
(1993) 11 DEL CK 0034

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 3355, 5345 and 6135 of 1993

Rajinder Kakkar and Others

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 03-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AD 432 : (1994) 54 DLT 484 : (1994) 28 DRJ 133

Hon'ble Judges : B.N. Kirpal, J;Arun Madan, J

Bench : Division Bench

Advocate : Ashok Gumani, Ravinder Sethi, V.K. Seth and Sumeet Bansal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) Six persons claiming to be owners of different plots of land in Village Kishan Garh in the revenue estate of Mehrauli, New Delhi have filed the present writ petition challenging the action of the respondents, which has been taken and/or being proposed ; to be taken, for demolishing structures which have been erected by the petitioners on the said plots. The petitioners also challenge the validity of the entries in the revenue records viz., Khasra Girdawri in respect of the lands which they profess to own.

(2) The first two petitioners claim to have purchased land measuring 570 Sq.Yards from one Smt. Kusum Lata. It is averred in the writ petition that this land was purchased on the basis of an agreement to .sell executed by her in the name of both the petitioners jointly. Copy of the agreement to sell has not been placed on the record but the claim of the said petitioners is that they have been in occupation of the property in question since 13th June, 1986.

(3) Petitioner No.3 is stated to have purchased 10 Sq.Yds of land by virtue of an agreement to sell executed by one Shri Gyanendra Sharma on 20th November, 1989. Copy of the said agreement has been placed on record.

(4) Petitioner No.4 is stated to have purchased 100 Sq.Yds of land from one Shri Rambir by virtue of an agreement to sell dated 27th May, 1991.

(5) Petitioner No.5 is also stated to have purchased 100 Sq.Yds of land but no document evidencing this has been placed on record.

(6) Petitioner No.6 claims ownership of 580 Sq.Yds of land by virtue of a General Power of Attorney executed in his favor on 8th February, 1991 by one Smt. Naraini Devi, who, in turn, is alleged to have purchased 629 Sq.Yds of land in Village Kishan Garh in the revenue estate of Mehrauli from one Sardar Singh by virtue of an agreement to sell dated 25th June, 1985.

(7) It is an admitted fact that none of the petitioners has a registered sale deed in his/ her favor. It is also not in dispute that to the land in question provisions of the Delhi Land (Restriction of Transfer) Act, 1972 apply which require the obtaining of a No Objection Certificate prior to the execution of sale deed in respect of such land. No such permission was obtained by any of the petitioners obviously because no sale deed has been executed in favor of any one.

(8) The case of the petitioners is that during the pendency of the writ petition their properties have been partly demolished and this could not have been done without complying with the provisions of Section 30 of the Delhi Development Act, which requires a show cause notice being given before action for demolition is taken. The grievance of the petitioners also is that the land of the petitioners falls in Khasra No. 1244 of Village Kishan Garh in the revenue estate of Mehrauli and in the Khasra Girdawri for the period 14-10- 1991 to 14-3-1992 and w.e.f. 25-9-1992 to 15-3-1993 the land has been shown to be unoccupied whereas in fact this land is under the occupation of the petitioners.

(9) Before dealing with the rival contentions it is necessary to refer to some more facts relating to the land in question.

(10) The Delhi Municipal Corporation Act was enacted in 1957 and on 3rd June, 1966 by issuance of a Notification u/s 507(A) of the Delhi Municipal Corporation Act a number of localities mentioned in the Notification, which were formerly part of rural areas, ceased to be regarded as rural areas. In other words a number of villages mentioned in the said Notification were urbanised. One such village was Kishan Garh in the revenue estate of Mehrauli. Relevant at this stage are the provisions of Section 150 of the Delhi Land Reforms Act. Sub-section(3) of Section 150 provides that if the whole of the Gaon Sabha area ceases to be a rural area by virtue of a Notification issued u/s 507 of the Act then, the Gaon Sabha constituted for that area shall stand dissolved and on such dissolution all properties, their obligations, liabilities etc. shall vest in the Central Government. The effect, Therefore, of the issuance of the Notification dated 3rd June, 1966 u/s 507 of the Delhi Municipal Corporation Act was that the land belonging to the Gaon Sabha in the Village Kishan Garh in the revenue estate of Mehrauli vested in the Central Government. On 20th August, 1974 the Central Government issued a Notification u/s 22(1) of the Delhi Development Act placing at the

