

(2011) 05 DEL CK 0125

In the Delhi High Court

Case No : Writ Petition (Civil) No's. 12554-58 and 18272-74 of 2008

Ramesh Kumar and Others

APPELLANT

Vs

D.D.A. and Others
 Progressive Square Residents
Welfare Association and Others Vs Govt. of NCT of Delhi and
Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

National Capital Territory of Delhi Laws (Special Provisions) Act, 2007 — Section 3(1), 3(2), 3(3), 4

Citation : (2011) 05 DEL CK 0125

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : V. Shukla and O.P. Bhatia, in Writ Petition Civil No. 12554-58 and Parwinder Choudhry, in Writ Petition Civil No. 18272-74/2008, for the Appellant; Ajay Verma, Amit Mehra for DDA and Ravinder Agarwal, CGSC for UOI in Writ Petition (Civil) No. 12554-58, Arjun Pant, for DDA and Aditya Madan, in Writ Petition (Civil) No. 18272-74/2008, for the Respondent

Judgement

Sanjiv Khanna, J.—In these two writ petitions the prayers are somewhat identical and relate to removal of jhuggi jhompri clusters or encroachment on Government land. Keeping in view the similarity of the issues involved, the two writ petitions are being disposed of by this common order.

2. These writ petitions were filed in the year 2005. Writ Petition (Civil) No. 18272-74/2005 filed by Progressive Square Residents Welfare Association and Others pertains to jhuggi jhompri cluster at Outram Line, New Delhi. It is stated in the writ petition that there were about 200 jhuggies, 20 shops and go downs. It is alleged that land mafia was involved and they had given these jhuggies on rent. Delhi Development Authority (DDA) in their counter affidavit filed in December, 2005 had stated that there were about 475 jhuggies situated on about five acres of land. Inspection of the area was carried out and most of the jhuggies were post 1990 and few jhuggies were pre 1990. It was further stated

that as per the policy of DDA, some of the occupants were entitled to alternative allotment at the time of removal. In the status report, which was filed before this Court on 22nd August, 2006, it was stated that out of 475 jhuggi jhompri dwellers, 109 were found eligible for relocation. It may be noticed that this figure has to undergo a change in view of the subsequent policy of the Government of National Capital Territory of Delhi whereby the eligibility norms for relocation have been re-fixed and liberalized.

3. Mr. Ramesh Kumar and others have filed Writ Petition (Civil) No. 12554-58/2005 in respect of unauthorized encroachment and jhuggi jhompri clusters in Naraina. In the writ petition it is stated that land in village Naraina was acquired but several portions of the said land were unauthorisedly encroached upon and occupied by third persons. The Petitioner has prayed that the zonal development plan of Naraina, zone B-7, should be implemented and unauthorized encroachment on the acquired land should be removed.

4. Counter affidavits have been filed both by Land Acquisition Collector (South-West) and Delhi Development Authority. Rejoinder affidavits have also been filed. The Land Acquisition Collector (South-West) has stated that the award No. 1957 was pronounced on 28th February, 1967 and award No. 1380 was pronounced on 17th February, 1967 and land comprising of several khasra numbers in village Naraina was acquired except for land in khasra No. 1854/1784. Subsequently, land measuring 1 bigha 14 biswa was denotified on 12th June, 1995. There are two more awards bearing No. 32/1979-80 dated 12th February, 1980 and 1713 dated 30th October, 1993.

5. DDA in their affidavit in paragraph 6 has stated as under:

6. The contents of paragraph 6 of the petition are wrong and denied. It is submitted that the alleged representation relates to Respondent No. 2 and not to answering Respondent. It is however, submitted that in Master Plan for Delhi the norms providing in the residential area which includes villages and while at the time of creation of village Plan facilities in the open land are made available within or around villages. It is also submitted that the answering Respondent prepared and thereafter approved the village development plan of Naraina. Subsequently by Notification the Delhi Govt. transferred to MCD as part of 55 villages vide Notification No. F-16(1) 87 L & B/23559-74. The further details about the constructions in various Khasras. It may be mentioned here that the land under Khasran No. 1673/2 and 1679/2 min. is an unacquainted land whereupon house numbers WZ 572 A and WZ 572D are built up s(sic) structure and answering Respondent cannot have possession of this land. Similar is the position with regard to Khasras No. s 1671/2 whereupon houses Nos. WZ565 to 565C are built structures. This Khasra land is acquired land vide award N.1953. However the possession whereof has not till date been transferred to answering Respondent. The land under Khasra 1754 is under the possession of answering Respondent, which is lying vacant. Further there is no encroachment on site. Similarly the land in khasra No. 1768 is also lying acquired for DDA and it does

