

IN THE COURT OF SH. AMIT KUMAR :
ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING OFFICER,
APPELLATE TRIBUNAL, M.C.D., DELHI.

1. APPEAL NO. 370/11 - M/s Aashi Buildcon Pvt. Ltd. Vs. MCD
2. APPEAL NO. 500/13 - Vijay Dixit Vs. MCD
3. APPEAL NO. 175/13 - Rajinder Rai Vs. MCD
4. APPEAL NO. 931/13 - Raghubir Singh Vs. MCD
5. APPEAL NO. 933/13 - Harbhajan Kaur and Anr. Vs. MCD
6. APPEAL NO. 948/13 - Rama Sachdeva and Anr Vs. MCD
7. APPEAL NO. 959/13 - M/s Surya Marketing and Engineering Services Vs. MCD
8. APPEAL NO. 1066/13 - M/s Aashi Buildcon Pvt. Ltd. Vs. MCD

JUDGMENT

1. These are 08 appeals primarily challenging the sealing order dated 30.11.2011 passed by the Monitoring Committee appointed by the Hon'ble Supreme Court of India. Vide impugned order the Monitoring Committee noted that the Property No. 147A (challenged in appeal no. 1066/13) , Property No. 147/B (challenged in appeal no. 175/13,) Property No. 159/A and 159/1A (challenged in appeal no. 132/23 & 133/23, which are not being decided with these 8 appeals) and Property No. 160A (challenged in appeal no. 500/13, 931/13, 933/13 and 948/13) are encroachment on Govt. Land being located in Khasra No. 217, 222 Village Masjid Moth, on acquired land and therefore should be sealed.
2. Appeal no. 370/11 challenges the demolition order dated 11.03.2011 passed in respect of property no. 147A, Gujjar Dairy, Gautam Nagar, New Delhi whereas appeal no. 959/13 is against the sealing order dated 05.06.2007 passed in respect of property no. C161, Gujjar Dairy, Gautam Nagar.
3. The common question in these appeals are whether these properties are situated in Khasra No. 217, 222 which is the acquired land or exist in Khasra No. 669/440/221 which is non-acquired private land of Village Masjid Moth, New Delhi. The appeals nos. 175/13, 1066/13, 500/13, 948/13, 933/13 & 931/13 were instituted on the basis of orders passed by Hon'ble Supreme Court of India dated 30.04.2013 in M. C. Mehta Vs. UOI Writ Petition No. 4677 of 1985 wherein the Hon'ble Supreme Court of India directed the

appellants to approach this Court and transferred their respective I.A. to this Tribunal.

4. Ld. counsel for the appellants have argued that the properties were initially sealed on 16.11.2006 but were de-sealed on 11.09.2007 on the request of the appellants or their predecessor in interest. The buildings consisting of basement to third floor were in existence. The Monitoring Committee without verifying that the properties are situated in Khasra No. 440/221, Village Masjid Moth, passed order dated 30.11.2011 for sealing the properties. The appellants are the owner of the properties. The order dated 30.11.2011 has been passed on the basis of a wrong report dated 27.09.2011. The appellants applied for demarcation of Khasra No.440/221 with SDM, Hauz Khas and a report was submitted by M/s Maverick Engineers Pvt. Ltd. along with plan showing exact location of Khasra No. 440/221. It was argued that in view of that report the sealing order should be set-aside. It was stated that the Monitoring Committee subsequently got the property demarcated through SDM, Hauz Khas who filed his report dated 05.12.2014 but that report is not correct and the appellants have already filed objections to that report. The revenue officials have confirmed that Khasra No. 440/221 is a private land and the report of M/s Maverick Engineers Pvt. Ltd. has confirmed that the subject-properties fall in this khasra and therefore, the subsequent report dated 05.12.2014 should not be considered. In this report dated 05.12.2014, new reference fixed points were considered due to non-matching and this report is unreliable. The respondent in previous reports claimed that the property falls in Khasra No. 221 but in the report dated 05.12.2014 claimed that the same falls in Khasra No. 217 and therefore, the respondent itself is not clear about the khasra number of the subject-properties.
5. It was also argued that Khasra Nos. 217, 222 & 231, Village Masjid Moth were acquired vide Award No. 1268 and physical possession was handed over by LAC to DDA on 13.03.1972 and therefore, the question of subject-property falling in these khasras does not arise. It was argued that the Monitoring Committee merely by inspecting the area, cannot only by glance say that the property is on government land and therefore, the impugned orders should be set-aside and the report of M/s Maverick Engineers Pvt. Ltd. should be relied upon which is in accordance with law.

