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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29<sup>th</sup> June, 2022

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W.P.(C) 9627/2022 & CM APPLs. 28728/2022, 28729/2022

MEENU SRIVASTAVA

..... Petitioner

Through: Mr. Rajesh Pathak & Mr. Hamant  
Kumar, Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ORS ..... Respondents

Through: Mr. Satyakam, Additional Standing  
Counsel, GNCTD for R-1 to 3.Mr. Sushil Dixit & Mr. Parvinder  
Chauhan, Advocates for R-4/DUSIB.**CORAM:****HON'BLE MR. JUSTICE SANJEEV NARULA****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT****SANJEEV NARULA, J. (Oral):**

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India, 1950 seeking quashing/ setting aside of (i) Notification bearing no. F.10(42)-1/PA/DCF/93/2012-17(I) dated 24<sup>th</sup> May, 1994 [hereinafter "**Notification**"] issued by Respondent No. 2 – Development Department of GNCTD declaring lands mentioned under Schedule 'A' annexed therein [hereinafter, "**petition land**"] as "reserved forest"; and (ii) Notice bearing no. F.NO. 06/DCF(S)/ENCR.PUL PEHLADPUR/2021/5734-38 dated 08<sup>th</sup> June, 2022 [hereinafter "**Notice**"] issued by Respondent No. 3 – office of Deputy Conservator of Forests



(South), Department of Forest and Wildlife, GNCTD.

2. Mr. Rajesh Pathak, counsel for Petitioners, submits that the petition land was initially under the control of the Revenue Department, however, was later declared as “reserved forest” in terms of Section 4 of the Indian Forest Act, 1927 by the Respondent No. 3 by way of the above Notification. Thereafter, deriving authority from the same, Respondent No. 3 issued the impugned Notice wherein Petitioners were directed to vacate the petition land within 7 days, failing which, the structures erected thereon would be demolished and all materials found shall be seized as tools of encroachment. However, despite the issuance of the impugned Notice, it is submitted that the petition land always remained residential in nature and Petitioners and other alleged encroachers, continued to reside in the petition land for more than a decade.

3. Mr. Pathak further contends that despite the petition land being declared as reserved forest in 1994, Respondents never acted upon the same and Petitioners were not made aware of such Notification. Petitioners are the legal owners of the houses erected on the petition land and are duly facilitated with electricity, water supply etc. by government agencies. Furthermore, the factum of residence of the Petitioners in the petition land has also been endorsed by the Government as is evident from the issue of Aadhar cards against the same addresses. Petitioners predominantly belong to an economically weaker stratum of society and unbeknownst of the impugned Notification, purchased houses situated in the petition land, and have been residing therein for a considerable period of time. Petitioners do



not have means to secure alternative accommodations for themselves and their families and will be gravely prejudiced by the proposed demolition.

4. On the other hand, Mr. Satyakam, Additional Standing Counsel for Respondents No. 1 to 3, argues that Petitioners are rank trespassers on public/ reserve forest land and are not entitled to any equitable remedy under the writ jurisdiction of this Court. By way of this petition, Petitioners are seeking to bypass the orders of the Supreme Court in *M.C. Mehta v. Union of India*,<sup>1</sup> restraining any cultivation or construction in the Ridge Area – which encompasses the petition land as well. Petitioners are claiming rights to illegally occupy the petition land which vests with Respondent No. 3, merely because they have built a structure on the petition land. Petitioners' claims are wholly misplaced and misdirected, and as such, are liable to be rejected. Mr. Satyakam also places reliance on Section 5 of the Indian Forest Act, 1927 to state that no right could have accrued in favour of the Petitioners herein *qua* the petition land after the issuance of the Notification. It is for Petitioners to establish their rights or title over the petition land, which has not been successfully done.

5. We have given our thoughtful consideration to the contentions advanced by the counsel for the parties. Petitioners are apparently rank trespassers on public/ reserved forest land, and have not been able to establish any legal right over the same. Thus, we are of the considered view that Petitioners are not entitled to any equitable remedy under Article 226 of the Constitution of India, 1950 which bestows extraordinary jurisdiction on this Court.



6. That said, we are in agreement with Mr. Satyakam that granting a relief to the Petitioners, as prayed for, would upset the state of affairs that have been in operation for more than two decades. He has specifically drawn our attention to the orders of the Supreme Court dated 25<sup>th</sup> January 1996 and 13<sup>th</sup> March 1996 in *MC Mehta (supra)*. A perusal of the directions contained therein leaves no room for any doubt that the Apex Court has clearly held that the Ridge Area needs to be preserved, and no cultivation or any type of construction may be permitted thereon. The Court directed that uncultivated surplus land of Gaon Sabha, falling in Ridge area, (which includes the petition land) be excluded from vesting in the Gaon Sabha, and be made available for the purpose of creation of reserved forest. It also requested the committee established by GNCTD for consideration of matters arising from the inclusion of the Gaon Sabha area in the Ridge, to reconsider the same and issue a Notification under Section 154 of the Delhi Land Reforms Act, 1954. Accordingly, a Notification dated 2<sup>nd</sup> April, 1996 was issued under the above-mentioned provision, placing the said land at the disposal of the Forest Department for afforestation.<sup>2</sup>

7. Upon a conjoint reading of the said Notification with the Impugned Notification, it is clear that the petition land is a reserved forest, and cannot be utilised for residential purpose by the Petitioners herein, in view of the prohibitions contained under the Forest Conservation Act, 1980 as well as

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<sup>1</sup> (1996) 2 SCALE 55.

