

Shakil Ahmed & Anr vs Delhi Development Authority & Ors on 25 September, 2020

Author: Jayant Nath

Bench: Jayant Nath

\$~A-50

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7032/2020 and CM No. 23972/2020

SHAKIL AHMED & ANR. Petitioners
Through Mr.Choudhary Ali Zia Kabir and
Ms.Anupradha Singh,
versus

DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents
Through Mr. Sanjeev Sagar, Standing Counsel
for DDA with Ms.Nazia Parveen, Adv. for DDA.
Mr.Gautam Narayan, ASC for GNCTD/R-2 & 3
Mr.Ajay Digpaul, CGSC with Mr.Kamal
R.Digpaul, Adv. for R-4/UOI
Mr.Parvinder Chauhan, Adv. for DUSIB.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 25.09.2020 This hearing is conducted through Video-Conferencing.

1. This writ petition is filed by the petitioners seeking the following reliefs:-

"a. stay the eviction of residents at Dhobi Ghat, Batla House, Jamia Nagar, Okhla, South Delhi, Delhi-110025;

b. direct respondent no.2, DUSIB to conduct a survey of the affected residents and rehabilitate them in accordance with the Delhi JJ slum Rehabilitation and Relocation Policy, 2015;

c. Direct the R3, Police, to provide protection against any demolition to the residents until express order from the Court.

d. Direct R3, Police to return the belongings seized during the demolition drive on 24.9.2020 at Dhobi Ghat, Batla House, Jamia Nagar, Okhla, South Delhi, Delhi-110025 to respective residents;

..."

2. The case of the petitioners is that the slum settlement in question with more than 800 houses came into being in 1990s. It is pleaded that on 24.09.2020, two DDA officials arrived in the basti along with 30-40 policemen, JCB Bulldozers and MCD trucks to demolish the houses. The petitioners fear that their house is going to be demolished and hence, the present writ petition.

3. Issue notice.

4. Learned counsel for respondents No. 1 to 4 accept notice respectively.

5. Mr.Parvinder Chauhan, Advocate has entered appearance for DUSIB and states that DUSIB is a necessary and proper party.

6. This plea of Mr.Parvinder Chauhan, Advocate is accepted by the learned counsel for the petitioners. On the request of the learned counsel for the petitioners, DUSIB is impleaded as respondent No. 5.

7. Learned counsel for DDA has pointed out that the demolitions in question are being carried out in terms of the order of the NGT on account of the fact that these areas are located in the Yamuna Flood Bank. He has also pointed out that in an another matter, also relating to demolition being carried out in the Yamuna Flood Bank, a Coordinate Bench of this court had passed an interim order on 14.10.2019. The Division Bench in LPA No.681/2019 on 24.10.2019 stayed the said interim order.

8. Learned counsel for the petitioners, however, relies upon the judgment of another Division Bench of this court passed in the case of Ajay Maken & Ors. vs. Union of India & Ors., (2019) 260 DLT 581 DB.

9. On 14.10.2019, the Coordinate Bench of this court passed the following orders:-

"1. The petitioners claim that they are the residents of YK Jhuggi Camp, Yamuna Khadar, Phase-I, Mayur Vihar, Delhi- 110091 (hereafter referred to 'subject area'). 1.1 It is their averment that they have been residing in the subject area for years and that demolition commenced in the subject area on 9.10.2019 without following due process.

2. According to the petitioners, no show cause notice was issued before commencing demolition.

3. I have queried the counsel for respondent No.1/DDA as to whether any show cause notice has been issued. Learned counsel says that he has no instructions in that behalf. 3.1 It is, however, the submission of the learned counsel for respondent No.1/DDA that the orders have been passed by National Green Tribunal (NGT) for clearing the Yamuna flood plain as it is eco-sensitive zone.

4. On the other hand, Mr. Chaudhary Ali Zia Kabir, who appears for the petitioners, has placed before me a judgment of the Division Bench of this Court titled *Ajay Maken vs. Union of India and Others* (2019) SCC OnLine Delhi 7618 to support his contention that the directions of the NGT would have to merge with the constitutional requirement of rehabilitating the slums dwellers.

5. To my mind, the matter needs further examination.

6. In these circumstances, issue notice to the respondents. 6.1 Mr. Kush Sharma accepts notice for respondent No.1/DDA, while Mr. Nitin Jain accepts notice on behalf of respondent No.2/DUSIB.