6. It was also stated that property no. 147 was sub-divided in two properties no. 147A & 147B on 26.10.1998 when No Objection Certificate for executing Sale Deed of 147A was obtained and later NOC for 147B was obtained on 01.10.2001 and since this sub-division took place prior to 08.02.2007, the same should be considered as approved sub-division in view of regulations of Delhi Development Authority for unauthorized regularized colony notified on 17.01.2011. It was argued that the regularization application filed in respect of property no. 147A was wrongly rejected on the basis of sub-division of plot and therefore, the impugned orders should be set-aside.
7. Ld. counsels for the DDA on the other hand argued that the suit property is a part of Khasra No. 217, Village Masjid Moth which is government land being acquired vide Award No. 1268. The DDA has filed status report on 20.03.2017 stating that the area of Gautam Nagar has been de-notified and same is looked after by MCD. The property as per record is not part of Khasra No. 440/221 which was not acquired. The regularization plan of Gautam Nagar was prepared in 1979 and the draft plan was approved on 13.02.1979 and thereafter, modified plan was approved on 23.09.1983. As per draft plan, the property no. 147 was shown in that plan and not property no. 147A and 147B. However in the final approved plan dated 23.09.1983, the property numbers were not shown and therefore, after de-notification, the land stand transferred to MCD and it is for the MCD to ascertain the exact khasra number where the subject-properties are located.
8. Ld. counsel for MCD on the other hand argued that the Monitoring Committee passed order dated 30.11.2011 after considering the report of the Revenue Department that the property falls in Khasra No. 217 which admittedly is government land. The subsequent survey also show that the subject-property is part of Khasra No. 217 which is acquired land and therefore, these appeals are without merits and should be dismissed. It was argued that the regularization application of property no. 147A was rightly rejected because of sub-division of plot carried out prior to 30.06.1977 and therefore, there are no merits in these appeals.
9. I have perused the record. The Monitoring Committee passed the impugned order dated 30.11.2011 on the basis of a report dated 27.09.2011 submitted by Tehsildar Hauz Khas. As per this report property no. 147A and 147B were

in Khasra No. 217, property no. 159/1 was in Khasra No. 217 & 222 and property no. 160A & 159 were in Khasra No. 222. All these khasras are government acquired land. Khasra No. 669/440/221 was stated to be a private land. This report was submitted on the basis of field inspection report given by Halqua Patwari.