<sup>2</sup> The notification bearing no. F-1 (29)/PA/DC/95 dated 2<sup>nd</sup> April, 1996 declared certain uncultivated land of Gaon Sabha (specified therein) situated in Southern Ridge as surplus land and excluded the same from vesting in Gaon Sabha and further placed the said land at the disposal of Forest Department of GNCTD. Therein, at Annexure-F, certain Khasras in the revenue estate of village Pul Prahadpur (forming a part of the petition land), were also notified to be covered in the Ridge as declared surplus, and placed at the disposal of Forest Department for afforestation.



Section 5 of Indian Forest Act, 1927, which reads as under:

*“5. Bar of accrual of forest-rights.*

*After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.”*

8. The Petitioners have neither mentioned nor challenged the afore-noted Notification of 2<sup>nd</sup> April 1996. That apart, Mr. Satyakam also draws our attention to the judgment passed by this Court in ***Bhagat Singh v. Union of India***,<sup>3</sup> wherein, under somewhat similar facts and circumstances, the Petitioners therein had filed a petition seeking quashing of the Notification dated 2<sup>nd</sup> April 1996. In the said decision, the Division Bench of this Court had held as follows:

*“5. We asked the learned counsel for the petitioners to show us the documents by which his forefathers or they came into settled lawful possession of the land in question which belonged to the Gaon Sabha. There is no such document on record. This question was posed as Gaon Sabha land is for the collective enjoyment of the village and there is no right in any individual to occupy the land unless such an allotment is made by the Gaon Sabha. The Gaon Sabha land is thus not meant for individuals for their own enjoyment and the vesting of the land in Gaon Sabha is as per Section 7 of the said Act. The significance of the said Act coming into force was that all lands of common utilities which were owned by the proprietors of villages and which were commonly used by the villagers were vested in the Gaon Sabha and proprietors were divested of their ownership. As per Section 154(1) (vii) of the said Act, all the forest land situated in a Gaon Sabha area shall vest in the Gaon Sabha. The proviso to Section 154(1) of the said Act refers really to the uncultivated area situated in Gaon Sabha area and the same being more than the ordinary requirement of the Gaon Sabha may be excluded from vesting in the Gaon Sabha.*

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<sup>3</sup> (2010) SCC OnLine Delhi 2386)



6. *We are of the considered view that no further exercise was necessary to be carried out by the R-1 and R-2 in case of such Gaon Sabha land which was actually part of 'Ridge' area and it is with the objective of protecting the 'Ridge' area that the land in question which forms part of the 'Ridge' area was declared surplus and was placed at the disposal of the Forest Department of the Govt. of NCT of Delhi for creation of Reserved Forest.*

7. *In our considered view, the petitioners are only encroachers on Government land who are seeking to prevent vesting of the land in question with the appropriate Government authority and possibly physically preventing the Government from taking over possession of the same. The petition has been filed 14 years after the notification in question was issued and the only reason given in this regard is that the petitioners had no knowledge of the same."*

9. We have also considered the contentions of Mr. Pathak that there was no prior notice issued by the Respondents. However, we are not persuaded by such a contention. Illegal occupants/encroachers are not entitled to any prior notice, as has been held by this Court in ***Rajinder Kakkar v. DDA***.<sup>4</sup> Nonetheless, a vacation Notice (*being* the impugned notice dated 08<sup>th</sup> June, 2022) has already been issued to the Petitioners requiring Petitioners to peacefully vacate the petition land within 7 days. Thus, this contention also fails.

10. Accordingly, the notification of 2<sup>nd</sup> April 1996 is still in force today and bars the Petitioners herein from utilizing the land for residential purpose. Thus, the Petitioners' claim for protection, based on the ground that they have purchased their houses on the petition land much after the impugned notification dated 24<sup>th</sup> May, 1994 was notified, is unfounded, perverse in law, and barred by the view taken by this Court in ***Bhagat Singh*** (*supra*).

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<sup>4</sup> 1994 (28) DLT 133.



11. From the facts narrated in the petition, it is apparent that the Petitioners are keenly desirous of holding on to their encroached land. They cannot legally occupy the land in question which vests with the Respondents. Merely because the Petitioners have built a structure on the petition land, it cannot give them any right to continue residing thereon when the land underneath the said structure does not belong to them.

12. Allowing the present petition would unnecessarily hinder the process of removal of encroachers. As per the directions of the Supreme Court,<sup>5</sup> and National Green Tribunal,<sup>6</sup> the Forest Department is now duty bound to protect the areas and promote forestation.

13. For the grounds and reasons stated above, we do not find any merit in the present petition.

14. Dismissed.

**SANJEEV NARULA, J**  
**(VACATION JUDGE)**

**NEENA BANSAL KRISHNA, J**  
**(VACATION JUDGE)**

**JUNE 29, 2022**

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<sup>5</sup> Order dated 19<sup>th</sup> February 2020 and 5<sup>th</sup> April 2021 in SLP(C) No. 7220-21/2017 titled *Municipal Corporation Faridabad v. Khorī Gaon Residence Welfare Association (Regd.) & Ors.*

<sup>6</sup> Order dated 15<sup>th</sup> January 2021 in O.A. No. 58 of 2013 titled *Sonya Ghosh v. Govt. of NCT of Delhi & Ors.*