disposal of the Delhi Development Authority the Nazul lands in different urbanised villages for the purpose of development and maintenance of the said lands as green. By the said Notification the Dda was further directed not to make or cause or permit to be made any construction on the said land. This Notification pertained to 48 different Villages including the Village Kishan Garh in the revenue estate of Mehrauli.

(11) By another Notification dated 22nd June, 1987 55 urbanised villages were denotified from the provisions of Section 12 including Village Kishan Garh in the revenue estate of Mehrauli. The effect of this was that the land in question ceased to be a development area but on 26th July, 1989 a Notification in respect of Village Kishan Garh was once again issued u/s 12 of the Delhi Development Act.

(12) The position in law as a result of the aforesaid Notification, Therefore, was that all the Gaon Sabha land vested in the Central Government with the issuance of the Notification of 3rd June, 1966 u/s 507 of the Dmc Act read with Section 150 of the Delhi Land Reforms Act. This land was nazul land and vide Notification dated 20th August, 1974 was placed at the disposal of the Dda for maintaining the same as a green area. For some time this land was not to be regarded as a development area but since 26th July, 1989 this area has continuously become part of the development area.

(13) It is in this background that one has to view and determine as to whether the petitioners have any legal right in the land in question. This aspect is important because it has been contended by the learned counsel for the respondents that the petitioners are encroachers of public land who have raised unauthorised buildings and are, Therefore, not entitled to the discretionary reliefs under Article 226 of the Constitution.

(14) Petitioners 1,2 and 5 have not placed on record the documents whereby they claim to have acquired the ownership of the land in question. Learned counsel for the " petitioners has, however, admitted that there is no sale deed executed in their favor. No permission or no objection certificate under the 1972 Act has been taken by them. What is important to note is that there is no document on record showing that the vendors had any right, title or interest which they could pass on to the said petitioners. As regards the other petitioners, in support of their title they have merely placed on record agreements to sell which have been executed. An agreement to sell does not transfer ownership in land. That apart, in the said agreements to sell it has been stated that the vendor has absolute right as an owner and is the owner in possession but there is no document showing that any of the vendors had ownership right. The land in question had vested in the Gaon Sabha on the promulgation of the Delhi Land Reforms Act, 1954 and there after became the property of the Central Government on the issuance of the Notification u/s 507 of the Dmc Act on 3rd June, 1966. Under these circumstances the question of any person claiming ownership right in the land in question could not arise. The recital in the

agreements to sell, Therefore, to the "effect that the vendors were absolute owners of the land in question was palpably false.

(15) We also have had the benefit of seeing the revenue record which has been produced by the Patwari of Mehrauli. The respondents have also placed on record the Khatauni of the village in question. which shows that as per the last entry in 1980 the land in I question belongs to the Gaon Sabha. In actual effect this land should have been shown as that of Central Government but be that as it may, it is evident that the land does not belong, as per the said revenue record, either to the petitioners or their predecessors in interest. In the Khasra Girdawri also, the possession of the petitioners or their predecessors in interest is not shown.

(16) Apart from the bare recital in the agreements to sell there is no document on record to show that there was any legal title or legal right to possession of the land in question in any of the petitioners or their predecessors in interest. It is no doubt true that the petitioners have been occupying the land for some time but their occupation was of trespassers or encroachers of public land. They have no legal right, title or interest in the same. As we have already noted, the main grievance of the learned counsel for the petitioners is that the respondents have acted and are threatening to act without complying with the provisions of Section 30 of the Delhi Development Act. We will deal with this contention presently but we cannot help but observe that the contention of the petitioners in effect comes to this that they have violated the law and will continue to do so but this does not give the Dda a right to follow the petitioners' example. In other words the law is meant to be obeyed by the Dda alone and not by the petitioners.

