

(2011) 01 DEL CK 0467

Delhi High Court

Case No: Writ Petition (C) No. 8262 of 2010 and CM Application No's. 21252, 21253, 21435 and 21436 of 2010

Balwan Singh

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: Jan. 6, 2011

Acts Referred:

- Delhi Development Act, 1957 - Section 12(1), 30

Citation: (2011) 177 DLT 328

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Ajay Verma, for DDA, Sameer Vashisht and Aashita Yadav, N. Prabhakar, for the Appellant; Ajay Verma, for DDA, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

The Petitioner prays for a direction to the Delhi Development Authority ("DDA") not to go ahead with the demolition of the unauthorized construction at property No. C-23 in the Masoodpur, District South-West, New Delhi-110070.

2. The Petitioner states that Village Masoodpur and other adjoining villages were notified on 18th March, 1993 as Development Area No. 176 under the Delhi Development Act, 1957 ("DD Act"). The Petitioner claims to have continued to be in possession of agricultural land in Village Masoodpur notwithstanding the fact that it stood acquired under the Land Acquisition Act, 1894 ("LA Act") resulting in an Award dated 22nd December, 1980. The Petitioner claimed that he partitioned his property C-23 in the year 2000 and a portion thereof was given to his son for residential purposes. It is stated that on the acquired land there stands an unauthorized colony which has been issued a provisional certificate of regularization on 17th September,

2008. The names of the Petitioner and his son figure in the list of occupants who were also members of the resident welfare association which has submitted an application for regularization. According to the Petitioner, his son made certain alterations in the property to make it residence worthy. Reliance is also placed on the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007 to urge that no demolition action against the Petitioner's premises can be undertaken by the DDA.

3. It appears that one Mr. Kartar Singh and another resident of Village Masoodpur filed Writ Petition (Civil) No. 1085 of 2010 in this Court complaining of unauthorized constructions in Village Masoodpur. On 23rd March, 2010 the following order was passed by a learned Single Judge in the said writ petition:

1. Petitioners are residents of Village Masoodpur, Vasant Kunj, New Delhi. Counsel for Petitioners submits that Petitioners had informed the DDA vide letter dated 11th February, 2010 with regard to ongoing unauthorized construction on the land bearing Khasra Number 398/329/93 which was acquired vide award number 90/80-81 on 22nd December, 1980.

2. Counsel for Petitioners further submits that on query raised under Right to Information Act, Petitioners have learnt that DDA has lodged a complaint on the basis of which FIR against one Balwan Singh has been registered. However, thereafter no further action has been taken by DDA.

3. Counsel for DDA submits that the complaint of the Petitioners, a copy of which has been filed along with the writ petition, shall be considered by DDA within a period of two weeks from today, and in case of any unauthorized construction at Khasra number 398/329/93, action shall be taken in accordance with law. DDA shall remain bound by the statement made by the Counsel in Court today.

4. In view of the stand taken by Counsel for DDA, petition stands disposed of.

4. According to the Petitioner, the above order was passed without notice to him although he was the affected party.

5. Aggrieved by the non-compliance with the above order, the Petitioners in that case i.e. Mr. Kartar Singh and another filed a Contempt Case (Civil) No. 428 of 2010 in this Court. On coming to know of the order dated 23rd March, 2010 at this stage, the Petitioner filed CM Application No. 19398 of 2010 in the said contempt petition. On 1st November, 2010 the learned Single Judge of this Court disposed of the contempt petition as well as the Petitioner's application therein by the following order:

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Mr. Ajay Verma, learned Counsel for the Respondent, on instructions, submits that order of this Court dated 23rd March, 2010 has been complied with and a

demolition order has been passed. Counsel further submits that meanwhile a writ petition has been filed by one Mr. Balwan Singh, who would be affected by the demolition order, and the aforesaid writ petition is listed on 10th November, 2010. In view of the stand taken by Counsel for the Respondent, nothing further survives in the present contempt petition. The same is accordingly disposed of.

CM No. 19398/2010

Mr. N. Prashar, learned Counsel for the Applicant Mr. Balwan Singh does not wish to press the present application in view of the fact that the application has already filed an independent writ petition, which is listed on 10th November, 2010. Accordingly, application stands dismissed as not pressed.

6. The independent writ petition referred to in the above order was Writ Petition (Civil) No. 6665 of 2010 filed by the Petitioner. However, on 23rd November, 2010 the Petitioner withdrew the said writ petition. An LPA No. 858 of 2010 filed by the Petitioner challenging the order dated 23rd March, 2010 passed by the learned Single Judge in Writ Petition (Civil) No. 1085 of 2010 was heard by the Division Bench on 29th November, 2010. The operative portion of the order passed by the Division Bench on 29th November, 2010 in LPA No. 858 of 2010 reads as under:

In a considered opinion, the learned Single Judge had not expressed any opinion or dwelled upon the merits of the case. Regard being had to the aforesaid, we do not find that there is any substance in this appeal and hence there is no justification to issue notice on the application for condonation of delay. In the result, the application for condonation of delay stands dismissed and as an inevitable corollary, the appeal also stands dismissed. However, if the Appellant is aggrieved by any order or action taken by DDA, it is open to him to challenge the same by way of an independent writ petition or any other proceeding, as advised in law.

