

(2012) 09 DEL CK 0259

In the Delhi High Court

Case No : Writ Petition (C) No. 8926 of 2011

S.B. Tripathi

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0259

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Bhupesh Nanda, for DDA and Mr. Sumeet Pushkarna and Mr. Varun Dubey for DJB, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, an advocate, resident of the colony of Dwarka, New Delhi, has filed this writ petition in public

interest to restrain the respondent No. 1 Delhi Development Authority (DDA) from supplying untreated, raw and hard tubewell water to the

residents of the colony of Dwarka, particularly in Sectors 14-A and 14-B of the said colony; direction is also sought to restrain the respondent No.

1 DDA from mixing untreated, raw and hard tubewell water with the water supplied by the respondent No. 4 Delhi Jal Board (DJB); direction is

yet further sought against the respondent No. 1 DDA to remove the encroachments on public land in the said colony. Notice of the petition was

issued. Counter affidavits have been filed by respondent No. 1 DDA and respondent No. 4 DJB. None appeared despite service on behalf of the

respondent No. 5 Municipal Corporation of Delhi (MCD). Rejoinder has been filed by the petitioner to the counter affidavit of the respondent No.

1 DDA.

2. The petition pleads:

(i) that the distribution of water supply system scheme of Dwarka Project was approved way back in the year 1993 by the DJB inter alia on the

condition that DDA shall manage water with tubewells till DJB is in a position to obtain more raw water, as DJB was not in a position to spare

filtered water for Dwarka due to severe constraint of raw water;

(ii) that the colony of Dwarka has been divided into five Command Tanks with each such Command Tank supplying water to specified areas of the

colony;

(iii) that the water requirement of Dwarka is 60 Million Gallons per day (MGD);

(iv) that of the five Command Tanks only two are functional;

(v) that DJB is supplying only 2 to 3 MGD of water for entire Dwarka in one Command Tank only, wherefrom part of the water is transferred by

DDA to another Command Tank for supply through tankers in the nearby areas;

(vi) that DDA has bored 4/5 tubewells in Dwarka in order to make additional arrangement of water, but without making any arrangement for water

treatment. This raw water extracted from tubewells is either being mixed in the water supplied by the DJB or being directly supplied to some

pockets of the colony;

(vii) that the petitioner had earlier filed W.P.(C) No. 10467/2004, also in public interest, highlighting the paucity of water in the colony - the said

writ petition was disposed of vide order dated 02.02.2005 with the direction to the heads of DDA and DJB to sit together and to ensure that the

allottees of flats in the said colony do not suffer owing to scarcity of water;

(viii) that the water supplied by the DDA in the colony has a very bad taste and is salty;

(ix) that the tests got done by the Residents Welfare Association showed the water to be unfit for human consumption;

(x) that certain persons have been encroaching / misusing public land viz. road in front of Sector 14, Pocket-2, Phase-2, Dwarka by operating

weekly market (Saptahik Bazaar) on every Sunday in connivance with DDA, MCD and the local police and without any permission; and

(xi) that the representations in the aforesaid regard made to the authorities have gone unheeded.

3. The respondent No. 1 DDA in its counter affidavit has admitted the water demand of Dwarka Sub-City to be approximately 10 MGD and the supply by DJB of only about 3.5 MGD. It is however pleaded that the parameters of hardness are kept within the permissible limits as prescribed in BIS-10500 and the water supplied is fit for human consumption. The allegations of encroachment on public land are denied. The respondent No. 1 DDA has further informed that it has allotted and handed over land in the colony of Dwarka, as demanded, to respondent No. 4 DJB for construction of Water Treatment Plant. Along with the affidavit, test reports to show water supplied being potable are filed. With respect to the allegations in the writ petition of encroachment, the respondent No. 1 DDA has stated that in response to its complaints to the police, the police has informed that the weekly market complained of has been approved by the Lieutenant Governor and the fee in accordance with the Rules is being collected by the respondent MCD and the respondent No. 1 DDA has no role in the same. It is further pleaded that it is the MCD which is responsible for sweeping the roads.

