
(2013) 02 DEL CK 0289

Delhi High Court

Case No: Writ Petition (C) 6844 of 2012

Anil Dutt Sharma

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision: Feb. 13, 2013

Hon'ble Judges: D. Murugesan, C.J; V.K. Jain, J

Bench: Division Bench

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. Expressing grievance against illegal encroachments and illegal constructions on the pavements, roadside drains, parking places, common areas, green lands, etc., the petitioner has sought the following relief"s in this petition:-

(i) Mandamus directing the respondents to remove entire illegal encroachments, illegal constructions on the pavements, roadsides, roadside-drains, parking places, common areas, green lands in entire areas of Delhi and to clear each and every roads, lanes, parks, parking areas and common places in Delhi for free traffic and common use as per existing Master Plan 2021; and/or

(ii) Direct the respondents concerned to forthwith repair, clean and improve all the roads, lanes, parking places of capital city as like as city of London with/without cost/compensation of offending officials of M.C.D., Police and concerned M.C.D. Councillors after removal of encroachments and unauthorized constructions; and/or

(iii) Direct the respondents concerned to take appropriate legal actions, [criminal and/or civil] and/or departmental actions to the concerned offending officials, staffs, local councillors and encroachers/offenders who were responsible for illegal encroachments and for illegal acts committed under their respective jurisdiction.

(iv) Direct the respondents Government to take legal action on those unauthorized constructions/improper constructions without sanctioned plan, and dangerous for

life, which were reported by police authorities to MCD as illegal and already booked in the record of STF/SDM and to ensure the properties constructed therein are at least free from danger, before regularization of any colony/areas in the city.

(v) Fix the duties of Councillors to protect illegal construction in their areas and failing which, make them disqualify who are guilty for unauthorized construction and encroachment in their area and ask them to share the cost of demolition with concerned AE, JE, SE and SHO on duty at the time of unauthorized construction or encroachments.

The issue of unauthorized encroachment/constructions in Delhi was subject matter of WP(C) No. 4582/2003 "Kalyan Sanstha Social Welfare Organization v. UOI & Ors.". Vide order dated 10.09.2008, a Division Bench of this Court approved a Scheme/Mechanism to deal with the menace of unauthorized encroachment/construction in Delhi. The aforesaid Scheme, inter alia, provided as under:-

1. MCD should not only deal with on-going unauthorized constructions but also take actions against encroachments on Govt. lands and against existing/already booked unauthorized constructions under the Act.

2. The senior officers of MCD like Additional Commissioners and equivalent will be directly responsible to this Court for enforcing and implementation of law in a timely and effective manner by their staff members as per the duties assigned to them under law and otherwise.

3. The detection of unauthorized construction at the first level shall be carried out by the Junior Engineers and Assistant Engineers of the concerned zones under the supervision of Executive Engineers. Superintending Engineer would ensure that the separate teams for detection and ensuring action, act as per law and if either of the teams/officers fails, it would be the primary responsibility of the superintending engineer of the zone and if any dereliction of duty is noticed he would initiate appropriate action against the erring officers. However, the ultimate responsibility of unauthorized construction would lie on the part of the Additional Commissioners of the concerned zones who will ensure that if any of the Officers fails to take any action appropriate disciplinary proceedings would be initiated against the erring officers within the fixed time frame.

4. A "Nodal Steering Committee" is to be constituted with the following officers as its members:

- I) The Additional Commissioner (Engineering)

- II) The Chief Vigilance Officer

- III) The Chief Town Planner

- IV) The Chief Law Officer.

This "Committee" would monitor the overall working of zones and its officers including the highest officers of the zone. It will meet at least once every month and would review the functioning of the zonal staff and forward its monthly report to the Commissioner. If any laxity is noticed in any zone, it would also recommend action against the erring officers.

5. A Co-ordination Committee consisting of nodal officers of the rank of Additional Commissioner or equivalent of MCD, DDA, Revenue Authorities, L&DO, CPWD and Delhi Police shall meet once a month.

6. MCD would ensure that within a period of six months from today it fills up all its vacancies and recruits staff equivalent to the extent of its sanctioned strength.

7. MCD would ensure that unauthorized constructions which are compoundable under the law are regularized on a payment of fine within a period of six months from today.

8. A Junior Engineer of MCD would every month issue a certificate under his signature to the effect that there is no unauthorized ongoing constructions and/or encroachment on public/government land. The said certificate must also give details regarding any unauthorized ongoing construction and or encroachment on public/government land and action if any proposed to be taken. Copies of this certificate and action taken plan would be furnished to the concerned Deputy Commissioner with a copy to the Head Quarters who would maintain records of such certificate.

9. MCD will also prepare a Scheme within a period of four months from today to protect and utilize the public land retrieved from the encroachers in the last two years.

