioners. Section 4 of the Act reads as under:-

"4. Provisions of this Act not to apply in certain cases.- 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 subsection (1) of section 3;

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

public projects."

(emphasis supplied)

10. Consequently, as the land in question is required for a specific public project i.e. for rehabilitation of leprosy affected patients, Section 3 of the Act and the judgment in Banwari Lal Sharma (supra) offer no protection to the petitioners.

11. This Court is also in agreement with the submission of Mr. Ravinder Sethi, learned amicus curiae that this Court cannot direct the respondents to complete the process of regularisation of the petitioner-societies as the same would not only be unethical, illegal, contrary to public purpose but would also amount to placing premium on fraud. After all, there is no question of regularising illegal and unauthorized colonies in Tahirpur leprosy complex for "able-bodied and healthy outsiders" as the said complex is dedicated to the welfare and rehabilitation of leprosy affected patients.

12. Moreover, as the petitioners admit that they have carried out illegal and unauthorised construction, this Court is of the opinion that they cannot invoke the high prerogative writ jurisdiction as the said jurisdiction is only available to those who approach the Court with clean hands.

13. This Court is further of the view that the admitted position is that though the petitioners are healthy able-bodied persons, yet they have encroached upon the land which had been dedicated for rehabilitation and welfare of leprosy affected patients. As a consequence, another "welfare scheme stands on its head today". In fact, due to rampant encroachment and illegal construction within the Tahirpur leprosy complex, there is no further accommodation available to rehabilitate the leprosy affected patients. In this context, the observations of SDM Seemapuri are apposite inasmuch as he concludes, "that the Tahirpur Complex, which was initially created for the welfare of persons afflicted with leprosy on humanitarian considerations, has now almost lost all its relevance in the sense that it is catering to the healthy people more than it is doing to the persons afflicted with leprosy. The amount which is being spent by the Government in development and for other facilities is being swallowed by outsiders who have a grater say in affairs of the complex. However, these outsiders are sheltered by the Panchayats, their Pradhans, local politicians and, reportedly, by some others who are professional litigants. Both the groups have developed their vested interests in the affairs of the complex which they do not want to do away with.?"

(emphasis supplied).

14. This Court is of the opinion that despite the State setting apart valuable land and monetary resources for maintenance of the said complex, the leprosy affected patients, thanks to the encroachment and illegal construction carried out by the petitioners, have been forced to squat and beg on pavements outside public places and places of worship.

15. For the aforesaid reasons, the present writ petition and application are

dismissed and the interim order dated 4th January, 2017 stands vacated. This Court places on record its appreciation for the services rendered by Mr. Sethi, learned Amicus Curiae.