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Wazirpur Bartan Nirmata Sangh vs. Union of India, October 2006

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IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : LAND DISPUTE

CM Nos.10710/2006 and 10711/2006 in WP(C) No. 2112/2002

Judgment reserved on: September 28, 2006

Judgment delivered on: October 4, 2006

Wazirpur Bartan Nirmata Sangh

Petitioner

Through: Mr. Anand Yadav for the petitioner.
Mr. S.M. Aggarwal, Convener of the Committee.
Mr. Ritesh Kumar for Mr.A.S.Chandhiok,
Sr.Advocate, Amicus Curiae.

versus

Union of India and other

Respondents

Through: Mr. Vivek Singh for the applicant
in CM Nos. 10710-11/2006 and
CM Nos. 10516-18/2006
Mr. Sarfaraj Khan for counsel for
the respondent/Railways.
Mr. P.N. Puri with Mr. Dhiraj for
the applicant in CM No.1067/2006.
Mr. J.R. Midha, standing counsel
(Civil) for GNCT.
Mr. Ajay Arora with Mr. Kapil
Dutta and Mr. Ravi Mehta for
the respondent/MCD.
Mr. Rajiv Bansal for the
respondent/DDA.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J :

1. This order will dispose of objections dated 18.09.2006 and applications bearing CM Nos. 10710/2006 and 10711/2006. CM No. 10710/2006 has been preferred by the applicants for impleadment and for seeking certain directions while CM No.10711/2006 has been moved for interim stay. In brief, the case set up by these applicants is that they claim themselves to be owners in possession of super structures situated at Ghat No.6,

Kudasiya Ghat, Bela Road, Delhi and they felt threatened of dispossession and demolition of their structures from the officials of DDA who have been taking various steps for the clearance of encroachments on the embankment of river Yamuna and all the illegal structures coming within the radius of 300 mtrs. from the edge of river Yamuna pursuant to various directions given by this Court. The main grievance of the applicants is that they cannot be equated with the illegal encroachers as they are rightful allottees under the lease and have raised various structures under the sanctioned plans.

2. Vide order dated 31.08.2006 we had directed these applicants to approach the Convener of the Yamuna - Removal of Encroachments Monitoring Committee and the said Committee was directed to communicate their decision within a period of three days after giving hearing to the applicants as well as the DDA. Pursuant to these directions, the hearing was given to the applicants by the Committee headed by Hon'ble Ms. Justice Usha Mehtra (Retired) on 01.09.2006 and 04.09.2006 and the Committee had authorized the Convener to pass appropriate orders. The Convener of the Committee vide order dated 05.09.2006 gave time to these applicants upto 12.09.2006 to demolish and remove the super structures existing on Ghat No.6, Kudasiya Ghat, Bela Road, Delhi after determining the status of the applicants as that of unauthorized occupants and encroachers. The said order of the Convener was filed along with the 7th Report of the Committee which finds place at pages 765 to 768. Feeling not satisfied with the said order of the Convener of the Committee, the applicants approached this Court with a request that some more documents are in their possession which they wanted to place before the Committee and, therefore, they sought fresh hearing of the Committee for consideration of their case. Vide order dated 07.07.2006 this Court allowed the said request of the applicants and directed the Committee to reconsider the matter after taking into consideration the fresh documents being relied upon by the applicants. Pursuant to these directions the Committee gave re-hearing to the applicants on the basis of certain fresh documents which the applicants claimed to have obtained after the passing of the previous order dated 05.09.2006. Personal hearing was given by the Committee to the applicants represented through their counsel, Shri Vivek Singh on 11.09.2006. Even after perusing these fresh documents produced by the applicants and after examining the relevant records of Land and Development Office the Committee reached to the conclusion that no case is made out by the applicants to review their earlier decision dated 05.09.2006. However, the Committee after hearing the parties has passed a detailed order dated 13.09.2006 which is filed by the Convener of the Committee along with its 8th Report. The said order finds at Page Nos. 781 to 788 of the main file.

3. The applicant is still not satisfied with the order passed by the Yamuna - Removal of Encroachments Monitoring Committee and has filed objections against the orders passed by the Committee on 05.09.2006 and 12.09.2006/13.09.2006.

