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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 17520/2022 & CM APPL. 55902/2022

MOHD ISREAL AND ORS Petitioner
Through: Mr Fidel Sebastian and Ms
Anupradha Singh, Advocate.
versus

DELHI DEVELOPMENT AUTHORITY AND
ANR. Respondent
Through: Ms. Shobhana Takiar, Standing
Counsel, DDA with Mr. Kuljeet
Singh and Ms. Latika Malhotra,
Advocates.
Mr. Mohd. Irsad (ASC, GNCTD)
with Mr. Rakesh Kumar Sinha,
Ms. Divita Dutta & Mr. Kumud
Ranjan Mishra, Advocates for R-2.

Reserved on: 23rd December, 2022

Date of Decision: 26th December, 2022

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The The present writ petition has been filed by 7 Petitioners, who have identified themselves as slum dwellers residing in Shahi Qabarastan in Khasra No. 163, Ward No. 1, Mehrauli, Delhi ('subject land' or 'graveyard'). It is stated in the petition that the Petitioners' were allowed to reside in the subject land by Prince Mirza Arif Bakht Anjum Jah

(‘Prince’), who had executed a license deed dated 31.01.2013 in favour of the now deceased father of Petitioner no. 2 herein, appointing him as a caretaker.

2. The present petition impugns the demolition order dated 12.12.2022 issued by Respondent no. 1, Delhi Development Authority (‘DDA’), calling upon the encroachers to remove themselves from the Government land falling in Khasra No. 163, within 10 days, failing which Respondent shall remove the said encroachers and the cost of demolition shall be recovered from the said encroachers.

3. Learned counsel for the Petitioners states that subject land, where the Petitioners have been residing bears an old private graveyard, where members of Ex-Royal Family of Mughal Dynasty are buried. He states that the Prince allowed the locals of the subject land to reside at the graveyard and maintain it as caretakers. He states that the land does not belong to DDA and therefore the proposed demolition action is illegal.

4. He states that the impugned demolition order itself records that there are subsisting stay orders of this Court restraining removal action in Khasra No. 163, however, the Petitioners are not aware of the said orders and the proceedings, where orders have been passed. He states that the Petitioners have constructed *jhuggis* in the graveyard and have been residing there peacefully for past 30 years. He states that the Petitioners are daily wage workers residing with their families and will be rendered homeless during the winter, if the Respondent no.1 is not restrained from carrying out the demolition action.

5. He has also relied upon an order dated 04.01.2008 passed by a Civil Judge allegedly with respect to the subject land to contend that the issue with respect to ownership of this graveyard is pending adjudication

between the members of the Royal family, DDA and Waqf Board in the said proceedings. He states that the Respondent no. 1, DDA, and Delhi Waqf Board have been restrained from creating any third-party rights or raising any construction in the subject land.

6. He further, states that notwithstanding the above raised contentions, even if it is assumed that the land belongs to DDA, the houses of the Petitioners cannot be demolished without rehabilitation as per the provisions of Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 ('Policy of 2015') of Delhi Urban Shelter Improvement Board ('DUSIB'). He also seeks to place reliance on Draft Protocol for removal of *Jhuggis* and *JJ Bastis* in Delhi dated 14.06.2016 ('Draft Protocol of 2016') of DUSIB. He states that the Petitioners' *Jhuggis* are a part of notified *Jhuggi* cluster i.e. *Basti of Ghosiya Colony*.

7. In reply, learned standing counsel for the Respondent no. 1, DDA, who appears on advance notice states that the Khasra No. 163 has been acquired by Government of India and the entire land has been placed at the disposal of Respondent No.1, DDA, since 1974. She states that the subject land is Government land.

8. She states that the Petitioners herein have no right, title or interest in subject land; they are rank encroachers and therefore they have no enforceable rights to maintain the present petition. She states, it is trite law that no injunction can be granted against the true owner.

9. She states that Khasra No. 163 forms part of 'Mehrauli Archeological Park' and that the impugned order dated 12.12.2022 proposing action for removal of unauthorized encroachments has been issued to implement the directions issued by the Division Bench of this Court in: -

- (i) W.P.(C) 4302/2015 titled The Indian National Trust for Art & Cultural Heritage (INTACH) vs. DDA & ors.;
- (ii) W.P.(C) 13905/2019 titled *The Managing Committee of Delhi Waqf Board's Masajids, Graveyards and Land/Properties at Ladha Sarai vs. GNCTD & Ors.*

10. She states that in the aforesaid writ petitions the Division Bench has directed Respondent No.1 and Archaeological Survey of India ('ASI') to ensure that the entire area covered by the Mehrauli Archaeological Park is secured and is freed from encroachments. She has placed reliance on the orders dated 29.04.2015, 17.05.2017, 05.07.2017, 14.09.2017, 17.07.2019 and 02.12.2022 passed in the said writ proceedings.