10. MCD to maintain a Building Plan Register and to maintain a Construction Watch Register (CWR) regularly.

11. The whole system of booking of unauthorized construction should be computerised and made online and the following procedures will be followed:-

i. As soon as the municipal staff detects any unauthorized construction or comes to the notice of the MCD through any other source, the required details will be posted on a formatted sheet fed in the computer.

ii. The computer would generate a Performa of all the mandatory actions required under the Act.

iii. Once any complaint is registered in the system, the system would forward the same to all concerned officers for taking action as per provisions of the Act.

iv. The status of the case would be available for monitoring purpose to senior officers and would also be put on the website of the MCD.

v. Once the unauthorized construction is detected and registered, action would be taken against the unauthorized construction within a time bound manner.

vi. Any complaint received and registered would be acted upon within four weeks so as to ensure that no grievance goes unheard and the status of the action taken would from time to time be updated on the website of the MCD.

12. MCD should create a Centralized and Zone wise complaint cell with telephone facility (on the line of Tel. No. 100 of Police Control Room). On receipt of complaint in the centralized complaint centre, it should be immediately referred to the concerned MCD zone/officer within 24 hours and action taken within one week thereafter.

13. All the maps i.e. to say, the Master Plan of Delhi, the Zonal Plans of Delhi, Sub Zonal Plans, Layout Plans of every colony clearly indicating the ownership of the land i.e. Government, Institutional or private as well as land under acquisition, should be put on the MCD, DDA and Delhi government websites. The information available on the website will be available to all concerned to know the actual ownership of the land before purchasing the same and it will enable the Public spirited persons to assist the authorities in preventing the encroachment of the public land.

2. The aforesaid writ petition was finally disposed of by a Division Bench of this Court vide order dated 26.09.2011. While disposing of the writ petition, this Court noted that the Nodal Steering Committee had been working since 10.09.2008 and had from time to time been issuing directions to the municipal authorities to take action. It was directed that the Nodal Steering Committee would continue to function till MCD were to seek dissolution thereof and the grievance, if any, raised by the land owners would be brought for adjudication through properly constituted writ petitions or appeals before the Appellate Tribunal MCD and any such grievance would be adjudicated as required by law, i.e., on merits.

3. In view of the above-referred orders passed by this Court, we direct the petitioner to bring all the instances of encroachment on public land/municipal land and/or unauthorized construction on such land in Delhi to the notice of the concerned Nodal Steering Committee. We take note that in terms of the order passed by this Court in WP(C) No. 4582/2003 on 10.09.2008, MCD is required to deal also with encroachments on public land/municipal land, which obviously would include pavements, roadside drains, parking places, common areas, green lands, etc. The instances of encroachment on public land/municipal land and/or unauthorized construction on such land, which do not fall within the jurisdiction of any of the three municipal corporations of Delhi, shall be brought by the petitioner to the notice of the concerned land owning agency such as Delhi Development Authority, NDMC, CPWD, L&DO, Revenue Authorities, Cantonment Board, etc. If the Nodal Steering Committee approached by the petitioner in terms of this order finds that the matter in question falls in the jurisdiction of some other Nodal Steering

Committee, it shall forthwith bring the matter to the notice of the concerned Nodal Steering Committee. If the Nodal Steering Committee approached by the petitioner in terms of this order finds that the matter brought to its notice by the petitioner does not fall in the jurisdiction of any of the three municipal corporations in Delhi, it shall forthwith bring that matter to the notice of the concerned land owning agency such as Delhi Development Authority, NDMC, CPWD, L&DO, Revenue Authorities, Horticulture Department, Cantonment Board, etc. On the petitioner approaching the Nodal Steering Committees such committees shall take action in the matter strictly in accordance with law. All the instances of encroachment on public/municipal land and/or unauthorized construction on such land, which are the subject matter of this petition, shall be brought by the petitioner to the notice of the concerned Nodal Steering Committees within six weeks from today and the Nodal Steering Committees shall take action on them in accordance with law and file an Action Taken Report within 03 months, commencing after 06 weeks from today.

If any person aggrieved from the action taken by any land owning agency in terms of this order seeks to challenge such an action by way of a writ petition, the Registry of this Court, if the High Court Rules/Orders so provide, shall list such petitions before DB-I of this Court. If the High Court Rules/Orders do not so provide, such writ petitions shall be listed before the concerned Roster Bench. This direction, obviously, would not apply to any remedy other than a writ petition, available in law to a person aggrieved from the action taken by a land owning agency in terms of this order. We make it clear that since the grievance made in the writ petition is primarily in respect of encroachment on public land/municipal land and unauthorized constructions made on such land, the scope of this order is restricted to the encroachments on public land/municipal land and/or unauthorized constructions, if any, raised on public land/municipal land.

The writ petition stands disposed of in terms of the directions issued hereinabove.