

Shyam Singh and Anr Vs. Delhi Development Authority and Anr

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SooperKanoon Citation : sooperkanoon.com/51774

Court : Delhi

Decided On : May-19-2015

Judge : Vibhu Bakhru

Appellant : Shyam Singh and Anr

Respondent : Delhi Development Authority and Anr

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

19. 05.2015 W.P.(C) 4908/2015 & CM No.8893/2015 SUKHAPAL SINGH & ANR Petitioners Versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4909/2015 & CM No.8894/2015 ANIL KUMAR & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4910/2015 & CM No.8895/2015 MANGAL DAS & ORS Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4911/2015 & CM No.8896/2015 VED PARKASH AND ANR. Petitioners Versus DELHI DEVELOPMENT AUTHORITY AND ANR. Respondents AND + W.P.(C) 4912/2015 & CM No.8897/2015 BRAHMANAND AND ORS. Petitioners versus DELHI DEVELOPMENT AUTHORITY AND ANR. Respondents AND + W.P.(C) 4914/2015 & CM No.8902/2015 KESHAV CHAUHAN & ORS Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4915/2015 & CM No.8903/2015 DALBIR SINGH & ANR Petitioners versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4916/2015 & CM No.8904/2015 SHYAM SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4917/2015 & CM No.8905/2015 PRITAM SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4918/2015 & CM No.8906/2015 HUKAM SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR W.P.(C) 4908/2015 & Other Connected Matters AND + W.P.(C) 4919/2015 & CM No.8907/2015 RAJESH CHAUHAN & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4920/2015 & CM No.8908/2015 RAKESH KUMAR & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4921/2015 & CM No.8909/2015 BRIJ PAL AND ORS. Petitioners versus DELHI DEVELOPMENT AUTHORITY AND ANR. Respondents AND + W.P.(C) 4922/2015 & CM No.8910/2015 PARTAP SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4923/2015 & CM No.8911/2015 BABU SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4924/2015 & CM No.8912/2015 MATHURA PRASAD & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4927/2015 & CM No.8915/2015 RAJPAL SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents AND + W.P.(C) 4928/2015 & CM No.8916/2015 SUSHIL KUMAR AND ANR. Petitioners Versus DELHI DEVELOPMENT AUTHORITY AND ANR. Respondents AND + W.P.(C) 4960/2015 & CM No.8957/2015 BALJEET SINGH & ANR Petitioners versus DELHI DEVELOPMENT AUTHORITY & ANR Respondents Advocates who appeared in this case: For the Petitioners : Sumit Bansal, Mr Ateev Mathur and Ms Richa Oberoi. For the Respondents : Mr Sanjeev Sabharwal, Standing Counsel for DDA in W.P.(C) Nos. 4908/2015, 4910/2015, 4918/2015, 4919/2015, 4920/2015, 4923/2015, 4924/2015, 4927/2015, 4928/2015 & 4960/2015. Mr Arun Birbal and Mr Sanjay Singh for respondent/DDA in W.P.(C) Nos. 4909/2015, 4911/2015, 4912/2015, 4914/2015, 4915/2015, 4916/2015, 4917/2015, 4918/2015, 4921/2015, 4922/2015, 4928/2015 & 4960/2015. CORAM: HON'BLE MR. JUSTICE VIBHU

JUDGMENT

VIBHU BAKHRU, J (ORAL) 1. The petitioners - members of Delhi Peasants Co-operative Multipurpose Society (hereafter the Society) and the Society - impugn Orders dated 31.03.2014 (hereafter the impugned order(s)) passed by the District Judge under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter the Act) whereby the appeals against the Eviction Orders dated 31.01.2014 (hereafter the Eviction Order(s)) passed by the Estate Officer, were dismissed. The petitioners further impugn orders dated 31.01.2014 passed by the District Judge dismissing the application for impleadment filed by the Society.

2. As the facts obtaining and issues raised in the petitions are similar, the petitions were heard together and petition W.P.(C) 4908/2015 was considered as the lead matter.