(17) Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for law. The wheels of justice grind slowly and the violators of law are seeking to take advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while, at the same time, showing their-complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased manifold in recent years viz., large scale encroachment on public land and unauthorised construction thereon, most of which could not have taken place without such encroachers getting blessings or tacit approval from the powers that be including the Municipal or the local employees. Should the Courts give protection to violators of the law? The answer in our opinion must be in the negative. Time has now come when the Courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorised construction specially when such construction, like the present, is commercial in nature.

(18) Before action for demolition or removal of encroachment is taken the Court must be satisfied, prima facie, on the basis of some document or other tangible evidence that the petitioners or the applicants have a legal title to the property or a right to remain in possession thereof. Where a person is an encroacher and

never had any right to legal possession of public land, the Courts should not grant any injunction or relief which will have the result of permitting or protecting the continued illegal occupation of public land. There may be a case where at a point of time the possession or occupation may have been valid under a lease or a grant and which lease or grant may have subsequently been wrongfully terminated and the termination challenged, such a case may, however, fall in a different category where the question of balance of convenience will have to be carefully examined specially when the action of termination of lease or grant is seriously challenged. But, in a case like the present, where at no point of time the petitioners had any valid right, title or interest to the property the Court ought not to grant any relief to such a petitioner even if there has been any procedural irregularity by the respondent while seeking to get back possession of public land.

(19) Reference may usefully be made to the observations of the Supreme Court in the case of *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, . It was observed by the Supreme Court, while dealing with the jurisdiction under Article 226 of the Constitution, as under:

"8. On the merits, the position is absolutely clear. Under Art-226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be passed in favor of a party. It must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226. The narrow question which falls for our decision in the present appeals is whether the respondents can be said to have proved any legal right in respect of the properties of which they apprehended they would be dispossessed by the appellant."

(20) Another cardinal principle which has to be followed in a writ jurisdiction is that the petitioners must come to the Court with clean hands. Is such the case here? The answer is no. The following facts speak for themselves:

1. The petitioners have no legal title to the land; 2. The land vests with the Central Government and is a public property; 3. There is encroachment by the petitioners on the land without permission from the Government; 4. Construction has been raised on public land without submitting any building plans; 5. According to the Master Plan no construction can be raised on the land in question because this is a green area; 6. Before seeking the transfer of land "No Objection Certificate" was not obtained and the provisions of the Delhi Land (restriction of transfer) Act, 1972 were not complied with.

(21) The conduct of the petitioners is such that they are not entitled to any relief from this Court. Even if it be assumed that a show cause notice had to be issued u/s 30 of the Delhi Development Act before any demolition could be effected and non-issuance of the show cause notice has resulted in the breach of law, nevertheless no relief can be granted to the petitioners because of the irregularities which have been committed by the respondents. The respondents are entitled to regain possession of land which belongs to them and which has been encroached upon and the petitioners cannot be allowed to take advantage of their own wrong. It is possible that the petitioners may be innocent victims of land mafia but be that as it may, the petitioners should have known that in law this land vested in the Central Government and they should not have purchased the same in small parcels and then raise construction without following any building bye-laws. This is not a case where poor houseless people have put up shelters for themselves for their residence. Here is a case where public land has been encroached upon and is sought to be used for erecting structures for commercial use.

(22) Even though non-compliance of Section 30 would not entitle the petitioners to any relief on the facts of the present case, nevertheless it would be appropriate to examine as to in what cases will Section 30 of the Act apply. Section 30 provides for an order of demolition of building being passed and the relevant sub-section is 30(1) and the same is as follows:

"(1) Where any development has been commenced or is being carried on or has been completed in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 12 or in contravention of any conditions subject to which such permission, approval or sanction has been granted,- (i) in relation to a development area, any officer of the Authority empowered by it in this behalf, (ii) in relation to any other area within the local limits of a local authority, the competent authority thereof, may, in addition to any prosecution that may be instituted under this Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of removal, with a brief statement of the reasons Therefore, has been delivered to the owner or that person) as may be specified in the order and on his failure to comply with the order, the officer of the Authority or, as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue: Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made."

