
(2012) 03 DEL CK 0564

In the Delhi High Court

Case No : Writ Petition (C) 3444 of 2010 and CMs 6892 of 2010, 7230 of 2011

Krishna Estate Resident Welfare Association and Others

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0564

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Ved Prakash Sharma with Ms. Amrit Kaur and Ms. Kanika Sabharwal, for the Appellant; Ajay Verma, Advocate for R-1/DDA, Mr. Rajeev Sharma, Advocate for R-2/GNCTD, Mr. Rajan Sabharwal, Advocate for R-4/UOI, Mr. K.R. Chawla, Advocate for the applicant in CM 7230/2011, for the Respondent

Judgement

Hima Kohli, J.—This petition is filed by petitioner No.1/Krishna Estate Resident Welfare Association and nine others praying inter alia for setting aside the proposed demolition action being undertaken by the respondents in respect of residential premises of petitioners No.2 to 10 existing in Khasra No.509, G-Block, Punjabi Colony, Narela, Delhi, known as Krishna Estate, G-Block, Punjabi Colony, Narela Delhi.

2. It is contended by learned counsel for the petitioners that the aforesaid demolition action has been undertaken by respondent No.1/DDA in violation of the National Capital Territory of Delhi Laws (Special Provisions) Act and the policy framed by the Govt. of NCT of Delhi, applicable to the unauthorized colonies like that of the petitioners", which is awaiting regularization. He states that the petitioner No.1/Association had applied to the respondent No.2/Govt. of NCT of Delhi for regularization of its colony and its name figures at Sr. No.1391 in the list of applicants for regularization of unauthorized colonies as drawn by respondent No.2/Govt. of NCT of Delhi. The registration number assigned to petitioner No.1/Association is 1574. It is averred in para 8 of the writ petition that on 12.08.2008, petitioner No.1/Association had received a letter from the

Govt. of NCT of Delhi, calling upon it to submit documents and rectify the deficiencies in the application submitted by it for grant of a provisional registration certificate. A copy of the aforesaid letter dated 12.08.2008 addressed by the Govt. of NCT of Delhi to the petitioner No.1/Association is enclosed as Annexure P-6.

3. Immediately after the aforesaid averment made in para 8 of the writ petition, in para 9 it is stated that petitioner No.1/Association received a letter dated 15.09.2008 from the MCD, calling upon it to remove the discrepancies in respect of its application for regularization. A copy of the aforesaid letter dated 15.09.2008 addressed by the MCD to petitioner No.1/Association is enclosed as Annexure P-7. In para 2 of the aforesaid letter, the MCD had mentioned attaching a copy of the discrepancies noticed in respect of the petitioner No.1/Association's colony. However, the said enclosure has not been attached to Annexure P-7. Petitioner No.1/Association claimed that it had removed all the discrepancies as pointed out and submitted a complete set of papers to the MCD on 15.03.2010, after a period of two years.

4. It is contended by learned counsel for the petitioners that at the time of submitting the layout plan of the colony to the MCD under cover of letter dated 15.03.2010, petitioner No.1/Association had added Khasra No.509, subject matter of the present petition, to the said layout plan but thereafter, MCD did not intimate anything to petitioner No.1/Association in this regard. As a result, petitioner No.1/Association remained under the bonafide impression that the aforesaid Khasra No.509 had been included in the layout plan of its colony pending regularization. It is submitted that the petitioners were compelled to file the present writ petition in May 2010, for the reason that on 19.03.2010, the respondents had suddenly undertaken certain demolition action and thus dispossessed petitioners No.2 to 10 from their residential premises that fell in the aforesaid Khasra No.509.

5. When the present petition came up for admission on 19.05.2010, in view of the submission made by the counsel for the petitioners that the colony in question had been included in the list of unauthorized colonies, and it was under consideration for regularization, a provisional certificate having been issued to it, an interim protection was granted to petitioners No.2 to 10 by directing that till the next date of hearing, no demolition action would be undertaken in the aforesaid Khasra, in case construction had been carried out there on or before 07.02.2007 and it was clarified that the same was subject to any orders that may have been passed by the Division Bench pertaining to the land in question.

6. A counter affidavit was filed by respondent No.1/DDA on 13.09.2010, wherein it stated that the petitioners are not the owners of the land in question measuring 15 bighas 8 biswas situated in village Mamurpur and they did not have any right, title or interest in the land inasmuch as the same was acquired vide Award No.202/86-87 for the purpose of planned development of Delhi. It is further stated that the land in question had been handed over by the Land &

Building Department, Govt. of NCT of Delhi to the respondent No.1/DDA on 23.09.1986 and the same was placed at the disposal of respondent No.1/DDA on 07.11.1986. It is asserted by respondent No.1/DDA that the parcel of land in question is not covered by the National Capital Territory of Delhi Laws (Special Provisions) Act as it is not a part of the unauthorized colony known as Krishna Estate.

