

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

**W.P.(C) No. 5200 of 2008**

Reserved on: February 11, 2010

Decision on: February 24, 2010

HARIJAN KALYAN SAMITI REGD. & ORS. .... Petitioners  
Through: Mr. Vikram Nandrajog, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents  
Through: Ms. Priyanka Kumar, Advocate for UOI.  
Mr.V.K. Tandon, Advocate for GNCTD.  
Mr. P. N. Bhardwaj, Advocate for Applicant  
Ms. Sadhna Tyagi in CM No.14517 of 2009.

**AND**

**W.P.(C) No. 5201 of 2008**

HARDEV NAGAR RESIDENTS WELFARE ASSOCIATION  
REGD. & ORS. .... Petitioners  
Through: Mr. Vikram Nandrajog, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents  
Through: Ms. Priyanka Kumar, Advocate for UOI.  
Mr.V.K. Tandon, Advocate for GNCTD.  
Mr. P. N. Bhardwaj, Advocate for Applicant  
Ms. Sadhna Tyagi in CM No.14469 of 2009.

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether reporters of the local news papers  
be allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in the Digest? Yes

**J U D G M E N T**

**W.P.(C) Nos. 5200 & 5201 of 2008 & CM Nos. 9914 & 9915 of 2008 (for stay) & CM Nos. 14469 & 14517 of 2009 (for impleadment)**

1. The prayer in Writ Petition (Civil) No. 5200 of 2008 filed by the Harijan Kalyan Samiti (Regd.) and 17 other individuals who are residents of the

Harijan Basti of Jharoda Majra in Burari is for quashing a notice dated 17<sup>th</sup> July 2008 issued by the Secretary, Ministry of Urban Development (Unauthorised Colony Cell), Government of National Capital Territory of Delhi (GNCTD) directing the removal of all encroachments on the land of the supplementary drain in Jharoda Majra by 23<sup>rd</sup> July 2008 failing which the encroachments would be demolished on 23<sup>rd</sup> July 2008.

2. Writ Petition (Civil) No. 5201 of 2008 is by the Hardev Nagar Welfare Association (Regd.) and 13 other individuals who are residents of Hardev Nagar Jharoda Majra, Burari seeking an identical relief.

3. The impugned notice dated 17<sup>th</sup> July 2008 was issued pursuant to the order dated 4<sup>th</sup> July 2008 of this Court in Writ Petition (Crl.) No. 703 of 1998 titled “*Sadhna Tyagi v. Flood Control Department*” and the subsequent directions issued on 15<sup>th</sup> July 2008 by the Divisional Commissioner. The background to the impugned order is that land forming part of Khasra Nos. 30/22, 31/16/2, 30/21 and 31/25 situated in village Jharoda Majra, