
(2014) 02 DEL CK 0060
In the Delhi High Court
Case No : Cont. CAS (C) 848/2012

Mukesh Mohan Goel and Others

APPELLANT

Vs

Asst. Engineer (Bldg) Central Zone South Delhi Municipal Corporation

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) 4 AD 149

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Akhil Sachar and Mr. Vivek, Advocate for the Appellant; Mini Pushkarna and Ms. Yoothica Pallavi, Advocate for the Respondent

Judgement

Sudershan Kumar Misra, J.—This contempt petition is predicated on the alleged non-compliance of the order dated 15.10.2012 in W.P.(C) No. 6509/2012, where in this Court had allowed the writ and set aside the "vacation notice" dated 03.10.2012 given by the respondents herein to the petitioners. It is the case of the petitioners that the respondents have not complied with the orders of this Court by continuing with the demolition process and therefore are in contempt. The petitioners claim to be occupiers of Plot No. 16A, Bagh Chandiwalla, which is located between Mathura Road and Arab Ki Sarai (Nizamuddin), New Delhi, admeasuring about 6265 sq. yards. The stated plot of land primarily consists of open land, and has some semi-concrete construction on it such as; sheds with tin rooftops etc This plot of land has been the subject matter of various disputes and some of the issues, and points of determination, are still sub-judice.

2. On 28.03.2007 the Monitoring Committee had sealed the said premises, and only left a small residential portion unsealed. Later, in 2011 a notice dated 09.02.2011 was issued stating that the property was in a dangerous condition and posed a threat to the inhabitants of nearby areas. The petitioner herein filed Suit No. 14/2011 challenging the notice. That suit is pending.

3. Thereafter, on 03.10.2012, the respondents issued a vacation notice to the

petitioners, stating that the land was government land, allotted to the Archeological Survey of India, to be developed as a "Green Zone". The plot of land in question was contiguous to the heritage building; "Arab Ki Sarai". The respondents gave 24 hours time to vacate the premises stating that the failure to do so would be at the peril and risk of the occupiers/encroachers i.e. the petitioners. On 08.10.2012, the respondents carried out partial demolition of the property.

4. The Petitioner herein approached the Court by way of the aforesaid writ petition No. 6509/2012, praying that the "Notice to Vacate" dated 03.10.2012 be set aside. In that matter, the following order was passed;

Accordingly, the impugned notice dated 03.10.2012 is set aside. Liberty is granted to the respondent to issue a fresh notice, if so advised, in accordance with law. Keeping in view the pendency of civil proceedings in the trial court, all the issues raised by the petitioners and all the legal objections taken, are kept open. Writ petition and the application are disposed of. As prayed, liberty is also granted to the petitioners to take appropriate steps by filing a suit to claim damages for the illegal demolition, alleged to have been carried out.

5. The respondents then continued the demolition on 30.11.2012 without issuing a notice to the petitioners herein. It is stated that only 10% of the property in question now remains un-demolished. It is this action of the respondents which has led to the filing of this contempt petition.

6. It is clear that the order of this Court dated 15.10.2012 gave liberty to the respondents to issue a fresh notice for vacation, "if so advised", and, "...in accordance with law". Obviously the respondents have reapplied their mind to the matter and, after reconsidering their position, concluded that in such matters, where the encroachment is made on public ways or public area, or space left for a public utility, no notice need be given to the occupiers/encroachers beforehand, and that the municipal authority has the right to remove such encroachment without a show cause notice. In this context, the respondents rely on the decision of this Court in Smt. Shehzadi Begum and Ors. v. Municipal Corporation of Delhi, RSA No. 132/2007, where it was held that;

I consider that no contempt can be filed against a municipal authority, where the municipal authority removes encroachment from public area, public land or space left for public utility. In all those colonies and complexes, which are approved by NDMC or a Municipal Authority, the Municipal Authority has a right to remove encroachment from public areas, public ways, open areas meant for public use and utility without a show cause.

And on the decision dated 26.11.2007 in Rakesh Jain v. N.D.M.C. and Anr., Cont. Cas. (C)125/2010.

7. In paragraph 8 of its reply, the Corporation has also taken the position that in a connected writ petition being, 7559/2012, titled, Ram Bhagwan Singh Chauhan

& Anr. v. Land and Development Office & Ors., which has been filed in respect of the same land which is the subject matter of these proceedings, the respondents have referred to proceedings in the petitioner's case in writ petition 6509/2012 and stated categorically, that the vacation notices issued to the petitioner, which became the subject matter of writ petition 6509/2012 (out of which the instant contempt proceedings arise), were wrongly issued by the department since;

There was no requirement of issuing any vacation notice with respect to encroachment on Government Land. The law in this regard is very clear, that encroachers of Government Land are not entitled to be served any notices, statutory or otherwise before eviction.

And that;

This position of law was not brought before this Hon'ble Court inadvertently on the said date when order-dated 15/10/2012 was passed by this Hon'ble Court.

8. It was after considering this stand of the respondents that this Court dismissed writ petition 7559/2012 whilst granting liberty to petitioners to withdraw the same and to take recourse to any remedy that may be available by filing civil suit in this regard. Clearly, therefore, the writ court did not find any impediment with the decision of the respondents to carry out the demolition in question without issuing any vacation notices in advance, and chose not to interfere.

9. The direction of 03.10.2012, which has been reproduced above, specifically permits the respondent to issue a fresh notice, "if so advised" and, "in accordance with law." Obviously, the respondents have re-examined the matter and have taken the step in question advisedly after due consideration of the state of the law as set down, inter alia in Smt. Shehzadi Begum's case (supra). Under the circumstances, to my mind it cannot be said that the impugned action of the respondents can be said to suffer from any "wilful disobedience" of any direction of the Court, which were given in the order dated 15.10.2012.

Consequently, the petition is dismissed with costs of Rs. 25,000-. Costs to be deposited with the Indigent and Disabled Lawyers Fund of the Bar Council of Delhi within eight weeks from today.