7. Learned counsel for respondent No.1/DDA submits that as per the layout plan provided by the Govt. of NCT of Delhi to the DDA alongwith the list of Khasra Nos., the land of Khasra No.509 does not form a part of the said list. He points out that out of the land measuring 15 bigha 8 biswa comprising in Khasra No.509, land measuring 11 bigha had been got vacated by respondent No.1/DDA on 19.03.2010 and the built up structures were removed from the said land and only a few structures falling in an area measuring 4 bighas 8 biswas could not be removed on the said date due to paucity of time. Thereafter, the interim order dated 19.05.2010 came to be passed in the present proceedings due to which DDA stayed its hands. Mr. Ajay Verma draws the attention of the Court to the document enclosed with the counter affidavit, which is a copy of the land status report in respect of the colony in question that had been prepared by the Revenue Department of respondent No.2/Govt. of NCT of Delhi on 06.07.2009 to submit that Khasra No.509 does not form a part of the layout plan of the aforesaid colony. He further states that the petitioners have deliberately not placed on record the enclosure to the letter dated 15.09.2008 addressed by the MCD to petitioner No.1/Association, which would have clearly shown the discrepancies that had been pointed out by MCD in respect of the colony in question. As regards the rectified layout plan submitted by petitioner No.1/Association to the MCD, he submits that the same would in any case not make any difference for the reason that even as per the Govt. of NCT of Delhi, Khasra No.509 had not been shown by the Revenue Department in the land status report as a part of the unauthorized colony.

8. The aforesaid submission made by learned counsel for respondent No.1/DDA is affirmed by the counsel for respondent No.2/Govt. of NCT of Delhi, who submits that the said exercise of preparing a land status report had been undertaken by the Govt. of NCT of Delhi to determine the boundary of the colony and the layout plan of the unauthorized colony, as received from the applicant, had been forwarded to the Deputy Commissioner, Revenue Department, Govt. of NCT of Delhi, for preparation of a land status report as well as indicate the Khasra Nos. in the layout plan. He states that the Revenue Department had informed the Unauthorized Colony Cell in the Department of Urban Development, Govt. of NCT of Delhi that the khasra No. in question had not been shown by it as a part of the colony either in the land status report or in the layout plan.

9. The aforesaid affidavit filed by respondent No.1/DDA makes it crystal clear that Khasra No.509, subject matter of the present petition, was never a part of the layout plan as originally submitted by the petitioner No.1/Association at the

time it submitted an application for regularization of the colony to the Govt. of NCT of Delhi. Pertinently, the aforesaid fact has been deliberately skirted by the petitioners while filing the present petition, which is apparent from a perusal of paras 7 to 9 of the writ petition. Further, simply because the Govt. of NCT of Delhi had requested MCD to verify the layout plan submitted by the petitioner No.1/Association, for processing its application for regularization would not be of any assistance to the petitioners herein, when as per the land status report pertaining to the unauthorized colony in question as prepared by the Revenue Department of the Govt. of NCT of Delhi, Khasra No.509 had never been shown as a part of the colony proposed to be regularized.

10. Moreover, the petitioners have not been able to connect the letter dated 15.03.2010 addressed by petitioner No.1/Association to the Chief Town Planner, MCD to the discrepancies pointed out by the MCD in its letter dated 15.09.2008 addressed to it in respect of the layout plan and the documents submitted by it to the Govt. of NCT of Delhi, for regularization of unauthorized colony. For the said purpose, the enclosure to the letter dated 15.09.2008 sent by MCD was of material consideration and the petitioners having failed to place the same on record, it can only be assumed that they did not want this Court to verify as to whether the reply dated 15.03.2010 furnished by petitioner No.1/Association to the MCD was in consonance with the discrepancies as pointed out by the said authority. It is also pertinent to note that after perusing the stand taken by respondent No.1/DDA in its counter affidavit filed on 13.09.2010 and the averments of respondent No.2/Govt. of NCT of Delhi in its affidavit filed on 10.08.2011, the petitioners had all the time to implead MCD as a necessary and proper party in the present proceedings by relying on the correspondence exchanged between petitioner No.1/Association and the MCD with regard to the exact status of the layout plan of the colony in question. Despite the categorical stand taken by the aforesaid respondents that Khasra No.509 was never shown as part of the layout plan of Krishna Estate, the petitioners have failed to implead MCD as a co-respondent in the present proceedings. As a result, an adverse inference would have to be drawn against the petitioners.

11. In view of the aforesaid facts and circumstances, this Court is of the opinion that the petitioners have not been able to place on record documents to substantiate their claim that Khasra No.509 is a part of the layout plan of Krishna Estate. As a result, the relief sought by the petitioners in the present petition is declined. However, while dismissing the present petition, it is clarified that if it is permissible for the petitioner No.1/Association to approach the Govt. of NCT of Delhi at this stage to seek inclusion of Khasra No.509 as a part of Krishna Estate, it shall be at liberty to do so. If such an application is received by the Govt. of NCT of Delhi, the same shall be considered and decided in accordance with law.