11. She states that in pursuance to the directions passed in the aforesaid writ petitions, a total station survey was conducted and the area of Mehrauli Archaeological Park has been demarcated for the seam line of the said park. She states that the subject land falls within this seam line and all encroachments have to be removed.

12. She further relies upon order dated 23.12.2022 passed by the Division Bench, in W.P. (C) 17591 of 2022 filed by Delhi Waqf Board impugning the same order dated 12.12.2022. She states that the Division Bench has declined to grant any interim relief after recording the statement of Respondent, DDA, that religious structures as well as graveyards will not be demolished.

13. She states with respect to the alternate argument raised by the Petitioners with respect to the Petitioners rights of rehabilitation, under the Policy of 2015 and Draft Protocol of 2016, being *jhuggi* dwellers the same is also untenable. She states that the Petitioners have neither made DUSIB a party to this petition nor made any representation to DUSIB for

verifying the claims of the Petitioner and recognizing them as persons eligible for rehabilitation under the Policy of 2015. She further, states that *Ghosiya* Slum Cluster i.e. *Basti* has not been notified. She therefore states that the Petitioners claim for rehabilitation as per Policy of 2015 is not made out from the record.

14. She states in similar matters pertaining to removal of slum dwellers, the Coordinate Bench on 22.12.2022 in W.P. (C) 17521/2022 has upon an undertaking given by the Petitioners that they will voluntarily vacate the *jhuggis*, extended the time of eviction till 31.01.2023.

15. In rejoinder, learned counsel for the Petitioner has placed reliance on the reply dated 20.04.2022 received from DUSIB under Right to Information Act, 2005, which states that DUSIB has not yet notified JJ *Bastis* as per provisions of DUSIB Act, 2010. He therefore states that absence of notification of the *Ghosiya* Colony JJ *Basti* does not affect the validity of the claim of the Petitioner to be rehabilitated as per the Policy of 2015.

16. He states, on instructions, that the Petitioners are unwilling to give an undertaking that they shall vacate the subject land i.e. graveyard on or before 31.01.2023. He states that as per the Draft Protocol of 2016 and more specifically paragraph 6, therein the Respondent no. 1 herein, who asserts itself as the land-owning agency, is responsible for rehabilitating the Petitioners herein.

17. This Court has heard the submissions of the parties and perused the documents. The Petitioners have taken two alternative arguments to assail the impugned order, calling upon the Petitioners to vacate the subject land. Firstly, they have asserted that the subject land is privately owned by Prince, consequently, Respondent no. 1, DDA has no right, title or interest

in the subject land and therefore, the action of Respondent, DDA, in evicting the Petitioner is illegal and without any authority. Secondly, in complete contradiction, Petitioners have taken a plea that if the DDA asserts that it is the owner of subject land than Respondent No.1, DDA, are liable to verify the claim of the Petitioners that they are eligible *jhuggi* dwellers, who are entitled to be rehabilitated as per the DUSIB Policy of 2015 and Draft protocol of 2016.

18. With respect to the first plea of the Petitioners disputing the title of the Government of India to the subject land, the said plea is sought to be substantiated by relying upon license deed dated 31.01.2013 executed by the Prince asserting the same as his private property. During the course of arguments, reliance was also placed on an order dated 04.01.2008 passed by Civil Judge, Delhi in a suit filed against Respondent, DDA.

19. In this regard its firstly noted that no claim under license deed dated 30.01.2013 can be maintained by Petitioner Nos. 1, 3, 4, 5, 6 and 7. The license deed as per the writ petitioners was executed in favour of deceased father of Petitioner No. 2. As per the license deed, under clause 8 there is an absolute bar on the licensee to sub-let, assign or otherwise part with the possession of whole or any part of the occupied portion or elsewhere within the boundary of the graveyard. In this view of the matter Petitioner No. 1, 3, 4, 5, 6 and 7 have no right to remain in the graveyard on the basis of the license deed dated 31.01.2013.

20. To substantiate the plea that the subject land is a private property, the Petitioners in addition to the license deed dated 31.01.2013 have also relied on an injunction order dated 04.01.2008 passed by a Civil Judge, Delhi in a Civil Suit between the Plaintiff therein and DDA as well as Delhi Waqf Board. A perusal of the memo of parties annexed to the order

dated 04.01.2008 shows that the said suit was instituted by the sole plaintiff i.e., Shahzadi Roshan Jahan Begum Temoori ('Shahzadi') against the Respondent, DDA and Delhi Waqf Board.

21. This Court is unable to appreciate the connection between the graveyard, which is a subject matter of dispute in this writ, and injunction order dated 04.01.2008 in the suit filed by Shahzadi for the following reasons:

- a. The details of the suit land, which is the subject matter of the said suit is not recorded in the order dated 04.01.2008.
- b. As per the license deed dated 31.01.2013 filed with the writ petition, the Prince claims himself to be the sole and absolute owner of the subject land, to exclusion of any other party. There is no mention or acknowledgment of Shahzadi's title rights in the license deed.
- c. The proceedings in the civil suit are not pleaded in the writ petition and no reliance has been placed on the civil suit in the writ petition.

