
(2013) 01 DEL CK 0386

In the Delhi High Court

Case No : Writ Petition (C) 2000 of 2012

Khushi Seva Sanstha (Regd.)

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 — Section 2(i), 3

Citation : (2013) 01 DEL CK 0386

Hon'ble Judges : D. Murugesan, C.J.;V.K. Jain, J

Bench : Division Bench

Advocate : Alamgir, for the Appellant; Ravi Sikri and Mr. A. Kumar for R-5 and 6, Mr. Suman Kukrety for Ms. Farida Satarawala Chopra, for R-4, Mr. Sanjay Kumar Pathak, for R-1, Ms. Anooja Srivastava for Ms. Suparna Srivastava, for MCD/R-3 Mr. Ajay Verma for DDA and Mr. Kamal Nijhawan and Mr. Dinesh Patel, for DDA, for the Respondent

Final Decision : Disposed Off

Judgement

1. Alleging encroachment and illegal construction in the Greenbelt of Khasra No. 225 situated in Village Arakpur Bagh Mochi, Delhi, belonging to the Government and particularly alleging construction by respondent nos. 5 and 6 on the wall adjacent to a monument, the petitioner has sought direction to respondent no. 2 DDA and respondent no. 3 Municipal Corporation of Delhi to forthwith demolish the structure and remove the encroachment on the aforesaid government land. The petitioner has placed reliance upon the order dated 28.4.2003 passed by the learned Single Judge of this Court in W.P.(C) 39214/2002 titled Smt. Shakunta Narang vs. DDA and others, inter alia, directing as under:

Learned counsel for respondent no. 1, DDA has today placed on record an order passed by the Director (LM) North Zone dated 26.3.2003. Learned counsel submits that in view of the allegations and counter allegations between the parties, detailed hearings were granted to all the parties and thereafter this order has been passed. A copy of the said order is taken on record. The operative

portion of the said order is as under:

I am of the opinion that Sh. K.L. Narang has been making complaints against specific persons and not against the encroachment done by several persons in Kh. No. 225. He has not been able to substantiate his allegations. The record being maintained in the Nazul Branch has not been shown any signs of tampering at any level by anybody to give undue benefit to the family members of Sh. Sri Chand was a Chulha Tax Payer in Village Arak Pur Bagh Mochi and his descendants are fully entitled to get any benefit arising out of their being Chulha Tax Payee regarding encroachment of Kh. No. 225 it is reiterated that Government may take a decision in respect of entire encroachment which is existing since 1959 and no selective action can be taken against any individual. Regarding the new unauthorized construction/encroachment DD (lands) should ensure that no such construction, takes place in future on Government Land and the help of local police may be taken to stop the same.

In view of the aforesaid finding, it is directed that action shall be taken by Respondent No. 1 in pursuance to the report within a maximum period of eight weeks and compliance report shall be filed within two weeks thereafter with advance copy to learned counsel for the petitioner and the respondent no. 4.

In my aforesaid view, the grievance of the petitioner stand satisfied with the aforesaid directions. In view of the findings the encroachments have taken place in Khasra No. 225, unauthorized construction exists and new unauthorized construction has been raised, all of which is liable to be removed.

Relying upon the aforesaid order, it is submitted by the learned counsel for the petitioner that the respondent DDA was, in compliance of the aforesaid order, required to remove whatever encroachment and unauthorized construction existed in Khasra No. 225 situated in Village Arakpur Bagh Mochi, Delhi as also the unauthorized construction which has been raised thereafter.

2. The learned counsel for the respondent no. 2 DDA has submitted that a representation was received from the Villagers of Village Arakpur Bagh Mochi, Delhi seeking regularization of their colony and on that representation, the following order was passed by the Lt. Governor:

It seems that there is divergence between the order of the High Court and the action that DDA proposes to take. The Court had given a direction or the removal of unauthorized construction in Khasra No. 225. What DDA proposed to do is to demolish structure raised by 14 persons, who are not originally Chulha Tax Payers and who seem to have acquired those plots from Chulha Tax payers.

