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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5083/2011 & CM No.11894/2012 (for putting on record site plan)

EAST LAXMI MARKET SENIOR CITIZEN RESIDENTS ASSOCIATION

..... Petitioner

Through: None.

Versus

MCD AND ORS

..... Respondents

Through: Ms. Biji Rajesh, Adv. for EDMC.
Mr. Raman Duggal with Ms. Aayushi Gupta, Advs. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2015

1. None appears for the petitioner.
2. This petition has been filed seeking mandamus to the Municipal Corporation of Delhi (MCD) as well as the Government of NCT of Delhi (GNCTD) to remove the encroachments "on the main road" but of which description cannot be found in the petition; however Mr. Santosh Datta, Assistant Engineer of Public Works Department (PWD), Delhi present in Court informs is, Disuse Canal Road stretching between Karkardooma to Pusta Road, and to restore the said road to its original width of 20 ft.
3. It is the case of the petitioner in the petition itself that whenever the petitioner attempted to make complaints in this regard, they were shunted

from one authority to another. The same has continued after the filing of this petition also and finding, that neither the MCD [since represented by East Delhi Municipal Corporation (EDMC)] nor the GNCTD was taking responsibility with respect to the said road, vide order dated 21st August, 2014 a direction was issued to set up a Coordination Board of land owning agencies and service providers so to delineate as to which land owning agency owns which area / road and which authority is responsible for providing various civil amenities as well as for removal of encroachments.

4. The standing counsel for GNCTD informs that a portal in this respect has been set up but is facing teething problems and he would be able to report definitely on the matter within a period of ten days from today.

5. However in my view, the aforesaid should not be allowed to come in the way of an action with respect to the alleged encroachment being taken. The responsibility has to be either of the EDMC or of the GNCTD. The standing counsel for GNCTD informs that though it was the stand of EDMC that the said land belongs to the PWD of GNCTD but probably the same belongs to the Flood and Irrigation Department of the GNCTD and the responsibility to take action for removal of encroachment will be of the said department.

5. What emerges is that owing to the aforesaid state of affairs, not only have the encroachments taken place but notwithstanding this petition pending for the last nearly five years, no direction could be issued.

6. I am of the opinion that even if determination of the land owning agency will take time, a joint effort should be made by EDMC as well as by the GNCTD for inspecting the area and for reporting whether any encroachment exists and to come up with a definite schedule for removal of the said encroachments.

7. The Commissioner, EDMC to within two weeks from today have a meeting with the officer of equivalent rank of GNCTD nominated by the Chief Secretary, GNCTD to chalk out a plan for inspection of the area and for joint action for removal of the encroachments if any found.

8. If no such plan is put up before this Court on the next date of hearing, both the said officials to personally appear before this Court.

9. List on 31st July, 2015.

Dasti under signature of the Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2015

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

+ W.P.(C) 5083/2011 & CM No.11894/2012 (for putting on record site plan)

EAST LAXMI MARKET SENIOR
CITIZEN RESIDENTS ASSOCIATION Petitioner
Through: Mr. Sugriva Dubey, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents
Through: Mr. Gaurang Kanth, Adv. with Mr.
A.K. Batra, SE(II) & Mr. Charan
Singh, EE of EDMC.
Mr. Raman Duggal and Ms. Aayushi
Gupta, Advs. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.07.2015

1. This order is in continuation of the earlier order dated 10th July, 2015.
2. The counsel for the petitioner has appeared today and clarifies that the reliefs claimed in the petition are with respect to a 20 ft. wide road, the width whereof, on account of encroachments, has been reduced to about 8 ft.
3. The counsel for the respondent East Delhi Municipal Corporation (EDMC) states that in accordance with the directions contained in the order dated 10th July, 2015, a meeting was held and status report with respect

where to has been filed in the Registry. The same is however not on record. The counsel for the respondent EDMC has handed over a copy thereof in the Court and which is taken on record.

4. The Standing Counsel for the respondent Govt. of NCT of Delhi (GNCTD) has also handed over in the Court an affidavit which is taken on record.

5. The counsel for the respondent EDMC states that in the meeting, it was decided that the encroachment removal action shall be taken by the Public Works Department (PWD) officials of the GNCTD with the assistance of the Police and the Revenue Department.

6. The Standing Counsel for the GNCTD however contends that the meeting was with respect to the removal of encroachments from the 100 ft. wide road and not from the 20 ft. wide road. It is stated that the 20 ft. wide road is in the jurisdiction of the respondent EDMC and under the Delhi Municipal Corporation Act, 1956, the statutory obligation for removal of encroachments therefrom, is of the respondent EDMC and not of GNCTD or its Departments.

7. The counsel for the respondent EDMC controverts.

8. A perusal of the Minutes of Meeting held on 21st July, 2015 shows that the reference therein is to the 100 ft. wide road only and not to a 20 ft wide road and the decision taken was also of removal of encroachments as aforesaid from the 100 ft. wide road.

9. The counsel for the respondent EDMC contends that there is in fact one road only which at some places is of 20 ft. and at other places is of 100 ft. width and the decision in the meeting of 21st July, 2015 pertains also to the 20 ft. wide road.

10. The Standing Counsel for the respondent GNCTD, on instructions, and the counsel for the petitioner, confirm that the 20 ft. wide road is of only 200 meters in length, while the 100 ft. wide road is 2 Km. long. The counsel for the petitioner states that the grievance in the petition is with respect to the encroachments on the said 200 meters portion only of the road.

11. Though on the last date of hearing i.e. 10th July, 2015, the identity of the road was not clear but mention is found in the order of that date, of the claim in the petition being of restoration of the road to its original width of 20 ft.

