

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Execution Application No. 05/2017
In
O.A. No. 13/2015

(With report dated 9.11.2020)

Dr. Amarjit Singh Nalwa & Ors.

Applicant(s)

Versus

The State of NCT Delhi & Ors.

Respondent(s)

Date of hearing: 09.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Rahul Choudhary, Advocate

Respondent(s): Ms. Sonalika Jiwani, SDM Mehrauli

ORDER

1. The issue for consideration is remedial action against failure to remove encroachment from forest land inspite of order of this Tribunal dated 11.12.2015 at certain locations in South Delhi.

2. The matter has been earlier considered in the light of the status reports filed by the Deputy Commissioner, South District, Delhi Government. The status report shows that there are about 5000 encroachers and 750-800 structures set up illegally over a period of time at one camp and about 3000 encroachers are living at another camp. Huge forest land has been encroached. For ready reference, we reproduce extracts from order dated 17.01.2020 as follows:-

“1to4..xxx.....xxx.....xxx

5. Accordingly, a further status report has been filed on behalf of the Deputy Commissioner, South District. The Tables showing the particulars of Encroachments yet to be removed:-

| Name of Jhuggi Jhopri Basti/Colony | Khasra No. | Total Area (Bigha-Biswa) | Remarks/Details |
|---|---|---------------------------------|--|
| Shambhu Bapu Camp | 91//20, 91//21, 91//22, 92//14, 92//15, 92//16, 92//17, 92//23, 92//24, 92//25, 105//3, 105//4, 105//5, 105//6, 105//7, 105//8, 105//13, 105//14, 105//17, 106//1, 106//2, 106//3, 106//4, 106//7, 106//8, 106//9, 106//10, 106//11, 106//12, 106//13, 92//16 | 93-16 | Approx 5000 people are residing in the colony, and 750-800 structures are existing. The area is heavily built up and thickly populated. These colonies are part of Sl. No. 363 & 364 of the DUSIB list of Jhuggi Jhopri Basties. |
| Bhim Basti Camp | 67//1, 67//2/1, 67//9/2, 67//10, 67//11, 67//12/1, 67//19/2, 67//20, 67//21, 67//22/1, 79//10, 79//11, 79//20, 79//21 | 24-9 | Approx 3000 people are residing in the colony, and 450-500 structures are existing. The area is heavily built up and thickly populated. This colony is on Sl. No. 365 of the DUSIB list of Jhuggi Jhopri Basties. |
| Total Left over encroached area in village Jonapur | | 118-05 (24.6 Acres) | |

| Name of the Colony/Land Details | Khasra No. | Total Area (Bigha-Biswa) | Remarks |
|--|--|---------------------------------|---|
| Shanti Camp | 25/5, 25/6, 25/7, 25/14, 25/15, 25/16, 25/17, 25/25, 37//2/3, 37//3, 37//8, 37/9/1 | 28-9 | This colony is at Sl. No. 367 of the DUSIB list of Jhuggi Jhopri Basties. |
| Jawahar Colony | 5, 6/11, 6/20, 6/21 | 32-15 | This colony is part of plots allotted for 20 Point Programme, for residential |

| | | | |
|--|---|-------------------------|---|
| | | | <i>purposes. Details have been sent to Forest Settlement Officer for necessary action.</i> |
| <i>Govt. Allotments, Private Land, Temple etc.</i> | <i>39//7/2, 45//11/1, 56/3, 60/4, 60/7, 61/25, 62/5, 75//17/2, 82/19, 84//11/2, 91/16, 103/20/1, 108//2/2, 118//21, 131</i> | <i>30-18</i> | <i>Necessary action such as referring the matter to the Forest Settlement Officer and Religious Committee has been taken.</i> |
| Total | | 92-02 (19 Acres) | |

6. Progress after last affidavit is given as follows:

“Progress after last affidavit (12.08.2019)

*It is submitted that demolition action was undertaken on 13th, 14th, 16th and 17th of August, 2019, (91-01) Bigha Biswa, (18-9) Acres of Forest Land has been retrieved and taken over by the Forest Department. Copy of Demolition report is annexed herein and marked as **ANNEXURE-A**. Copy of the last affidavit file by the respondent is also annexed herein and marked as **ANNEXURE-B**.*

Further, the demolition programme was fixed on 30/10/2019, for the removal of encroachment in village Dera Mandi. However, consequent upon the Hon’ble High Court of Delhi, vide order dated 18/10/2019 in W.P. (C) 11079/2019 titled as Bari Bhati and Chhoti Bhati Resident Welfare Association and Ors. Vs Govt. of NCT of Delhi & Ors., deferred the said demolition process till 10/11/2019.

