
(2013) 07 DEL CK 0562

Delhi High Court

Case No: Cont. Cas (C) 574 of 2011

R.K. Hirenkohomba

APPELLANT

Vs

G.S. Patnaik

RESPONDENT

Date of Decision: July 5, 2013

Citation: (2013) 07 DEL CK 0562

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Sushil Kr. Jain, for the Appellant; Zubeda Begum, St. Counsel for GNCTD and Mr. Ajay Verma, Advocate for DDA, for the Respondent

Final Decision: Disposed Off

Judgement

Sudershan Kumar Misra, J.

The grievance of the petitioner appears to be that despite the order passed on 20.04.2011 in writ petition No.

2462/2011 issuing directions to the effect that, ""If there is any encroachment, DDA shall take appropriate action regard being had to the averments

made in the present petition within a period of three months from the date of receipt of the order passed today""; the DDA has failed to demolish

and remove the encroachments. This order came to be passed on the allegations, inter alia, that there is an encroachment on the land situated in

Khasra No. 560/180, Masjid Kangal Shah Bagh Mochi, Indira Park, DDA land, Dhaula Kuan, New Delhi. Counsel for the petitioner today says

that pursuant to these orders, the DDA has indeed carried out certain demolitions in that area where there is also an ancient Mosque which has

been duly notified by the Government of India; in other words, the Mosque in question would not be subject to demolition. His contention is that

there is a substantial area behind the Mosque on a part of which a double storey building has also been constructed unauthorisedly. He contends

that the authorities are not taking any action with regard to this area or that building for the reasons best known to them.

2. Mr. Verma, who appears for the DDA, contends that in the instant case, as has been mentioned in the reply to the show cause notice also, the

DDA has made a bonafide attempt to demolish unauthorised structures in the area with a view to implementing the aforesaid order of the Division

Bench. He states that certain jhuggis were demolished on 16.03.2011 and further bonafide efforts were also made to demolish the remaining

structures; however, there was serious opposition in the area, and adequate help from the police was not forthcoming. According to him, both the

Mosque and the adjoining Madarsa are unauthorised. Furthermore, on 2.5.2006, the Supreme Court has passed some orders in SLP No.

8519/2006 titled Union of India vs. State of Gujarat, pursuant to which a Religious Committee was constituted under the chairmanship of the Chief

Secretary, GNCTD to consider cases which pertained to unauthorised religious structures. Consequently, the DDA has referred the issue of the

Mosque and Madarsa which, admittedly, still remain on the area in question, to that Committee, and the matter rests there. At the same time, it

appears that the said Religious Committee has expressed the opinion that, ""use of force may not be appropriate at this stage"". It is also stated that

the said Committee decided that the DDA being the land owning agency may approach these illegal occupants for persuading them to vacate the

place and if possible, provide them alternative piece of land. It was also directed that the Delhi Police should make a fresh assessment in the

matter.

3. In addition, Mr. Verma, who appears for the DDA, has also relied, in particular, on paragraph 8(i)(b) of an order passed by the Division Bench

of this Court on 22.05.2013 in Writ Petition No. 7057/2005, where the directions have been given, inter alia, to the DDA as well as the Chief

Secretary, GNCTD to convene a higher level meeting to, inter alia, "finalise the modalities for negotiations with regard to the 34 other unauthorised

religious structures as recommended by the Religious Committee. If necessary successive meetings be held within a week to finalize the action plan

and modalities. It is made clear that the modalities must be worked out with a view to ensuring the phased removal of the said 34 unauthorized

religious structures and ensuring that the land occupied by them is ultimately handed over to the DDA.

4. Mr. Verma states that the structures in question in the instant matter, which are a Mosque and Madarsa, have both been referred to the

Religious Committee because of their unique juxtaposition and location, and consequently, the process of implementation of the orders passed on

20.4.2011 is under way in the aforesaid manner.

5. Looking to the circumstances and keeping in mind the fact that very issue which has come to the fore when the DDA was trying to carry out the

orders of this Court, is in issue before a Division Bench in Writ Petition (C) No. 7057/2005, and in view of the statement of Mr. Verma that in the

unlikely event that the structures questioned in this matter do not form part of the list of 34 structures envisaged in para 8(i)(b) of the interim orders

passed by the Division Bench in W.P. (C) No. 7057/2005 on 22.05.2013, the same shall also be placed before that court by a separate

application moved in this behalf by the DDA; to my mind, nothing further requires to be done in this matter. More so, since the DDA did attempt

to implement the order but succeeded only partially and intends to carry out the remaining part of its mandate in accordance with any further

directions that may be passed by the Division Bench in W.P. (C) No. 7057/2005.

6. The petition stands disposed off in the above terms. Dasti.