6.2 Likewise, Mr. Shekhar Kumar accepts notice for respondent No.3/Commissioner of Police, Delhi and respondent No.4/GNCTD while Mr. Chiranjeev Kumar accepts notice for respondent No.5/UOI.

7. Counter affidavits be filed within four weeks from today. Rejoinder thereto, if any, be filed before the next date of hearing.

8. Mr. Kabir says that out of 2000 slum dwellers in the subject area, 500 slums have already been demolished and those people have been rendered homeless.

9. In these circumstances, respondent No.1/DDA will carry out an enumeration of the persons whose slums have been demolished. Respondent No.1/DDA will find them an alternate place for rehabilitation within ten (10) days from today. 9.1 In case respondent No.1/DDA is unable to do so, it will permit them to set up temporary camps in the subject site. 9.2 This direction has been passed in view of the fact that winter is fast approaching and the slum dwellers have nowhere else to go.

10. In the meanwhile, status quo vis-a-vis demolition of other slums in the subject site will be maintained by the respondents.

11. Mr. Kabir has placed before me additional documents in the Court today.

11.1. The Registry is directed to scan and upload the same for the purpose of good order and record.

12. Renotify the matter on 28.1.2020.

13. Dasti under signatures of the Court Master."

10. However, the Division Bench on 24.10.2019 stated as follows:-

"1. This Letters Patent Appeal has been listed today on urgent mentioning.

2. It appears that this appellant is the original respondent no.1 in WP(C) No.10900/2019. It is submitted by learned senior counsel for the appellant that in the aforesaid writ petition, the stay order has been granted in favour of the petitioner by the learned Single Judge vide order dated 14th October, 2019 on the very first date of hearing of the writ petition. The counter affidavit is yet to be filed by the present appellant in the said writ petition.

3. Learned senior counsel appearing for the appellant further submitted that there are several orders passed by the National Green Tribunal (NGT) in OA No.6/2012 (order dated 13th January, 2015 & 11th September, 2019) as well as in OA No.65/2016, OA No.76/2016 & OA No.81/2016 (order dated 7th December, 2017), wherein the NGT has directed this appellant to remove the encroachments from the flood plain of river Yamuna. These orders are annexed in the memo of this appeal as annexures A-2, A-3 & A-4. It is also submitted by learned senior counsel for the appellant that if these directions are not complied with by the appellant herein which are given by the NGT, in that case the National Green Tribunal has imposed fine of Rs.5,00,000/- per month from 1st April, 2020 which can also be recovered from the erring officers of the appellant. Thus, it is submitted by learned senior counsel for the appellant that for the work to be completed on or before 1st April, 2020 in compliance with the order of the NGT, it ought to have been started latest by now. All these aspects have not been properly appreciated by the learned Single Judge because on the first date of the hearing of the writ petition, stay order has been granted in favour of the respondent no.1 herein by the learned Single Judge on 14th October, 2019 in WP(C) No.10900/2019. Hence, let this appeal be admitted and stay order may be granted against the order passed by the learned Single Judge.

4. Issue notice. Mr.Parvinder Chauhan, Advocate waives notice on behalf of respondent no.2 and Mr.Vikrant N. Goyal, waives notice on behalf of respondent no.5. Notice upon rest of the respondents be served by ordinary process, returnable on 4th November, 2019.

5. Having heard learned senior counsel for the appellant and looking to the facts and circumstances of the case, as an ex parte ad interim relief, we hereby stay the operation, implementation & execution of the order passed by the learned Single Judge on 14th October, 2019 in WP(C) No.10900/2019 till the next date of hearing.

6. List on 4th November, 2019.

7. Dasti under signatures of Court Master."

11. Keeping in view the above orders of the Division Bench, it is not possible for this court to pass any interim orders.

12. Learned counsel for the petitioners has, however, at this stage strenuously urged that the petitioners are residing in these areas since 1990s. It is also pleaded that as per the judgment of the Division Bench of this court in the case of Ajay Maken & Ors. vs. Union of India & Ors. (supra), the land owning agency has to provide alternate accommodation to the petitioners and that the directions of the NGT for eviction would necessarily be subject to compliance of the aforesaid directions. Learned counsel for the petitioners urges that this court may grant protection for some days to the petitioners to enable them to take steps as per law.

13. Keeping in view the submissions of the learned counsel for the petitioners, the aforesaid demolition orders are stayed for a period of 5 days from today to enable the petitioners to take appropriate steps as per law.

14. List on 09.10.2020.

JAYANT NATH, J SEPTEMBER 25, 2020/rb