4. Respondent No. 4 DJB in its counter affidavit has pleaded that it only gives bulk supply of treated water to one of the Command Tanks of respondent No. 1 DDA in the colony of Dwarka; thereafter water distribution system and supply for Dwarka is maintained by respondent No. 1 DDA which is the developing agency of the area in question and is solely liable and responsible for supply of potable water at the consumer end in the area. It is further informed that W.Ps.(C) No. 7402/2005 and 7815/2011 with similar grievances already stand dismissed vide orders dated 12.09.2011 and 11.01.2012 respectively.

5. The petitioner in his rejoinder to the counter affidavit of respondent No. 1 DDA had inter alia pleaded that respondent No. 1 DDA has not disclosed as to who has authorized mixing of raw tubewell water into the DJB water; that since the ground water is highly saline and contaminated, the respondent No. 1 DDA is not justified in mixing the same with DJB water; that the weekly market is being run in contravention of the norms applicable thereto and beyond the earmarked portions; that the authorities however for their ulterior motives turn a blind eye to such encroachment.

6. We have heard the petitioner appearing in person and the counsels for respondent No. 1 DDA and respondent No. 4 DJB.

7. We have at the outset enquired from the counsel for the respondent No. 4 DJB the status of the Water Treatment Plant, land where for was

given by respondent No. 1 DDA to respondent No. 4 DJB in the said colony. The counsel for respondent No. 4 DJB informs that the said Water

Treatment Plant is 95% ready but cannot be made operational owing to scarcity of raw water. It is informed that supply of raw water to feed the

said Water Treatment Plant assured by / expected from the State of Haryana has not commenced as yet and without such additional supply from

the State of Haryana, no raw water is available to respondent No. 4 DJB for treatment at the said Plant and for onward supply in the colony of

Dwarka. We find that the prayer made in W.P.(C) No. 7402/2005 supra decided on 12.09.2011 was also for a direction to respondent No. 4

DJB to take charge of the water supply in the colony of Dwarka. It was the stand of respondent No. 4 DJB in the said writ petition that it / its

predecessor had as far back as in the year 1992-94 warned that the required quantity of water in the then proposed colony of Dwarka could not

be supplied due to severe constraint of raw water; that the Water Treatment Plant at Dwarka was to be fed from Munak Canal, Haryana, the

construction whereof was likely to be completed in March, 2012; that only after the supply of water from the said Munak Canal, Haryana

commences, could the Water Treatment Plant be commenced. In the face of the said pleadings, direction as sought in the said writ petition against

respondent No. 4 DJB was declined.

8. From the pleadings and material aforesaid, it is obvious that at the stage of inception itself of the colony of Dwarka, it was known that there was

no water available for meeting the requirement of to be residents thereof. The colony was nevertheless developed with the hope of additional

supply of water from the State of Haryana. The same has not happened till now. Considering the growing population of the city and the consequent

expanding need for housing, we cannot blame the authorities for going ahead with development of the colony of Dwarka without assured

availability of water to cater to the needs of the to be residents thereof. It is also obvious that once the colony was developed, to cater to the needs

of the residents for water, borewells were deployed. The petitioner also agrees that notwithstanding the hoped / expected supply of water from the

State of Haryana having not materialized, the colonization which has happened cannot be undone now and the residents thereof cannot be

evacuated. Naturally, water from the tubewells cannot be the same as treated water. We have enquired from the counsel for the respondent No. 4

DJB whether it is possible for borewell water to be treated in the Water Treatment Plant which has been readied. The answer is in the negative. It

is stated that the supply from the borewell is not sufficient for operation of the Water Treatment Plant. That is not the case of the petitioner also.