(23) SUB-SECTION (1-A) deals with the area other than the development area and contains a provision similar to sub-section(I). Sub-section (2-A) gives a right to an aggrieved party to file an appeal to the Central Government against the direction issued under sub-section (1-A). Sub-section (4) provides that the provisions of the said Section are in addition to the other provisions relating to demolition of buildings contained in any other law for the time being in force. The other relevant Section is Section 31 which gives power and authority to the Dda to stop development which is in the process of being carried on without the requisite permission, approval or sanction.

(24) It is contended by Shri Sethi that Section 30 would not apply to Government land. He submits that the said Section refers to development being carried on by the owner or a person at whose instance the development was commenced and Shri Sethi submits that this expression must mean the owner of the land or any person authorised by the owner. Shri Sethi contends that the owner can only be a private party and not the Government and, Therefore, the said section does not apply to Dda land. We are unable to agree with this contention. Section 30(1) applies to any development which is being carried on with or without permission, approval or sanction and it is not stated therein that the development is only with regard to private land. The expression "person at whose instance the development was commenced" would take within its ambit persons other than the owners or their representatives who may be constructing on Government land. It is to be noted that the word "development" has been defined in Section 2(d) to mean the carrying out of building, engineering, mining or other operations and, Therefore, construction on non-private land would also be included within the ambit of Section 30.

(25) Therefore, whenever the authority desires to take any action under sub-section (1) of Section 30 it would be obligatory on it to issue a show cause notice and give a reasonable opportunity as contemplated by proviso to sub-section (1) of Section 30, in a development area. It is possible, when any such show cause notice is issued that the person concerned is able to show that the land in question does not fall in the development area or that the requisite permission has infact been obtained and that the development is not unauthorised. We would expect reasonable opportunity being given but it should not mean that the proceedings should be unduly delayed. Show cause notice should ordinarily be time bound and a decision under sub-section(I) of Section 30 taken by the appropriate authority within a reasonable time.

(26) It is no doubt true that in the present case also a show cause notice u/s 30 should ordinarily have been issued before taking further action under that provision. The petitioners approached this Court and filed the present writ petition before any demolition had taken place. During the pendency of the writ petition some portions of the buildings have been demolished. Be that as it may, in view of the fact that the petitioners were rank trespassers or encroachers of public land and had constructed buildings without obtaining any approval from

the Municipal Corporation of Delhi they are not entitled to any relief against the non-compliance of the provisions of Section 30 of the Delhi Development Act. If the petitioners had any legal right, title or interest in the land in question then, on account of non-compliance of Section 30(1) by the Dda, relief may have been granted but, on the facts of the present case, when the Dda in discharge of its duty is removing unauthorised construction on Nazul land which has to be developed and maintained by the Dda as a green area, the question of a Writ Court granting any relief to the petitioners does not arise.

(27) The matter may be viewed from another angle. The proviso to sub-section (1) of Section 30 gives statutory recognition to the principle of natural justice. When the petition was argued full opportunity was given to the petitioners to try and establish that, on merits, they had any legal defense to the action which was proposed to be taken by the DDA. We Find that the petitioners have no valid defense to the action against them for recovery of .. possession of Government land From the facts as enumerated above, it is clear that the action proposed by the Dda is fully justified.

(28) At the cost of repetition it may be stated that the petitioners have not complied with any provision of any law and, having taken the law in their own hands and constructed unauthorised buildings, cannot now be heard to complain about the alleged violation of law by the respondents.

(29) For the aforesaid reasons we do not find any merit in this writ petition and the same is accordingly dismissed. The respondents will also be entitled to costs. Counsel's fee RS.1000.00