22. Learned counsel for the Petitioner as well during arguments has not explained as to how the land, which is subject matter of injunction in the civil suit is connected with the license deed dated 31.01.2013 or the subject land in the writ petition. In any event since the Petitioners are not claiming any license through the Shahzadi, no reliance can be placed on the said order of the Civil Judge in the present proceedings.

23. With respect to the claim of Petitioner No. 2 that his deceased father was granted a license by Prince to look after the private graveyard. Assuming that Prince is the owner of the private graveyard, a license is not heritable and upon demise of the licensee i.e. the father of Petitioner No. 2, the license being a personal privilege also came to an end. The

license was to act as a caretaker of the graveyard and in fact there was an express prohibition under the license under Clause 3, from constructing any permanent structure. Upon a perusal of the terms of the license deed, no interest was created in favour of father of Petitioner No. 2 under the license and in fact none is pleaded in the present petition. The Petitioner No. 2 therefore also cannot claim any rights to continue to reside in the graveyard under the license deed dated 31.01.2013, as it came to an end on the death of father of Petitioner No. 2. [*Shashank Shekhar Vs. Surinder Kumar Jain, 2016 SCC Online Del 3796* at paragraph 42]

24. It is an admitted case of the parties that the subject land in the writ petition is a graveyard. The Division Bench on 23.12.2022 in W.P. (C) 17591/2022 filed by Delhi Waqf Board has already recorded the statement of Respondent no. 1, DDA, that graveyards will not be demolished, demolition work will be done only as per the demarcation report prepared in the year 2021 and only encroachers are being removed. Therefore, the direction of removal of encroachment is without prejudice to rival claims to ownership of graveyards.

25. In view of the successive orders passed by the Division Bench, directing Respondent no. 1 DDA to remove encroachers from the Mehrauli Archeological Park and since the Petitioners have failed to show any right to remain in the graveyard, the present petition challenging the impugned order dated 12.12.2022 cannot be maintained.

26. The Petitioners alternative claim for rehabilitation on the assumption that Respondent no. 1, DDA, is the landowning agency is mutually destructive with their claim that the subject land is private land owned by the Prince. Be that as it may, the Petitioners claim that they are *jhuggis* dwellers eligible for rehabilitation under Policy of 2015 is also not

substantiated from the record. There is no material available on record to determine if the Petitioners are a part of the cluster of *Ghosiya Basti* and as pointed out by the Respondent no. 1 DDA, the Petitioners have elected to not implead DUSIB. They have also declined the offer to given an undertaking that they shall vacate the graveyard on or before 31st January, 2023.

27. Learned counsel for the Respondent no. 1 has categorically denied that the Petitioners are the part of the *Ghosiya Basti*.

28. To a pointed query by this Court, if there has been any verification conducted of the Petitioners by DUSIB verifying their claim and recognizing them as an eligible *Jhuggi* Dwellers, the learned counsel for the Petitioner stated that no such verification can be carried out. He also admits that the Petitioners have not applied to DUSIB for verification of their claims.

29. In these circumstances, this Court is unable to opine or examine the eligibility of the Petitioners to be rehabilitated in accordance with the 2015 Policy, Draft Protocol of 2016. The Petitioner's rights, if any, under the said Policy of 2015 shall be determined by the competent authority in accordance with law, if and when the Petitioners approaches the Competent Authority.

30. Though, the Petitioners have declined to offer any undertaking to this Court to vacate the subject land, however, taking note of the averments of hardship made by the Petitioners in paragraph 8 of the petition the Petitioners are given time until 15.01.2023 to vacate the *jhuggis*.

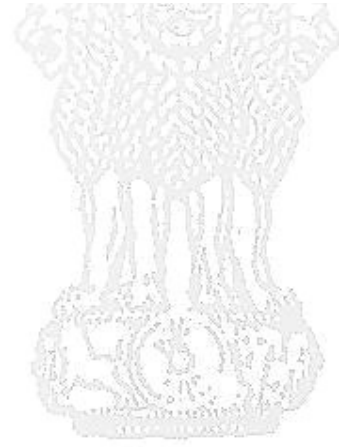
31. It is made clear that this Court has not examined the validity of Petitioner's claim that the subject land is a private graveyard owned by

Prince. In this writ petition the Court has only examined the claims of the Petitioners to remain in the said graveyard.

32. Accordingly, with the limited direction given in paragraph 30 hereinabove, the present petition is dismissed. No order as to costs. The pending application is also dismissed.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 26, 2022/msh/aa



ਸਾਹਿਬੁ ਜਯਸੇ