3. For the purposes of considering the controversy, the relevant facts obtaining in W.P.(C) 4908/2015 are, briefly stated, as under: 3.1. In 1949, the Society was allotted agricultural land on either side of river Yamuna, being 13,344 bighas of land in villages Patparganj Shamsapur, Jatwara Kalan South, Gaonwala, Mohammad Khan Wala, Jhilmil Tahirpur South, Jhilmil Tahirpur North and Murgi Khana (hereafter the said land), on lease hold basis for a period of 5 years through a lease deed executed between the Society and Delhi Improvement Trust (now DDA). The Society further allotted the said land to its members for cultivation. The said lease was extended from time to time till 1966. 3.2. DDA issued a letter dated 31.07.1967 requiring the Society to handover the possession of the said land to DDA immediately but not later than 05.08.1967. Aggrieved by the same, the Society filed a suit restraining DDA to give effect to the letter dated 31.07.1967; the said suit was dismissed. The Society filed an appeal (being RFA No.250/1971) before this Court against the said dismissal. The said appeal was disposed off in light of the statement made by DDA that the Society would not be dispossessed without following due process of law. 3.3. Thereafter, DDA in a meeting held on 30.04.1973, by Resolution No.6, resolved that pending decision in the case of Jhil

Khuranja Cooperative Society, the members of the Delhi Peasants Multipurpose Cooperative Society may be charged rent on the old rates and lease extended provided they clear all the outstanding dues against them.

3.4. Subsequently, DDA by letter dated 04.11.1987 addressed to the Co-ordinating Officer (Damages) with a copy to the Society, stated that the case regarding renewal of lease in respect of land allotted to Delhi Peasants Cooperative Multipurpose Society limited is under consideration. The eviction proceedings against the cultivators of the above society may therefore be kept in abeyance till further orders.

3.5. DDA then initiated eviction proceedings under the Act against the Society and its members. The Society filed a Writ Petition before this Court, being W.P.(C) 14260/2004, against the said eviction proceedings. The said Writ petition was disposed of by an order dated 19.04.2006, inter alia, directing the Society to place its defence before the Estate Officer. This court further restrained DDA from resuming possession of the said land without following the process of law and also directed that the effect of resolution No.6 be considered in the proceedings before the Estate Officer. 3.6. Thereafter, an eviction petition against the Society and its members was filed by DDA and an order dated 01.08.2007 was passed by the Estate Officer for eviction of the petitioners from the said land. The Society appealed against the said order dated 01.08.2007, before the District Judge (being PPA No.5/2009). By an order dated 01.09.2009, the District Judge set aside the said order dated 01.08.2007 on the ground that the location and measurement of land to be vacated was not mentioned therein and remanded the matter to the Estate Officer to decide afresh. 3.7. Fresh notices were issued by DDA to the Society and its members under Section 4(1) and 4(2)(b)(i) of the Act. The said notices were replied to and proceedings were initiated before the Estate Officer. The Estate Officer passed the Eviction Order dated 31.01.2014 under Section 5(1) of the Act directing the Society and/or its members to vacate the said land within 15 days from the date of issue of the order. 3.8. The Eviction Order dated 31.01.2014 was appealed against by the members of the Society under Section 9 of the Act before the District Judge in an appeal being PPA No.20/2014 and an application for impleadment was filed by the Society under Order 1 Rule 10 of the

Civil Procedure Code. By the Impugned Order dated 31.03.2014, the District Judge dismissed the said appeal and upheld the Eviction Order dated 31.01.2014. By a separate order dated 31.03.2014 - which is also impugned herein - the District Judge also dismissed the impleadment application. 3.9. Subsequently, a Meeting Notice dated 19.09.2014 was issued to the Society and Jheel Khuranja Milk Producers Society stating that a meeting is scheduled to be held in the chamber of Commissioner (LM), DDA on 29.09.2014 at 3.30PM to discuss the issues regarding renewal of lease of land in Yamuna River Bed, expired in the year 1966.

The said meeting was rescheduled and was held on 02.12.2014. The petitioner contends that in the said meeting, although the representatives of the Society were assured by DDA that their grievances would be addressed and necessary action to allow them to continue on the said land would be taken, no action has been taken in this regard by the DDA.