10. The appellants preferred their respective applications before Hon'ble Supreme Court and their applications were transferred to this Court vide order dated 30.04.2013 passed by Hon'ble Supreme Court. After registering these I.A.s as appeals, notices were issued to MCD, DDA and the Monitoring Committee.
11. The Monitoring Committee, MCD and DDA filed their reports and time was sought to file demarcation reports. Vide status report filed by the SDM on 07.11.2016, it was stated that the revenue records are maintained as per khasra-wise and not property-wise and since village Masjid Moth has been urbanised, it is not possible to file report whether the subject-properties are on government land or other-wise. The same was contrary to earlier status report dated 05.12.2014 filed by SDM, Hauz Khas stating that the subject-properties are part of government land.
12. It is also relevant to note that this report dated 05.12.2014 stated that the property is situated in Khasra No. 217 contrary to the report of M/s Maverick Engineers Pvt. Ltd which stated that the subject- property falls in Khasra No. 221. It will be relevant to note that M/s Maverick Engineers were engaged by the SDM himself to demarcate Khasra No. 440/221. When this agency being engaged by the government gave specific report on 08.07.2013 demarcating Khasra No. 440/221 and also submitted the location map showing that subject-property falls in khasra no. 440/221, what was the occasion for engaging one more agency M/s Dhayani Consultant to carry out fresh demarcation remains unexplained. This Dhayani Consultant, as per report fixed new reference point. How and why new points were fixed remains unclear.
13. It is also relevant to mention that Ashok Kumar, Kanoongo who joined the proceedings of demarcation with M/s Maverick Engineers was also the part of demarcation proceedings conducted by M/s Dhayani Consultants. M/s Maverick as well as M/s Dhayani Consultants used Total Station Mapping

(TSM) method to ascertain the location of Khasra No. 440/221. Why Dhayani Consultants did not consider report of M/s Maverick Engineers. It clearly shows that the respondents have failed to establish the exact location of Khasra No. 440/221 or the Khasra No. of subject-properties.

14. They have been filing different reports without proper verification of the exact khasra of the subject-property. It is also unclear that when the physical possession of Khasra No. 217, 222 and 231 was handed over to DDA by LAC, then how the subject-properties which are private properties are situated on the acquired land. There is no reason to disbelieve the report of M/s Maverick Engineers Pvt. Ltd.
15. It is also relevant to note that the DDA has claimed that property no. 147 was shown in their draft plan approved on 13.02.1979. If property no. 147 was existing in the draft plan of Gautam Nagar, the same clearly reflects that being an unauthorized colony, the subject-properties were not part of government acquired land and the same proves the case of the appellants that the subject-property is a part of unacquired Khasra No. 440/221. Admittedly property no. 147 was sub-divided as 147-A and 147-B.
16. It is also relevant to record that the house tax record of property no. 147 exist since 1962 recorded in the name of Mr. Sullar Singh. It means that this property is in existence at least since then. Further, the Jama Bandi of 1971-72 show that Mr. Sullar Singh S/o Shadi Ram was the recorded owner of this Khasra No. 440/221/1 of an area of 7 biswa. If the same is co-related to the house tax record, the property no. 147 certainly was part of Khasra No. 440/221.
17. Further, Sh. Sullar Singh applied for obtaining no objection with Additional District Magistrate seeking permission for sale of a portion measuring 180 sq.yards, out of his property no. 147 and this no objection certificate was granted by the Tehsildar on 26.10.1988 and therefore, it can be believed that the sub-division of the plot took place in October 1988. This 180 sq. yd. was purchased by Sh. Om Prakash Dawar and was recorded in his name. Sh. O. P. Dawar later sold this portion in favour of Harish Arora, HUF and Harish Arora HUF sold this 180 sq. yd. to M/s Aashi Buildcon who is the appellant of appeal no. 370/11 and 1066 of 2013.

