

Bharat Gramin Vikas Sangathan vs North Delhi Municipal Corporation & Ors on 13 February, 2019

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9764/2016

BHARAT GRAMIN VIKAS SANGATHAN Petitioner
Through : Mr. Ravin Rao, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION
& ORS Respondents
Through : Ms.Puja Kalra, Advocate with
Mr.R.KSharma EE & Mr. S.C. Garg,
AE for North DMC/R1.
Mr. Raghvendra Pandey, Advocate
for R2.
Mr. B.S. Dhir, Mr.Amit Wahi,
Advocates for R3/DDA.
Mr. Shashank Tiwari, Advocate for
Mr.Santosh Kumar Tripathi, ASC for
GNCTD/R4,6.
Mr. B.S. Dhir, Mr. Amit Wahi,
Ms.Shireen Khan, Advocate for
Mr.Rajender Sahu, Advocate for
UOI/R5.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER

% 13.02.2019 The petitioner's grievance relates to alleged unauthorized construction and encroachment on the old Grand Trunk Road from Libaspur to Gurudwara Road, Siraspur, Delhi.

Learned counsel for respondent No.1/North DMC, respondent No. 2/PWD, respondent No. 3/DDA and respondents Nos. 4 and 6/District Magistrate and Delhi Police are present.

It appears that there has been a running battle as between respondent No. 1/North DMC and respondent No. 2/PWD on whether the section of the road in question vests in respondent No. 1/North DMC or respondent No. 2/PWD; and further as to whose responsibility it is to remove encroachments and unauthorized construction from such road, regardless of the road vesting in one

or the other respondent.

It is evident that respondents Nos. 1 and 2 have still not resolved the controversy and are attempting to shift the responsibility for removal of encroachment and unauthorized construction onto each other.

If anything, the scope of this controversy is increasing inasmuch as it is now contended that unless the exact path, exact dimensions and lay-out of the road is confirmed, it will not be possible to ascertain as to what is, or is not, an encroachment, before action is taken against it.

Counsel appearing for the petitioner contends that the controversies as aforesaid are being created by respondents Nos. 1 and 2 only to avoid taking action in the matter.

In the context of the grievance made in the petition, it transpires that in compliance of orders of the Supreme Court in Writ Petition (Civil) No. 4677/1985 titled M.C. Mehta vs. Union of India & Ors, the Ministry of Housing & Urban Affairs ("MHUA") of the Government of India has vide Office Memorandum dated 25.04.2018 constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Bye Laws and Master Plan for Delhi-2021 relating inter alia to construction activity and land-use in Delhi. Vide another Office Memorandum dated 23.05.2018 the MHUA has also formulated an action plan for monitoring construction activities in Delhi and for fixing responsibility in case of violations of the Unified Building Bye Laws and the Master Plan.

Vide order dated 20.09.2018 made in Writ Petition (Civil) No. 1807/2018 titled Devender vs. Government of NCT of Delhi & Ors. (and connected matters) by the Division Bench of this Court headed by Hon'ble the Chief Justice, the Court has held that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in matters relating to unauthorised construction; and has disposed of such matters granting liberty to the petitioners to raise their grievances before the Special Task Force so constituted, in accordance with the scheme and procedure formulated under the aforesaid two Office Memorandums.

By order dated 24.09.2018 made in a subsequent matter, being Writ Petition (Civil) No. 9938/2018 titled Suresh Chand Goel vs. East Delhi Municipal Corporation, the Division Bench has followed its earlier order dated 20.09.2018 in Writ Petition (Civil) No. 1807/2018, similarly disposing of the writ petition, granting liberty to the petitioner to file a complaint before the Special Task Force. I am informed that the Division Bench has subsequently also made similar orders in other matters.

To be sure, the petitions that were subject matter of the aforesaid proceedings before the Division Bench were petitions filed in public interest and otherwise; and related to contravention not only of sanctioned building plans but also of various laws, including the Delhi Municipal Corporation Act, 1957, the Delhi Development Authority Act, 1957, the New Delhi Municipal Council Act, 1994, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 as also encroachment on public land etc. Ergo, the binding observation of the

Division Bench that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in such matters, must not in my view, be restricted only to matters relating to unauthorised construction but must also apply to all other matters which the Special Task Force is mandated to deal with, including misuse and encroachment. In many instances, it may well be that there are multiple violations of Building Bye Laws and Master Plan in the same property, say unauthorised construction, encroachment as well as misuser of premises; in which case the same agency must be left to deal with such connected issues. I should think it is for this reason that the objectives of the Special Task Force as enunciated in Office Memorandum dated 25th April 2018 include inter-alia matters relating to encroachment, unauthorised construction and use violations.

The aforesaid Special Task Force is a 15-member body with representation of the highest level from all concerned municipal, civic, revenue and law enforcement agencies of Delhi; and is therefore ideally suited for multi-agency, coordinated action against the rampant malaise of breach of various laws, rules and regulations governing building construction and land-use in Delhi.

I am informed that as of date the Special Task Force even has its own dedicated website and mobile application to facilitate making of complaints, thereby making it even easier for parties to take their grievances before the said agency.

Accordingly, I am of the view that the correct course of action in this matter also would be to dispose of the present writ petition, giving liberty to the petitioner to approach the Special Task Force in accordance with the policy and procedure laid down for the purpose in MHUA's Office Memorandums dated 25.04.2018 and 23.05.2018 and avail the said alternate, efficacious remedy.

This writ petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

ANUP JAIRAM BHAMBHANI, J FEBRUARY 13, 2019 j