4. The learned counsel for the petitioners submitted as under:- (a) That the Estate Officer as well as the District Judge have erred in not considering that the petitioners were not unauthorised occupants within the meaning of Section 2(g) of the Act as they were occupying the said land by virtue of the lease granted by DDA in favour of the Society. (b) That the Estate Officer as well as the District Judge erred in not considering that the case of the petitioners was different from the case relating to Jhil Khuranja Milk Producers Co-operative Society Limited as in that case no demand for lease rentals had been made after the lease had been terminated and, by an order dated 16.10.1967, DDA had called upon that society to handover possession of the land before 23.10.1967. (c) In this case, by a letter dated 24.01.1974, DDA had called upon the Society to pay lease rentals pursuant to DDAs Resolution no.6 dated 30.04.1973 and, therefore, the lease in favour of the society stood extended. (d) That the Estate Officer as well as the District Judge have failed to consider the implication of Resolution no.6 dated 30.04.1973 even though this Court had, by an order dated 19.04.2006 (in W.P.(C) 14260/2004), directed that the effect of Resolution no.6 would be considered in the proceedings initiated under the Act. (e) That the notice for eviction states the following as a ground for eviction: Q Zone/channelization of Yamuna river

(Biodiversity Park). It is submitted that this ground was not available as MPD-2021 was under revision and, therefore, eviction on the grounds for further utilisation of the land in question could not be directed. (f) That the petitioners were protected from eviction under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

5. I have heard the learned counsel for the petitioners.

6. Admittedly, by a letter dated 31.07.1967, DDA had called upon the Society to handover the possession of the land not later than 05.08.1967. Undeniably, the lease in favour of the Society had been terminated. The petitioners contend that the same was, thereafter, extended as the DDA had passed a resolution - Resolution no.6 dated 30.04.1973 - for extending the lease. The note pertaining to abovementioned Resolution No.6 relied upon by the petitioners indicates that the lease in favour of the Society was first extended up to June 1955 and, thereafter, up to 14.06.1956. Apparently, on 14.06.1956, DDA decided to take over formal possession of the said land and allot the same in terms of the instructions issued by the Ministry of Health, Government of India by the letter dated 30.03.1956.

7. It appears from the note for the meeting of DDA held on 30.04.1973 (pertaining to Resolution no.6) that there were some disputes with regard to the rates fixed by DDA and, accordingly, a Special Committee was appointed to re-fix the rates, which were subsequently approved by DDA by resolution no.72 passed on 13.02.1964. In the meanwhile, the lease of the society was extended to 19.02.1966. Thereafter, notice was issued calling upon the Society to handover the possession of the said land to DDA. This led the society to file the writ petition before this Court which was subsequently withdrawn. However, it appears that certain interim orders were passed restraining DDA from recovering possession of the land in question. In the meantime, the lease in favour of Jhil Khuranja Milk Producers Co-operative Society Limited - a similarly placed society, which had been also granted lease of certain lands near the Yamuna river bed was also cancelled. Apparently, that society also approached this Court and as an interim measure, this Court had ordered charging of rental at old rates. The Society also desired that it be treated at par with Jhil Khuranja Milk Producers Co-operative

Society Limited. In the aforesaid backdrop, DDA passed the following Resolution no.6 dated 30.04.1973:

Resolved that pending decision in the case Jhil Khuranja Co-operative Society, the members of the Delhi Peasants multipurpose Co-operative Society may be charged rent on the old rates and lease extended provided they clear all the outstanding dues against them.

8. The contention that the Resolution no.6 entitled the petitioners to continue in occupation of the said land and implied extension of the lease by DDA, was considered by the Estate Officer. And, the Estate Officer concluded that the Resolution no.6 contemplated for extension of the lease, however, the same was not acted upon and no extension of lease was granted. The Estate Officer also observed that the original lease was only for a period of five years and its extension could not be indefinite. The Estate Officer further concluded that the Resolution no.6 did not confer any right, title or interest on the noticee.