18. The regularization of Gautam Nagar was approved by DDA vide Resolution No. 167 dated 23.09.1983. The DDA while passing regulations for Special Area, Unauthorized Regularized Colony And Village Abadi 2010 under Section 3 (iii) relating to building regulations mentioned that sub-division that has taken place prior to 07.02.2007 shall be recognized. The same is relevant as the regularization application of property no. 147A was rejected on the ground of sub-division prior to 30.06.1977.
19. It is also relevant to note that the owner of property no. 147B Mr. Rajinder Rai filed Writ Petition Civil No. 7126 of 2009 challenging the rejection of his regularization order dated 18.02.2009. The Hon'ble High Court vide order dated 22.11.2010 remanded the matter back with the directions to the MCD to pass reasoned order after giving an opportunity of hearing to Sh. Rajender Rai. Pursuant to that, hearing was given and vide order dated 26.02.2011 passed by Sh. S. K. Middha, the then Dy. Commissioner concerned directed that the application for according sanction to the building plan of the construction raised on plot no. 147B be considered and be regularized to the extent permissible on payment of applicable charges. This clearly shows that the sub-division of the plot no. 147 in two properties as 147A & 147B was duly recognized by MCD and the then Dy. Commissioner permitted regularization of the construction for the compoundable portion of 147-B on payment of compounding charges on commercial rates. Whether Mr. Rajender Rai got it regularized or not is a different aspect but the fact remains that the regularization was permitted vide order dated 26.02.2011 of plot no. 147B.
20. This clearly shows that the subject-properties were never part of acquired land. Otherwise also it is relevant to note that vide office order dated 11.09.2007 passed by Land & Building Department. (Land Acquisition Branch), it was decided by Hon'ble LG of Delhi as under:
- “In view of the policy decision to regularise certain unauthorised colonies, the land falling within the boundaries of such colonies as per the survey which had been carried out by the Divisional Commissioner, whether built-up or not, will not be now taken over by the govt”.
21. In view of this circular whether the subject-property falls in acquired land or not is an immaterial question. The govt. admittedly did not take over the possession of the subject-property, even presuming that it is part of acquired

land and therefore, is now precluded from taking over the possession of the subject- properties in view of this circular dated 11.09.2007.

22. In view of this discussion let us now consider the cases on their facts. The appeals nos. 500/13, 931/13, 933/13 and 948/13 are in respect of property no. 160, Gujjar Dairy, Gautam Nagar. These appeals however are in respect of different portions of this property where the sealing was done on 13.10.2006 & 16.10.2006 in pursuance to directions of Monitoring Committee. The MCD filed status reports in these appeals stating that these structures are being raised on government land and no conversion charges have been deposited from 01.04.2006 at the rate of Rs. 511/- per sq. mtr. per annum from the date of sealing. It was further reported that the properties have been sealed on the direction of Hon'ble Monitoring Committee as have been found to be unauthorized building without any sanction building plan. The Hon'ble Monitoring Committee later allowed permanent de-sealing for residential use on 02.09.2008 and the properties were de-sealed. It is stated that on 14.09.2011, it was resealed being constructed on encroached govt. land.
23. As already discussed, the respondent has failed to establish that the subject-properties are on govt. land. Even as per the case of respondent, the construction of the property is prior to 07.02.2007. Therefore, same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act 2011. The respondent therefore is directed to de-seal entire property no. 160A, Gujjar Dairy, Gautam Nagar, New Delhi on the undertaking of the appellants that the same shall be used only for the purposes permissible under MPD-2021 and if any use other than residential is permitted and the appellants choose to use it for any other purpose than residential, the same shall be done on payment of conversion charges. All these four appeals are allowed and the sealing orders are set-aside.
24. Coming to appeal no. 959 of 2013, this is an appeal challenging the sealing of property no. C161, Gujjar Dairy, Gautam Nagar. As per status report filed by MCD, the property was sealed in pursuance to order dated 30.11.2011.
25. I have gone through the order dated 30.11.2011. The subject-property no. C161 is not a part of this order. This order pertains only to properties no. 147A, 147B, 159/1, 159/1A and 160A. How this property was sealed is not mentioned. The office record shows that property no. C161 was sealed for

the reason that the construction is unauthorized and there is no sanction building plan. This fact has been ascertained through the report of Monitoring Committee no. 228 dated 20.05.2014 available at page 44/C of the office record. The MCD in the status report filed on 27.05.2014 also stated that the action has been taken as the construction is unauthorized. No show cause notice was sent to the appellant for the alleged unauthorized construction nor any demolition or sealing order was passed. The property was sealed only on the basis of an order dated 30.11.2011 which is in fact silent about this property. The respondent therefore is directed to de-seal the property within three weeks and shall be at liberty to issue fresh show cause notice, if there are any grounds. This appeal is also allowed.