12. In this view of the matter, it has been put to the Standing Counsel for the respondent GNCTD that the encroachment removal action should not be deferred any further and once the respondent GNCTD has taken responsibility for encroachment removal with the assistance of the Police and the Revenue Officials, the encroachment from the said 20 ft. road having length of 200 meters only be removed by the respondent GNCTD only.

13. However, the Standing Counsel for the respondent GNCTD states that there are several buildings encroaching over the 20 ft. road and which may be protected by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

14. However on enquiry, as to how the aforesaid Law is applicable to encroachments over public roads, the counsel for the respondent GNCTD though first resisted but upon his attention being invited to Sections 2(1)(c) and 4 of the said Act, could not controvert that encroachments over streets are not protected by the said Act.

15. Notwithstanding the same, both the respondents i.e. GNCTD and EDMC refuse to be responsible for removing the encroachment, passing the burden to each other.

16. The same is nothing but a want of will to govern. It is strange that the bodies which have been constituted for public purposes are openly refusing in the Court to perform their functions, holding each other responsible for that. It was in this view of the matter that vide order dated 10th July, 2015, a meeting of the Commissioner, EDMC and of the Officer of equal rank of GNCTD was directed but which meeting also, it appears, failed to yield any result.

17. This Court is now left with no option but to direct, (I) EDMC, GNCTD as well as the Police to remove the encroachments from the aforesaid 20 ft. road having a length of 200 meters, within two months herefrom. The Executive Engineer (Maintenance), Shahadara, South Zone, EDMC and the Executive Engineer, PWD, M-211, Nizamuddin Bridge, Eastern Approach, Delhi-91 and the Station House Officer, Police Station-Preet Vihar, Delhi are made personally responsible for compliance of this order.

18. On request of the counsels, it is clarified that if the order is complied with, the observations with respect to the conduct of the respondents EDMC and GNCTD can be deleted.

The petition is disposed of in the above terms.

No costs.

JULY 31, 2015/bs..

RAJIV SAHAI ENDLAW, J.

W.P.(C) 5083/2011

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1/07/2015

- fresh em NO. 21102/15:- for impleadment
 - fresh em NO. 21103/15:- for recall of Order
 dt. 31/07/15.
 " CM NO. 21104/15:- exemption

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5083/2011**
EAST LAXMI MARKET SENIOR CITIZEN RESIDENTS
ASSOCIATION Petitioner

Through: None.

Versus

MCD AND ORS

..... Respondents

Through: Mr. Arun Panwar, Adv. for Mr.
Raman Dugga, Adv. for GNCTD.
Mrs. Biji Rajesh, Adv. for Mr.
Gaurang Kanth, Adv. for EDMC.
Mr. Harish Malhotra, Sr. Adv. with
Mr. Dhruv Kapur & Mr. Siddharth
Bhatia, Advs. for applicants.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.09.2015

CMs No.21102/2015 (for impleadment) & 21103/2015 (for recall of order dated 31st July, 2015)

1. Vide order dated 31st July, 2015 in this petition, the respondents were directed to remove the encroachments from a public road.
2. These applications have been filed, for impleadment and for recall of the said order, by persons who are sought to be removed in pursuance to the aforesaid directions of this Court.
3. These applications came up first before this Court on 24th September, 2015 beyond Court hours at 1635 hours when the counsel for the respondent

East Delhi Municipal Corporation (EDMC) appearing on advance notice had informed that encroachment removal action has been scheduled for today i.e. 28th September, 2015 at 10:00 hours. The counsel for the respondent EDMC was requested to not commence action till the hearing of these applications today i.e. 28th September, 2015.

4. The applicants have neither disclosed nor filed any document of title to the land. What is argued by the senior counsel for the applicants is that the applicants are in possession since the year 1987 and have Agreements to Sell and General Power of Attorney in their favour.

5. The remedy of the applicants was not by way of making these applications but by way of independent proceedings for establishing their title and for injuncting the respondents.

6. The senior counsel for the applicants contends that the order dated 31st July, 2015 having been made in the absence of the applicants, is bad and is liable to be set aside and inasmuch as no order affecting the rights of the applicants could have been passed in their absence.

7. This Court has passed the directions for removal of encroachment on the basis of material before it and as recorded in the orders dated 10th July, 2015 and 31st July, 2015. If during the compliance of the said directions, the applicants or anyone else is affected, their remedy has to be by way of separate proceedings inasmuch as this Court in the said orders dated 10th July, 2015 and 31st July, 2015 has not returned any findings on the rights if any of the applicants.

8. The senior counsel for the applicants then states that time be given to enable the applicants to take appropriate remedies.

9. Since no document showing original title to the land of the persons who may have executed Agreement to Sell / Power of Attorney in favour of others including the applicants has been shown, the present is not found to be a fit case for grant of any long time as there is nothing to dislodge the basis of the orders dated 10th July, 2015 and 31st July, 2015 of encroachment on public street.

10. However, so as not to deprive the applicants of legal remedy, it is deemed appropriate to suspend the encroachment removal action till 5th October, 2015.

11. If by that time the applicants are unable to obtain interim relief restraining the respondents from carrying out the encroachment removal action in accordance with the directions of this Court, the respondents shall immediately take such action with effect from 6th October, 2015.

12. For the aforesaid directions, it is not deemed necessary to issue notice to the petitioner.

13. The petitioner shall however be entitled to seek impleadment in the proceedings if any so initiated by the applicants.

14. It is ordered accordingly.

15. The applications are disposed of.

Dasti under signature of Court Master.

SEPTEMBER 28, 2015
'gsr'..

W.P.(C) 5083/2011

RAJIV SAHAI ENDLAW, J.