4. We have heard Shri Vivek Singh, counsel appearing for the applicants/objectors and Convener of the Committee. The contentions which have been raised by the applicants are exactly similar to the one which were raised by the counsel representing the applicants of CM bearing No.11672-73/2006 and we have passed detailed order dealing with all these contentions of the applicant and, therefore, it would be exercise in futility

to again dwell on these contentions which have been answered by us in the said identical matter. The findings given by the Court in the said order shall be fully applicable and binding on the applicants. The earlier CM Nos.11672/2006 and 11673/2006 were heard and decided by the Court and no separate orders were passed by the Yamuna - Removal of Encroachments Monitoring Committee but in the present case a full fledged hearing has been given by the Committee on 01.09.2006, 04.09.2006 and 11.09.2006 and detailed orders dated 12/13.09.2006 has been passed by the Committee. The Committee has examined the contentions of the applicants threadbare and reached to the conclusion that the applicants have no right over Ghat No.6, Kudasiya Ghat, Bela Road, Delhi and the entire super structures existing on the said Ghat deserves to be demolished immediately. The Committee has taken into account the five years' lease which was granted by the Notified Area Committee vide registered Lease Deed dated 14.04.1925 in favour of Shri Madho Prasad, s/o Shri Shyam Lal and Shri Premsukh Dass, s/o Shri Dwarka Dass in respect of a vacant site for the purposes of Bathing Ghat' for the use of public on a nominal rent of Re.1/- per annum. The Notified Area Committee ceased to exist in March, 1958 and then it was succeeded by Land and Development Office, Government of India. The last Temporary Lease Deed of five years on which the applicants have placed reliance, was executed on 26.12.1967 between the LandDO on behalf of President of India and Shri Ram Kishan Dass s/o Shri Madho Prasad, Shri Anand Prakash and Shri Kishori Lal sons of Late Shri Gul Raj. This last Lease Deed was operative from 15.07.1963 upto 14.07.1968 on the existing terms and conditions with a nominal rent of Rs.2/- per annum payable in advance on yearly basis. Subsequently, the applicants claimed that the lease was further extended for a period of five years upto 30.06.1973 on the same terms and conditions. The Committee has found that the lease came to an end by a efflux of time on 30.06.1973 as the applicants never exercised any option for renewal thereafter. Even during the course of arguments, the applicants have not been able to substantiate as on what basis they claim extension of lease after 30.06.1973. Clause 10 of the Temporary Lease Deed dated 26.12.1967, photocopy of which has been placed on record, clearly mandates that the lessee was to peacefully yield possession of the leased site and the lessee shall remove the building standing on the land without claiming any sort of compensation for the same after the determination of the lease, unless, there is a renewal of lease in favour of the lessee. Since in the present case the lease stood determined at the expiry of the lease period i.e. 30.06.1973, therefore, as per Clause 10 of the lease deed it was obligatory on the part of the applicants to hand over the possession of the land after removal of the structures existing at site to the lessor. The Committee has, thus, rightly found the possession of the applicants as that of unauthorized occupants.

5. Another contention which has been raised by the applicants before the Committee as well as before this Court is that the structures existing at site are in accordance with the sanctioned plan. The Committee has found that no sanctioned plan whatsoever were produced before them so as to show that the structures existing at site are in accordance with the sanctioned plan. The counsel appearing for the applicants has vehemently argued that all the structures existing at site are in accordance with the sanctioned plan but when the Court asked the counsel to produce the sanctioned plan of all the structures existing at site, he failed to produce the same. The Committee has also found that there has been

inconsistency in the stand of the applicants as far as the extent of constructions existing at site. It would be relevant to reproduce the following paragraph from the Report of the Committee which would clearly reveal that massive structures were raised by the applicants at the site which was only meant for bathing ghat for the common public.