26. Coming to appeal no. 175/13. This is an appeal filed by Rajinder Rai who is the owner of property no. 147B. The appellant moved IA before Hon'ble Supreme Court of India and his IA was transferred to this Court for disposal. The challenge again is to the sealing order dated 30.11.2011 passed primarily on the ground of encroachment on govt. land. As already discussed, the respondent has failed to show that the subject-property is on govt. land and therefore, the appeal is allowed. The respondent is directed to de-seal property no. 147B, Gujjar Dairy, Gautam Nagar within two weeks the appeal stands disposed off.

27. The appeal nos. 370/11 and 1066/13 are in respect of property no. 147A, Gujjar Dairy, Gautam Nagar. The appeal no. 370/11 challenges the demolition order dated 11.03.2011 which was passed as the appellant failed to prove that the construction is authorized or regularized. The other appeal has sought directions to decide the representation dated 30.08.2013 and the sealing of the property. Admittedly, the sealing was done in pursuance to order dated 30.11.2011 of Monitoring Committee and is liable to be set-aside.

28. Coming to demolition order dated 11.03.2011 challenging in appeal number 370/11, this order has been passed as the appellant failed to show that the construction is legal or there exist any regularized plan.

29. It is relevant to note that the regularization application was rejected on 19.02.2009 on the ground of sub-division of plot prior to 30.06.1977. As already noted above that the owner of property number 147B filed Writ Petition before Hon'ble High Court which was allowed on 22.11.2010 and Mr.

S. K. Middha, the then Dy. Commissioner, South Zone passed reasoned order dated 26.02.2011 permitting regularization of that property including compoundable portion on payment of charges. The respondent cannot give a different treatment to the appellant who is owner of the sub-divided property no. 147A. His regularization was rejected as there was sub-division after 30.06.1977. As already recorded, the DDA notified that sub-division through documents prior to 07.02.2007 shall be recognized for Regularized Unauthorized Colony. Admittedly, the property was sub-divided in October 1998 when Sh. Sullar Singh sold 180 sq.yds. to Mr. O.P. Dawar after obtaining NOC from Additional District Magistrate. The property number 147B was also mutated separately in the property tax records. The regularization application therefore was wrongly rejected. The appellant shall be at liberty to apply for regularization of his property on parity with property number 147-B.

30. Be that as it may, the impugned demolition order records that the regularization application has been rejected as stated above. The initial demolition order dated 19.02.2009 passed for property number 147A, stated the unauthorized construction by constructing partition wall at basement to third floor. This order was challenged in appeal no. 75 of 2009 and was set-aside on 20.04.2009 and the matter was remanded back. After this order, hearing was given to the appellant and the impugned order was passed. Construction of a partition wall does not amount to unauthorized construction. The Sale Deed dated 17.07.2008 in favour of the appellant show that the property was constructed from basement to third floor as on that date. The appellant, as per initial booking, constructed only a partition wall which is an interior non-load bearing wall and therefore, the demolition order which books the construction of partition wall is not sustainable. Partition wall is a non-load bearing wall. It is not the case of the respondent that any other construction has been raised apart from this partition wall or separate entrance has been created in the property after raising the partition wall. Further, the impugned order is silent as to when this construction was raised and why protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available. In these facts the demolition order is

not sustainable and the appeal is allowed and the demolition order dated 11.03.2011 is set-aside.

31. All the 08 appeals are accordingly disposed off in terms of above findings.

32. Record of the respondents, if any, be returned along with copy of this order and appeals file be consigned to record room.

**Announced in the open Court
today i.e. on 06.02.2026**

**(AMIT KUMAR)
Addl. District & Sessions Judge-cum-P.O.
Appellate Tribunal, Delhi**