

(2002) 08 DEL CK 0002

In the Delhi High Court

Case No : CWP No. 5528/99 and CR No. 1020 of 2000

Sawan Park Residents' Association and Shri Gurcharan Singh and Others APPELLANT

Vs

M.C.D. and Others RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

Citation : (2002) 08 DEL CK 0002

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Vinay Bhasin and H.L. Raina, in CR No. 1020/200, for the Appellant; Anil Grover, for MCD and Vinay Bhasin and H.L. Raina, for R-5 in CWP No. 5528/99 and Anil Grover, for MCD in CR No. 1020/2000, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Sawan Park Residents' Welfare Association had approached this court by means of this petition in the nature of Public Interest Litigation primarily aimed against the respondent No. 5. The allegations in the petition were that the respondent No. 5 had encroached upon the Public land being Plot No. B-42A, Sawan Park, Delhi earmarked for the installation of the DESU/DVB transformer situated in Sawan Park residential scheme. It was alleged that Zonal Plan of the area clearly earmarked the use of the land as residential and in violation thereof, the respondent No. 5 was using the encroached land as a workshop and had even let out some of the portion of the encroached plot to a Dhaba/tea stall. It was also alleged that the petitioner association had made number of representations to the official respondents, namely, the Municipal Corporation of Delhi, the Delhi Development Authority, the police authorities etc. to discharge their statutory duty by removing the encroachment but they had failed to do the needful and in these circumstances a prayer was made directing the respondents to carry out their statutory obligatory by removing the encroachment.

2. Cognizance of this petition was taken and notice was issued to the respondents. It is not necessary to state the stand of these official respondents in detail or the manner in which the present case progressed. Suffice is to stay that as far as the Delhi Development Authority is concerned, it stated that the area in question did not fall within their jurisdiction and it was the Municipal Corporation of Delhi who was to take steps to corrective action. In so far as the Municipal Corporation of Delhi is concerned, it was directed to take steps in accordance with law and submit its status report. The Municipal Corporation of Delhi finally informed this Court that the encroachment had been removed.

3. Normally after this action report of the Municipal Corporation of Delhi the matter could have been closed. However, on 16th August, 2000 when this matter came up for hearing, the counsel for the respondent No. 5 submitted that there were other instances of unauthorised constructions in this colony and he may be permitted to give a list of the properties to the Municipal Corporation of Delhi where unauthorised constructions had been carried out. This court directed the counsel to give such list to the Municipal Corporation of Delhi to enable it to take action in accordance with law with respect to such unauthorised constructions in the other properties in the colony. The respondent No. 5 thereafter submitted such list to the Municipal Corporation of Delhi, a copy whereof was placed on the record of this case also. Pursuant thereto, the Municipal Corporation of Delhi also filed its affidavit dated 20th November, 2000 stating that acting on the directions of the court, the Municipal Corporation of Delhi had already initiated its action after inspecting the properties list whereof was supplied by the respondent No. 5 inasmuch as show cause notices were issued after booking unauthorised constructions in respect of those properties where unauthorised construction was found. A detailed statement of such action in respect of various properties was attached as Annexure "A" to the said affidavit. The matter was monitored thereafter from time to time and the Municipal Corporation of Delhi filed further action taken reports as well.

4. Last such report is dated 26th February, 2002 wherein details are given in respect of unauthorised constructions, issuing of show cause notices and demolition orders etc. passed in such cases. It may also be mentioned that certain residents against whom the action is initiated have filed civil miscellaneous applications praying for stay of demolition orders in respect of their properties.

5. As already pointed out above, this petition was filed for removal of alleged encroachment by the respondent No. 5 on Plot No. B-42A, Sawan Park, Delhi earmarked for DESU/DVB transformer and misuse of the said plot by the respondent No. 5 by using the same as workshop and dhaba. That has been removed. We may place on record here that the stand of the respondent No. 5 is that he was in possession of the said plot since 1971 and his removal by the Municipal Corporation of Delhi was illegal. However, we may also observe that he has nowhere pointed out as to how his possession of the said plot of land was

authorised or legal and how he was not an encroacher as alleged by the petitioner which position was accepted by the Municipal Corporation of Delhi. Be as it may, it is not necessary for us to make any further comments on this aspect inasmuch as in case the respondent No. 5 has any claim against the Municipal Corporation of Delhi or any other person, for alleged illegal removal, he may take whatever steps he deems proper against such persons.

6. So far as other illegal constructions in the colony are concerned, as alleged by the respondent No. 5, the petitioner and other residents submitted that this colony, which was initially an irregular colony, has since been regularised and the constructions are not illegal. It is not in dispute that in respect of these constructions allegation of respondent No. 5 is not that they are encroachers. The allegations relate only to unauthorised constructions, namely, an extra/additional construction in this building not permitted by the building bye-laws. Be as it may, since the Municipal Corporation of Delhi is taking action as per law, it is not necessary to keep this petition pending and the purpose would be served in giving directions to the Municipal Corporation of Delhi to take action in accordance with law. The applicants/residents who are claiming that the constructions are not illegal and the action/contemplated by the Municipal Corporation of Delhi is not warranted by law shall be at liberty to show this to the Municipal Corporation of Delhi and/or to take appropriate steps as are available to them under the law.

7. This writ petition is disposed of with these directions.

C.R. No. 1020/2000

8. In so far as C.R. No. 1020/2000 is concerned, it was filed by Sh. Gurcharan Singh (respondent No. 5 in CWP No. 5528/99) and two others against the order dated 7th September, 2000 passed by the Civil Judge, Delhi whereby their application under Order XXIX Rules 1 and 2 CPC in suit filed by them was dismissed and application under Order XXXIX Rule 4 CPC filed by the defendant No. 1 in the said suit, namely, Sh. Shyam Singh was allowed. Learned counsel for the petitioners in this civil revision, candidly admitted that with the removal of his workshop and dhaba from Plot No. B-42A, Sawan Park, this petition had become infructuous. The same is accordingly dismissed as such.

9. No Costs.