not suffer from any encroachment on site. It is submitted that the development is the slow process which takes period of several years together while the Master Plan, Zonal Plan, sub-zonal plan lay out plan are to be followed. The process of development further goes slow when it involves various departments, agencies and authorities of various governments. Therefore it is not correct to say that plans as contemplated in Delhi Development Act is not being acted upon. It is stated that there is no encroachment on the land in question as alleged by the Petitioners in this paragraph. It is wrong and vehemently denied that the land grabbers/unauthorized occupants have made encroachment with the collusion of officials of concerned departments on the land which has been shown for part, primary school, proposed roads, group housing scheme maternity centre (sic) in zonal development plan. It is stated that the Petitioners have made wild allegations of collusion against the officials mala fide, vaguely and without any basis or concrete facts.

6. Unauthorised encroachment on Government land specially when land is acquired after passing an award and payment has been made to the land owners, is a matter of grave concern. On several occasions directions have been issued to the authorities to remove encroachment. At the same time, it is noticeable that planned development of Delhi has been a dream and the authorities concerned have failed to provide shelter and houses/flats for the ever increasing population in the National Capital Territory of Delhi. Planned development has failed to keep pace with the needs and requirements of the common man. Failure to meet the basic need of shelter has resulted in unauthorized encroachment on Government land and private land in form of jhuggi jhompri clusters, unauthorized colonies, etc. Courts have been passing orders for removal of encroachments from Government land but leaving it to the authorities to formulate schemes for resettlement. The policy of relocation was quashed by this Court in Writ Petition (Civil) No. 4441/1994 Okhla Factory Owner's Association v. Government of NCT of Delhi (108) 2003 DLT 517 and Writ Petition (Civil) No. 2112/1992, Wazirpur Barton Nirmata Sangh Vs. Union of India (UOI) and Others, In Okhla Factory Owner's Association (supra), the High Court noted that most of the alternative sites provided to encroachers were sold away or transferred, thus defeating the very object of the policy. In Wazirpur Barton Nirmata Sangh (supra), the Court was once more of the view that the purpose behind the policy of relocation gets defeated as it gives the squatters an undue right to another allotment. Thus a person can sit wherever he wants. The court held that continuing existence of such policy which encourages further encroachment not only serves no social purpose, but is also illegal and arbitrary. However, SLP has been preferred and interim orders have been passed. In Sudama Singh v. Government of Delhi (168) 2010 DLT 218, a Division Bench of this Court held that relocation has to be a meaningful exercise consistent with rights of life, livelihood and dignity of such jhuggi dwellers and that removal of their jhuggis without ensuring their relocation would amount to gross violation of Fundamental Rights. In pursuance to this view that the court issued directions

that the decision of non-entitlement of alternative accommodation to the jhuggi dwellers on relocation was illegal and unconstitutional.

7. After filing of the present petitions, Master Plan of Delhi 2021 has been enforced. The said master plan deals with problems of urbanization, including encroachment on Government land, etc. Pursuant to the said plan, there has been revision in the zonal development plan, including the plan for the Naraina area.

8. By order dated 15th April, 2009 the Writ Petition (Civil) No. 12554-58/2005 was directed to be adjourned sine die with liberty to the parties to revive the same after expiry of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2009. After the expiry of the said Act, National Capital Territory of Delhi Laws (Special Provisions) Act, 2010 and National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 have been enacted. The preamble of the 2011 Act refers to the reasons and cause why the said Act has been enacted. The Preamble reads as under:

An Act to make special provisions for the National Capital Territory of Delhi for a further period up to the 31st day of December, 2011 and for matters connected therewith or incidental thereto.