Shri Vivek Singh argued that the then Notified Area Committee had sanctioned building plan of Ghat No.6 in favour of the then lessees by Resolution passed on 19.4.1924. The perusal of document on page 13 filed by the applicants shows that copy of this sanctioned plan was forwarded to the then lessees Shri Madho Prasad and Shri Preamsukh Dass. The said plan has not been produced before the Committee. Necessary adverse inference can, therefore, be drawn against the applicants that had the said sanctioned plan been produced, it would shown that the building as existing today was not sanctioned at that time. No sanctioned plan whatsoever has been produced before the Committee. At the cost of repetition, it can be stated that in the registered lease deed valid up to 14.7.1968 similar terms and conditions were incorporated prohibiting the lessees from erecting any building without sanctioned plan sanctioned by the lessor. The lessees were prohibited not to use Ghat or the building erected thereon as place of worship or the seat of an idol or God and not to use the building erected on the site for residential purpose etc. The lessor had earlier Shri Ram Kishan Dass one of the Co-lessees, a show-cause notice dated 29.4.1965 filed by the applicants on page 33 saying that on inspection it was found that the lessees had constructed an unauthorised room measuring 14'x9' and one platform measuring 10'x10' with a small covered structure where an idol has been placed without obtaining prior permission of the lessor and in violation of condition No.2 and 3 of the lease deed. It appears that these unauthorized constructions were removed by the lessees before the subsequent lease deed dated 26.12.1967 was executed as a registered document operative from 15.7.1963 to 14.7.1968 and what remained on the site was a vacant plot of land measuring about 3100.77 sq. yds. for use as 'Bathing Ghat' for general public. The LandDO in a routine survey conducted of various Ghats existing on Kudsia Ghat, Bela Road, Delhi had inspected this Ghat No.6 on 29.11.2001 and had found a temple in an area measuring 66'x33' and another temple in an area measuring 23'x41.5'. Earlier, there was only a small platform of 10'x10' with an idol place on a part of it. Now two temples with very large area were found. The overseer also found three big rooms measuring 33.5'x15', 36.5'x9' and 14'x13.25', two unauthorized bathrooms measuring 15'x8' and 6.25'x5' and a kitchen measuring 10'x8'. In the rough site plan submitted by the applicants before this Committee on 4.9.2006 one Satsang Hall, five small rooms (kutyas) one store room, four rooms (kugiyas), four toilets, two office rooms, one general kitchen, one Hawankund, four big rooms and a big hall have been shown. No temples have been shown in the said site plan although, in the additional representation made before the Committee submitted on 11.9.2006 as per direction of the Hon'ble Court dated 7.9.2006 an old temple is claimed to exist on this Ghat thereby conveying that a wrong site plan was submitted by the applicants before the Committee. In any case as per this site plan , two offices and a general kitchen is claimed to have been constructed recently in 1999. Aforesaid detailed analysis would, therefore, show that the then lessees and their heirs had violated specific terms and conditions of the registered lease deed by raising a huge structure for various purposes without getting the plan of the building sanctioned and the leased site was being misused for religious purpose, residential

purpose and for running a school and, therefore, even if the then lessees had exercised their option for renewal of lease from 1.7.1973 for a period of 5 years and onwards, the lease could not have been renewed by the lessor, particularly when this entire stretch of land including all Ghats existing on Kidsia Ghat were transferred by the LandDO to the DDA for care and maintenance for the purpose of development of river front on 25.3.1973 with a specific direction that no third party interest by way of lease etc. shall be created. The land in question now is presently required for the Central Government sponsored plan of 'Channelisation of River Yamuna' and for the development of river front and the Hon'ble Court is engaged in the solemn task of getting all encroachments removed from both sides of Yamuna coming within a distance of 300 mtrs for satisfactory execution of the said plan to restore the pristine glory of the river Yamuna.?

6. We agree with the aforesaid findings of the Committee that the applicants had raised unauthorized structures absolutely in contravention of the terms of the lease deed and not as per any sanctioned plan.

7. The applicants have also relied upon some unilateral deposit made by them towards ground rent and we have already held in our said decision dated 28.09.2006 that the unilateral deposit of ground rent with the statutory authorities without there being any bilateral or consensual arrangement, cannot confer any right on the applicants to claim the 'tenancy by holding over'.

8. Yet another contention of claiming protection under the Public Premises Act has also been squarely dealt by us in our aforesaid decision dated 28.09.2006.

9. After examining the entire gamut of facts the Committee has recommended that since the unauthorized super structures on Ghat No.6, Kudasiya Ghat, Bela Road, Delhi are just at the distance of 30 mtrs. of the present edge of Yamuna river, therefore, no protection can be given to the applicants because as per the directions of this Court, all unauthorized structures falling within 300 mtrs. distance from the edge of Yamuna river have to be demolished.

10. We, therefore, accept the recommendations of the Committee as given in orders dated 05.09.2006 and 12.09.2006/13.09.2006 and dismiss the objections of the applicants dated 18.09.2006 and the present applications bearing CM Nos. 10710/2006 and 10711/2006. The applicants are directed to demolish the entire super structure existing on Ghat No.6, Kudasiya Ghat, Bela Road, Delhi on land measuring 3100.77 sq. yds. which area is adjoining to Ghat Nos. 1 to 5 on the northern side and Ghat Nos. 7 to 10 on the southern side and to hand over the possession of the land to the DDA within three days, failing which the DDA is directed to demolish the entire super structures as existing on Ghat No.6, Kudasiya Ghat, Bela Road, Delhi and take the possession of the said Ghat No.6 on a land measuring 3100.77 sq. yds.

11. With these directions, the present applications and objections of the applicants are dismissed.

SD./-

KAILASH GAMBHIR, J.

SD./-

VIJENDER JAIN, ACJ