

Samiuddin and Others Vs. Executive Engineer and Others

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Court : Delhi

Decided On : Jul-26-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 10579/2005

Appellant : Samiuddin and Others

Respondent : Executive Engineer and Others

Advocate for Def. : Ms. Meera Bhatia, Adv.

Advocate for Pet/Ap. : Mr. Shiv P. Pandey; Ms. Rashmi Pandey; Mr. Mohd. Sajid, Adv.

Judgement :

1. The twelve petitioners have filed this writ petition impugning the notice dated 27th May, 2005 of the Zileadar-I, Head Works Deptt., Agra Canal, Okhla, New Delhi notifying the persons residing unauthorisedly on the land bearing Khasra No.207, Village Okhla, New Delhi Agra Canal that the said land belongs to the Irrigation Deptt. Govt. of U.P. and the said persons should remove their goods and malba from the said land within a month failing which the said land would be vacated with the help of Police Force.

2. It is the contention of the petitioners that their houses do not fall in Khasra No.207 but they were being sought to be dispossessed in pursuance to the notice

aforesaid. They, thus sought to restrain the respondents from dispossessing the petitioners on the pretext of clearing the canal land bearing Khasra No.207.

3. Notice of the petition was issued and vide order dated 12th July, 2005 which was made absolute on 24th November, 2005, dispossession of the petitioners stayed.

4. Vide order dated 5th March, 2010, the SDM concerned was directed to prepare rough sketch indicating the exact location of the houses of the petitioners and the khasra numbers in which they are located. A report has been submitted under the signatures of Halqa Patwari, Field Kanungo, Nayab Tehsildar and Tehsildar to the effect that the houses of the petitioners and others exist in Khasra No.207 i.e. the Agra Canal Land. Though the petitioners preferred objections to the said report but on 2nd May, 2011 withdrew the same. However it is informed that it was the contention of the counsel for the petitioners on that date that the houses of the petitioners, as per the dimensions of Khasra No.207 given by the respondent no.2 in his counter affidavit, were not in Khasra No.207. The counsel for the respondent no.2 had then sought time to file an additional affidavit.

5. No additional affidavit has been filed. The counsel for the respondents seeks further time to file the same.

6. However in the aforesaid state of affairs, need is not felt to adjourn the matter or to grant any further opportunity for filing the additional affidavit.

7. The demarcation was ordered by this Court in view of converse claims of the petitioners, of their houses being not in Khasra No.207, and of the respondents, of the petitioners being in occupation of Khasra No.207. The demarcation report to which there are no objections now has found the petitioners in occupation of Khasra No.207. The counsel for the petitioners today also contends that as per the counter affidavit of respondent no.2, the houses of petitioners are not in Khasra No.207. However, notwithstanding the said counter affidavit, this Court had deemed it appropriate to have the land demarcated. The demarcation report is against the petitioners. There is nothing else before this Court to suggest that the houses of petitioners are on any other land. The petitioners thus cannot be

granted any relief in this petition.

8. The counsel for the petitioners at this stage states that the houses of the twelve petitioners are situated in a full-fledged colony which though unauthorized, has been granted Provisional Certificate of Regularization and regularization whereof is under consideration. The counsel is however unable to state whether in the application for Provisional Certificate of Regularization and the documents filed therewith, reference has been made to Khasra No.207 or not and/or as to how the boundaries of the colony have been described.

9. If at all the houses of the petitioners are situated in an unauthorized colony which has been issued a Provisional Certificate of Regularization, then the same is to be dealt with as per the Regulations for Regularization of Unauthorized Colonies in Delhi, 2008.

10. In view of the aforesaid, no declaration even, as claimed of the petitioners being not in occupation of Khasra No.207 can be made in this petition.

11. The counsel for the petitioners at this stage states that the petitioners desire to file a suit to have the aforesaid disputed questions of fact adjudicated and seeks extension of the interim order in force in this petition for a period of three months to enable the petitioners to take appropriate remedies. The counsel for the respondent has been heard on the said aspect. Considering that the interim order has remained in force since the year 2005, it is deemed expedient to accede to the request. It is directed that no action for forceful dispossession be taken against the petitioners till 30th October, 2011.

12. The petition is therefore dismissed with liberty to the petitioners to take appropriate remedy for declaration of their title if any and to the respondents to take over possession of the land, if so entitled to, but only after 30th October, 2011 unless there is stay from any other fora. No order as to costs.