The encroachers went in High Court for Khasra Nos. 123/3/2, 123/4/2, 123/5, 123/6, 123/15, 124/1, 124/2, 124/9, 124/10, 124/11, 124/12, 125 & 126 of village Dera Mandi, in the matter of Om W.P. (C) 11079/2019 titled as Bari Bhati and Chhoti Bhati Resident Welfare Association and Ors. Vs Govt. of NCT of Delhi & Ors., where ASC informed to the Hon’ble High Court the time being there is no demolition programme. As and when, the matter came to the knowledge of SDM (Mehrauli), SDM (Mehrauli) briefed the matter to the DM (South), after that DM (South), instructed to ASC and SDM (Mehrauli) to file an affidavit in Hon’ble High Court for early hearing. On 18/11/2019, Hon’ble High Court directed to Status Quo to be maintained in the same matter, till further order. Accordingly, action against ASC has been proposed by DM (South). Since ASC failed to protect Government interest in this matter.

Directions of Hon'ble High Court of Delhi to the respondents, on 18.11.2018, in reference to W.P. 11079/2019 of the High Court of Delhi in Bari Bhati and Chhoti Bhati Resident Welfare Association and Ors. Vs Govt. of NCT of Delhi & Ors., as follows:-

Learned senior counsel appearing for the petitioner has submitted that the notification dt. 02.04.1996 issued under section 154 of the Delhi Land Reforms Act, 1954 does not state that the above stated land. He states that there is no Notification issued by the respondent under section 4 of the Indian Forest Act, 1927. He further states that it is mandatory for the State Government to issue a Notification under section 4 of the Indian Forest Act and complete the procedure thereof before a land can be said to be reserved forest. He further states that even assuming that the land in question is Gaon Sabha land, the petitioners have been occupying the said land for the last three generations and hence the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Second Bill, 2007 would be applicable and the petitioner will accordingly have protection from vacation.

Learned counsel for the respondent has disputed the above submissions.

List for further arguments on 26.11.2019 at 03:15 PM.

Status quo be maintained till then

In the same matter, demolition programme was again rescheduled for removal of all encroachment of Forest Land in the village of Dera mandi on 11/11/2019. Meanwhile, the Hon'ble Supreme Court of India had directed that due to deterioration of Air Quality Index, all construction and demolition activities in Delhi/NCR region will be stopped immediately till further order, in the matter of W.P. (s) (Civil) No. (s). 13029/1985 titled as M.C. Mehta Vs. UOI & Ors. dated 06/11/2019.

As per the directions of Hon'ble Supreme Court of India in the above mentioned matter, the demolition programme for removal of encroachment on Forest Land in the village of Dera Mandi, could not be done on 11/11/2019.

Further, another demolition programme is also fixed on 30.11.2019. Copy of the same is annexed herein and marked as ANNEXURE-C; however, this is subject to the revised order of Hon'ble Apex court in the matter of W.P. (s) (Civil) No. (s). 13029/1985 titled as M.C. Mehta Vs UOI & Ors.”

7. *It is clear from the above, that the matter is not being seriously pursued in proceedings pending before the High Court. It is admitted that Counsel for the Department itself made a statement that there was no demolition programme which was sought to be later on withdrawn. The legal position, as recorded in the orders of this Tribunal and earlier order of the High Court was not projected before the High Court in subsequent proceedings. The observations in the earlier order of the High Court in W.P. (C) 5459/2017, Residents Welfare Association (Regd.) & Ors. Vs. Union of India & Ors. are:*

“16. Although, by virtue of Section 3(2) of the Act, status quo as to certain encroachments or unauthorised developments as on 01.01.2006 is to be maintained, the same plainly does not extend to forests as no such use is permitted under the Forest (Conservation) Act, 1980. Further the Act was enacted in public interest so that no hardship is caused to the public until revision of Master Plan. The same has little relevance in the context of Forest land, which must be preserved. More importantly, the provisions of the Act cannot be read as protecting unauthorised encroachments, which are necessarily required to be removed for protecting the water bodies and preserving the natural flow of water, which is necessary to preserve and provide the basic necessity of life. Further is necessary to address the issue of water logging as that brings the functioning of the city to a standstill causes loss to property and exposes its residents to outbreak of diseases. The encroachment by petitioners cannot be protected at the cost of the other residents of the city. This is neither the object nor the import of the Act.”

8. *Reference may also be made to the observations of the Hon’ble Supreme Court in M.C Mehta v. U.O.I (In Re: Kant Enclave matters) 2018 SCC Online SC 1426 wherein the principle laid down in Godavarman Thirumulkpad Vs. Union of India (1997) 2 SCC 267 was reiterated.*

9. *In view of above legal position, no encroachment can be allowed to continue on the forest land and wherever stay has been granted, this position may need to be explained by the Delhi Government.*

10. *The orders for not undertaking to maintain air quality ought not to be construed as an obstacle to the removal of illegal constructions or demolition for remove encroachments not entailing constructions and demolitions.*

11. *Let further steps in the matter be taken expeditiously. The monitoring has to be at appropriate higher level so that the encroachments are not obstructed as appears to be happening at the moment.*

12. Further report about the status of steps taken, as on 30.04.2020, be filed before the next date by email at judicial-ngt@gov.in.”