7. Thereafter, the present writ petition was filed. The principal contention of the Petitioner is that on 1st June, 2010 a notification was issued by the Land and Building Department, Government of NCT of Delhi u/s 12(1) of the DD Act de-notifying the Development Area 176. It is submitted that as a consequence, the DDA has no power whatsoever to issue an order for demolishing any unauthorized construction in Village Masoodpur. In particular it is submitted that the DDA has no jurisdiction or power u/s 30 of the DD Act to order demolishing of the Petitioner's unauthorized construction. It is submitted that although the earlier Writ Petition (Civil) No. 6665 of 2010 was dismissed as withdrawn, the present writ petition was maintainable in view of the liberty granted to the Petitioner by the Division Bench while dismissing LPA No. 858 of 2010.

8. Appearing for the DDA, Mr. Ajay Verma, learned Counsel submits that the attention of the Division Bench which dismissed LPA No. 858 of 2010 on 29th November, 2010 was not drawn to the fact that the Petitioner had by then filed Writ Petition (Civil) No. 6665 of 2010 which stood dismissed as withdrawn on 23rd

November, 2010 itself. It is submitted that the filing of the present writ petition constitutes an abuse of the process of law. Secondly, it is submitted that the land in question belongs to the DDA and DDA was fully within its rights to take action for removal of an unauthorized construction thereon. Reference is made to an inspection report dated 8th February, 2010 of the Deputy Director (DA) confirming that the unauthorized construction was recent and therefore, was required to be removed. It is submitted that the issuance of the notification dated 1st June, 2010 by the LG de-notifying the Development Area 176 would make no difference to the situation since the land belonged to the DDA itself and it was acting pursuant to the order passed by this Court on 23rd March, 2010.

9. The above submissions have been considered.

10. It does appear from a perusal of the order dated 29th November, 2010 passed by the Division Bench that its attention was not drawn to the fact that the Petitioner had by that date filed Writ Petition (Civil) 6665 of 2010 in this Court which stood dismissed as withdrawn on 23rd November, 2010 itself. Although learned Counsel for the Petitioner pointed out that in the list of dates filed along with LPA No. 858 of 2010 mention was made of the fact that WP(C) No. 6665 of 2010 stood dismissed as withdrawn, clearly the narration in the main body of the petition do not contain such averment.

11. On merits, this Court finds that the notification dated 1st June, 2010 de-notifying the Development Area 176 does not actually make a difference to the demolition action that was proposed by the DDA even prior to the issuance of the said notification. Clearly, when this Court passed the order dated 23rd March, 2010, the DDA had the power to remove unauthorized construction from Development Area 176. It was on the basis of the statement made by the DDA that this Court disposed of the said writ petition. Even the subsequent order dated 1st November 2010 indicates that there was no variation of the order dated 23rd March, 2010.

12. For the reasons best known to the Petitioner, he withdrew the Writ Petition (Civil) No. 6665 of 2010 without reserving any liberty to file a fresh petition. The fact of the filing and subsequent dismissal of the Writ Petition (Civil) No. 6665 of 2010 was mentioned only in the list of dates and not in the memorandum of appeal of the LPA.

13. Be that as it may, it is clear from the site inspection report of the DDA that the construction raised by the Petitioner on the property in question was a recent one. It was clearly unauthorized. The Provisional Regularization Certificate issued in respect of the unauthorized colony at Village Masoodpur required every resident to strictly maintain status quo in respect of the premises under their occupation and not to raise fresh construction.

14. The powers of the DDA to remove unauthorized construction on the land belonging to it, does not get denuded by the issuance of the notification dated 1st

June 2010 de-notifying Development Area 176. At best such notification took away DDA's power to check "developmental" activity taking place contrary to the sanctioned plan on lands not belonging to it. The notification did not fetter the DDA's power to remove encroachment from lands belonging to it.

15. There is yet another reason for not entertaining this petition. The intervenor, who has filed CM No. 21435 of 2010, has placed on record the judgment dated 8th August, 2007 passed by a Division Bench of this Court in WP(C) No. 2746 of 2007 filed by the Petitioner and other residents of the colony seeking to restrain the Land Acquisition Collector and DDA from dispossessing them. While dismissing the writ petition, the Division Bench noticed that possession of the land in question was handed over to the DDA on 29th January, 1980. The Division Bench upheld the acquisition proceedings and characterized the Petitioners' aforementioned writ petition to be "totally misconceived".

16. For all of the above reasons, this Court finds no merit in this writ petition and it is dismissed as such. The pending applications stand disposed of.

17. Order be given dasti to learned Counsel for the parties under the signature of the Court Master.