WHEREAS there had been phenomenal increase in the population of the National Capital Territory of Delhi owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment or unauthorised developments which are not in consonance with the concept of planned development as provided in the Master Plan for Delhi, 2001 and the relevant Acts and building bye-laws made there under;

AND WHEREAS the Master Plan for Delhi, 2001 was extensively modified and notified by the Central Government on the 7th day of February, 2007 with the perspective for the year 2021 keeping in view the emerging new dimensions in urban development vis-a-vis the social, financial and other ground realities;

AND WHEREAS the Master Plan for Delhi with the perspective for the year 2021 specifically provides for strategies for housing for urban poor as well as to deal with the informal sector;

AND WHEREAS a strategy and a scheme has been prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors in accordance with the National Policy for Urban Street Vendors and the Master Plan for Delhi, 2021, and is being implemented;

AND WHEREAS based on the policy finalised by the Central Government regarding regularisation of unauthorised colonies, village abadi area and its extension, the guidelines and regulations for this purpose have been issued;

AND WHEREAS in pursuance of the guidelines and regulations necessary steps are being taken for regularisation of unauthorised colonies which, inter alia,

involve scrutiny of layout plans, assessment of built up percentage existed as on the 31st day of March, 2002, identification of mixed use of streets, approval of layout plans, fixation of boundaries, change in land use and identification of colonies not eligible for regularisation;

AND WHEREAS more time is required for proper implementation of the scheme regarding hawkers and urban street vendors and for the regularisation of unauthorised colonies, village abadi area and its extension;

AND WHEREAS the revised policy for proper arrangements for relocation and rehabilitation of slum dwellers and jhuggi-jhompri clusters in the National Capital Territory of Delhi has been formulated and accordingly, the Delhi Urban Shelter Improvement Board Act, 2010 has been enacted by the Government of National Capital Territory of Delhi and notified with effect from the 1st July, 2010 to provide for implementation of schemes for improvement of slums and jhuggi-jhompri clusters with a view to bring improvement in environment and living conditions, and to prepare housing scheme for such persons;

AND WHEREAS the draft policy regarding farm houses is under consideration in the Delhi Development Authority;

AND WHEREAS pursuant to the Master Plan for Delhi, 2021, the Zonal Development Plans in respect of various Zones have been notified which provides for regularisation of schools, dispensaries, religious institutions and cultural institutions;

AND WHEREAS the policy with respect to storages, warehouses and go downs used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land are under consideration of the Central Government in consultation with the Delhi Development Authority;

AND WHEREAS the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007 was enacted on the 5th day of December, 2007 to make special provisions for the areas of the National Capital Territory of Delhi for a period up to the 31st day of December, 2008 which ceased to operate after the 31st December, 2008;

AND WHEREAS the National Capital Territory of Delhi Laws (Special Provisions) Act, 2009 was enacted in continuation of the aforesaid Act for a period up to the 31st day of December, 2009 to make special provisions for the areas of the National Capital Territory of Delhi and that Act ceased to operate after the 31st day of December, 2009;

AND WHEREAS the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 was enacted in continuation of the aforesaid Act for a period up to the 31st day of December, 2010 to make special provisions for the areas of the National Capital Territory of Delhi and that Act ceased to operate after the 31st day of December, 2010;

AND WHEREAS it is expedient to have a law in terms of the Master Plan for Delhi, 2021, in continuation of the said Act for a period up to the 31st day of December, 2011 to provide for temporary relief and to minimise avoidable hardships and irreparable loss to the people of the National Capital Territory of Delhi against any action by the concerned agency in respect of persons covered by the policies referred to above.

9. Sections 3 and 4 of the said Act are also relevant and read as under:

3. (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made there under, the Central Government shall before the expiry of this Act, take all possible measures to finalise 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 its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and go downs 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 the National Capital Territory of 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 regularization of unauthorised colonies, village abadi area (including urban villages) and its 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; and

(e). policy or plan for orderly arrangement regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and go downs used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.

(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; and

(ii). 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 Sub-section (1),

shall be maintained.

(3). All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in Sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December, 2011.

(4). Notwithstanding any other provision contained in this Act, the Central Government may, at any time before the 31st day of December, 2011, withdraw the exemption by notification in respect of encroachment or unauthorised development mentioned in Sub-section (2) or Sub-section (3), as the case may be.

4. 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 Sub-section (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 its extension in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.

10. In the present writ petitions, the constitutional validity of the aforesaid Acts are not under challenge and need not be examined. These issues are kept open.

11. In view of the aforesaid facts, we are not inclined to keep the present writ petitions pending and the same are disposed of with the direction to the Respondent authorities to protect the acquired land mentioned in the two writ petitions by conducting a survey and, if required, by aerial survey through satellite imaging. Further, they shall take action "as per law" to remove encroachments. The expression "as per law" will mean and include the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011. Unauthorised construction or encroachment not entitled to benefit of the said enactment will be proceeded against as per law. Liberty is granted to the Petitioners to file a fresh writ petition in specific instance/case if the Respondent authorities do not act in accordance with law.

The writ petitions are accordingly disposed of. No costs.