9. The grievance as aforesaid of the petitioner now is not of paucity of water but as to the purity of water and that too of mixing of water supplied

by respondent No. 4 DJB with the underground water. However, there is only one water distribution network in the colony and separate water

distribution networks for water supplied by DJB and underground water are not available. The underground water is necessary to make up the

deficiency in the water supplied by DJB. In spite of our repeated queries, the petitioner has not been able to give any solution as to how mixing of

the two can be avoided.

10. On the contrary, the counsel for the respondent No. 4 DJB fairly informed, that several Housing Societies in the colony have made their

arrangements for separate storage of the DJB water meant for drinking and cooking and for underground tubewell water meant for other needs

and are availing of supply through water tankers of DJB water. A similar arrangement is offered to other Housing Societies who may be willing.

The petitioner alas is only one of the resident's and though had impleaded the Residents Welfare Associations as respondents has subsequently

dropped them from the array of parties. Notice may also be taken of the fact that W.P.(C) No. 7402/2005 supra was filed by the Federation of

Cooperative Group Housing Societies - Dwaraka Ltd. and who seem to be satisfied with the order dated 12.09.2011 therein.

11. The petitioner though has not been able to come up with any solution which could be enforced, however keeps on insisting that it is the duty of

the respondent No. 1 DDA and respondent No. 4 DJB to supply treated water. Even if that be so, in the face of the scarcity and which is not

disputed by the petitioner also, this Court is not able to yield a magic wand to make water out of thin air. We, in this regard, are reminded of the

magic trick titled ""Water of India"" of the famous magician P.C. Sorcar.

12. The Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, though in the context of health services and noticing

that it is the primary duty of the State to secure health to its citizens, nevertheless held that no State or any country can have unlimited resources to

spend and that is why it only approves its projects to the extent it is feasible and that provision of facilities cannot be unlimited and has to be to the

extent finance permits; the Court would not interfere with the same. The said dicta applies on all fours to the present situation.

13. However, having said so, we may observe that the same should not tantamount to respondent No. 1 DDA, respondent No. 4 DJB or the

other governmental agencies resting in peace. Having spent huge amount (we are informed in the region of Rs. 800/- crores) on the construction of

the Water Treatment Plant, endeavour should be made to ensure supply of water thereto as envisaged from the State of Haryana. We grant liberty

to the petitioner to represent to the Government of National Capital Territory of Delhi and the State of Haryana (who are not parties to this writ

petition) in this regard. We further direct the respondent No. 1 DDA to, from time to time have the supply of water at the end point in different

parts of the colony examined / checked / tested to ensure portability thereof. Though our suggestion for treatment of the ground water in the newly

constructed Water Treatment Plant was negated as above, but we beseech respondent No. 1 DDA and respondent No. 4 DJB to have the said

proposal examined technologically and we are sure that with the scientific advancement, some solution can be found. It is a pity that inspite of

water and the Treatment Plant, both being available, they cannot complement each other for supply of treated water to the residents of the colony.

We also bind the respondent No. 4 DJB to its offer aforesaid for supply of DJB water to the Housing Societies who may be in a position to make

use thereof for drinking and cooking purposes.

14. As far as the grievance with respect to the weekly market is concerned, the petitioner has argued that the place qua which grievance is made in

the writ petition is different from the place where the weekly market has been

authorized.

15. MCD as aforesaid has chosen not to appear. We are however aware of MCD, which is the authorized agency in this regard, having permitted

such weekly market in various colonies of Delhi. Similarly, the National Policy on Urban Street Vendors, 2009 also provides for MCD to identify

and allot vending / squatting sites on various street pavements / curbs to street vendors. However, in the absence of the MCD and in view of the

conflicting stand of the petitioner and the respondent No. 1 DDA, the only direction which we can give qua the allegations in the petition of

encroachment is that the MCD and the SHO of the concerned police station shall remove any unauthorized street vendors on the road between

Om Apartments, Sector-14, Pocket-2, Phase-2, Dwarka and upto Nirmal Bhartia School. We also grant liberty to the petitioner to give a copy of

this order to the SHO of the concerned Police Station for compliance.

The petition is disposed of in terms of the above.

No costs.