The situation in village Arakpur Bagh Mochi needs to be seen in the correct perspective. It seems that spread that over 5 Khasra numbers of which 225 is one, there are hundreds of pucca structures. Some of them belong to original Chulha Tax Payers, for the regularization of whose rights over the respective plots, a policy decision had been taken by the Government of India but formal

papers have not been issued. The second category of structures has been raised by persons, who have purchased the plots from the original Chulha Tax Payers. Their rights are not liable to be regularized under the government of India's policy, as it stands to date. The third category is of structure raised on government lands, by way of encroachment. All constructions are unauthorized in the sense that they have been made without sanction of building plans by the municipal authority. Even the court seems to belong to the second category mentioned above.

In this situation, to single out for demolition just 14 structures belonging to the second category and situated on Khasra No. 225 will be an arbitrary action and will give rise to a serious grievance on the part of their owners and may create a feeling of insecurity and panic in the entire area.

I feel that in the current context, it will be rational to view the entire village of Arakpur Bagh Mochi as an unauthorized colony and to deal with it as such, in accordance with the guidelines finalized by the Government of India Rights over the plots occupied by original Chulha Tax Payers and their descendants will be regularized in accordance with the Government of India's policy announced in 1983. The other will be called upon to pay the price of land at the L&DO rates plus. The other steps for the provision of infrastructure and regularization of building will be taken as per the guidelines.

I suggest that this perspective be presented to the court for its consideration.

3. He has drawn out attention to the following averments made in paragraphs 24 and 25 of the additional affidavit dated 23.11.2012:

24. The Government of India has already issued the policy guidelines for regularization of unauthorized colonies in Delhi and pursuant thereto DDA has also framed Regulations for regularization of unauthorized colonies in Delhi, which have been published on 24.3.2008. Further, Government of India having considered the hardship being faced by the residents of unauthorized colonies in Delhi has enacted a special legislation "The National capital Territory of Delhi Laws (Special Provisions) Second Act, 2011" where protection has been extended upto 31.12.2014.

25. That the Chulha Tax Payers and their descendants are already covered and safeguarded by the guidelines framed by the Government of India in 1983, they are further protected by "The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

4. Section 3 of The National capital Territory of Delhi Laws (Special Provisions) Second Act, 2011:

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 finalize 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 their extensions, 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 Delhi in accordance with the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 and the Master Plan for Delhi, 2021 to ensure its development in a sustainable, planned and humane manner;

(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 their 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;

(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 arrangement in respect of special areas in accordance with the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadis, 2010 within overall ambit of Master Plan in force; and

(g) policy or plan for orderly arrangement 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 unauthorized development;

(ii) in respect of unauthorized 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 8th day of

February, 2002, mentioned in sub-section (1);

(iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadi, 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.

5. In view of the provisions of the above referred Act, no action for removal of encroachment or demolition of unauthorized construction which had come up before 1.1.2006 can be taken either by DDA or by MCD irrespective of the order passed by any Court including the order dated 28.4.2003 passed by the learned Single Judge of this Court in W.P.(C) 39214/2002 titled Smt. Shakunta Narang vs. DDA and others. Similarly, no action can be taken in respect of special areas as defined in Section 2(i) of the Act. No action for demolition of unauthorized construction or removal of encroachment in respect of unauthorized colony can be taken if such colony existed on 31.3.2002 and the construction took place on or before 8.2.2007.

6. The learned counsel appearing for the respondent no. 2 DDA categorically states that any encroachment or unauthorized construction which is not protected under the provisions of the above referred Act shall be removed/ demolished by DDA wherever such matters fall in the jurisdiction of DDA. Similar statement is made by the learned counsel appearing for the MCD, in respect of the areas falling in the jurisdiction of MCD. As regards, the encroachment/ construction which is not protected under the said Act, DDA and MCD shall take prompt appropriate action in accordance with law in terms of the statement made by their respective counsel.

The writ petition stands disposed of with these directions.