8. A further compliance report has been filed today giving the status of demolition as follows:-

“5. The demolition status of the khasra-wise encroachments removed in Dera Mandi Village on 13,14,16 and 17th August, 2019 and present status is submitted below:-

Table showing encroachments removed in Dera Mandi village

| Khasra No. | Area | Remove Encroachment Area |
|-------------------|-------------|---------------------------------|
| 77/19/1 | 2-4 | 2-4 |
| 85/1/2 | 1-0 | 1-0 |
| 2/1 | 1-14 | 1-0 |
| 12/2 | 3-11 | 3-11 |
| 44/7/2 | 1-4 | 1-4 |
| 47/19/2 | 2-0 | 2-0 |
| 123/16 | 4-16 | 4-16 |
| 17 | 4-16 | 4-16 |
| 18 | 4-16 | 4-16 |
| 19 | 4-16 | 4-16 |
| 20 | 4-16 | 4-16 |
| 21 | 4-16 | 4-16 |
| 22 | 4-16 | 4-16 |
| 23 | 4-16 | 4-16 |
| 24 | 4-16 | 4-16 |
| 25 | 4-16 | 4-16 |
| 124/20 | 4-9 | 4-9 |
| 125 Min | 13-9 | 4-16 |
| 112/3 | 4-12 | 0-2 |
| 4 | 4-12 | 0-10 |
| 5/1 | 1-18 | 0-6 |
| 7 | 4-16 | 0-16 |
| 111/2/1 | 2-4 | 0-14 |
| 4/1 | 1-3 | 1-3 |
| 110/3/1 | 0-8 | 0-8 |
| 12 | 4-16 | 0-16 |
| 21/1 & 21/2 | 4-16 | 0-6 |
| 22 | 4-16 | 0-12 |
| 24/2 | 3-02 | 3-02 |
| 81/24 | 3-4 | 3-4 |
| 104/20/2 | 0-6 | 0-6 |
| 106/12/1 | 1-12 | 1-12 |
| 123/11/2 | 2-16 | 1-07 |
| 12 | 4-16 | 1-13 |
| 85/25/2 | 2-4 | 2-4 |
| 108/13/2 | 3-12 | 1-3 |

| | | |
|--|------|-----------------------|
| 14 | 4-16 | 0-16 |
| 20 | 4-16 | 0-16 |
| 2/2 | 1-6 | 1-6 |
| Total Encroachment Removed Area | | 91-01 (18-9 Acres) |

6. It was mentioned in the said order“10. The orders for not undertaking to maintain air quality ought not to be construed as an obstacle to the removal of illegal constructions or demolition for remove encroachment not entailing constructions and demolitions.” Accordingly, a demolition order dated 29.07.2020 was issued to all the Encroachers in the instant matter to remove the unauthorized construction/ colonization and plotting at Kh. Nos. 61/21 (0-13), 22 (0-11), 23/1 (0-7), 78/20/1 (0-16), 22/3 (2-3), 23/2(0-13) & 79/25/2 (2-0) Village Dera Mandi, New Delhi, on 18.08.2020.

7. However, the proposed demolition on 18.08.2020 could not be held **due to** non-availability of the police force despite informing them well in advance to depute sufficient police on the date of demolition.

8. Director (Rehabilitation), Delhi **Urban** Shelter Improvement Board, Govt. of NCT of Delhi, was requested vide letter dated 26.10.2020 to inform the steps taken by the DUSIB to relocate the JJ clusters of Sambhu Bapu Camp & Bhim Basti Camp so as to initiate further **necessary action by** the Revenue Department.

9. In this regard, a letter **was** received from the Department of Urban Development, GNCTD stating that **"The Rehabilitation Branch of DUSIB relocated JJ Basti on request of Land Owning Agency (LOA), i.e. Forest Department, as per provisions of Delhi Slum JJ Rehabilitation and Relocation Policy — 2015, after receipt of relocation charges in advance from concerned LOA, after completing all codal formalities."**

10. As per the laid down procedure, the Forest Department, Govt. of NCT of Delhi, being the land owning **agency**, will be requesting the Rehabilitation Branch of DUSIB, for rehabilitation of families / clusters in the encroachment areas.”

9. While it is true that removing such encroachment is a challenge but if the Rule of Law is not to be enforced, we will have lawless society. Forest laws can be defeated by allowing encroachments and thereafter pleading helpless in enforcing the law.

10. SDM, Mehrauli is present in person and she has assured that further action according to law will be taken.

11. In view of the above, let further action be taken according to law and status report as on 31.03.2021 be filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List for further consideration on 19.04.2021.

Pending M.A. Nos. 540/2017, 223/2019 and 224/2019, do not survive for consideration, in view of the subsequent orders passed. The same stand disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 09, 2020
Execution Application No. 05/2017
A