9. In view of the aforesaid, the contention that the effect of Resolution no.6 dated 30.04.1973 was not considered by the Estate Officer is erroneous. The conclusion that Resolution no.6 had not been acted upon and the lease had not been extended is a question of fact and unless it is shown that the same is perverse, no interference is called for in these proceedings. Concededly, no document extending the lease in favour of the Society was executed. It is also relevant to note that in substance, the Resolution no.6 only sought to put in place an interim arrangement pending the decision in the case of Jhil Khuranja Milk Producers Co-operative Society Limited. Admittedly, eviction orders in case of Jhil Khuranja Milk Producers Co-operative Society Limited have been passed. Thus, in any event, Resolution no.6 - even if implemented - would have outlived its tenure. I also find it difficult to accept that Resolution no.6 vested a right with the Society or its members to continue occupation of the said land, particularly when no deed had been executed thereafter.

10. The contention that the letters dated 24.01.1974 or 13.12.1977 conferred any right on the petitioners to continue occupation of the said land indefinitely is also not sustainable. The petitioners have been unable to establish any interest or any

indefensible right to continue in occupation of the said land.

11. Admittedly, the land in question belongs to DDA and the petitioners have been unable to establish any right, which would entitle them to continue in occupation with the said land.

12. The contention that the said land cannot be used for a Biodiversity park since the MPD2021 is under review is also without merit. MPD2021 has been modified several times and there is no requirement for the concerned authorities to put the development plans on hold only for the reason that MPD2021 is being reviewed to consider the issue of housing and unauthorised colonies. In my view, there is no impediment for the concerned authorities to use the said land for establishing a Biodiversity park. There is no material to indicate that establishment of a Biodiversity park on the said land would be contrary to the provisions of MPD2021. On the contrary, it is admitted that the said land has to be maintained as a green area.

13. The learned counsel for the petitioners emphatically urged that the tracts of land in the O Zone (i.e. the green area) had been encroached upon and unauthorised colonies have been established which were now protected under various policies and also under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. He submitted that the petitioners had maintained the land in question as a green area and in the circumstances, evicting the petitioners would be arbitrary and unreasonable. In my view, the fact that certain lands had been encroached upon and unauthorised colonies have mushroomed on public land cannot be a ground for preventing DDA from claiming possession of their land in order to establish a Biodiversity park. I do not find the decision to be arbitrary or unreasonable. In any event, this Court cannot supplant its opinion over that of the concerned authority unless the decision is found to be perverse, arbitrary or offending any statute. In the present case, none of the aforesaid grounds are made out.

14. The learned counsel for the petitioners had referred to the definition of encroachment under Section 2(c) of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 and contended that even if the petitioners

were considered as encroachers, their occupation would, nonetheless, be protected by virtue of Section 3(2) of the said Act. In my view, this contention is also without merit. Section 4 of the said Act expressly indicates that no relief under Section 3 of the said Act would be available in respect of encroachment on public land except in cases which were covered under clauses (a), (b) and (c) of Sub-section 1 of Section 3 of the said Act. Undeniably, the occupation of the petitioners does not fall under any of the said clauses which are reproduced as under:- 15. (a) orderly arrangements for relocation and rehabilitation of slum dwellers and jhuggi-jhompri clusters in Delhi in accordance with the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 (Delhi Act 7 of 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 their extensions, 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; It is also relevant to note that it was the Societys case before the DDA that it should be treated at par with the Jhil Khuranja Milk Producers Co-operative Society Limited. Orders evicting the members of that society have also been passed under the Act and the petitions preferred by the members of Jhil Khuranja Milk Producers Co-operative Society Limited have also been dismissed by a coordinate bench of this Court by a decision rendered on 20.05.2013 in W.P.(C) 2516/2013 captioned Rajinder Saini and Anr v. Delhi Development Authority and other connected matters.

16. The aforesaid decision has been followed by the Estate Officer as well as by the District Judge and I find no infirmity with the view that the decision would squarely apply in the facts of this case also.

17. The petitions and applications are, accordingly, dismissed. No order as to costs VIBHU BAKHRU, J MAY19 2015 RK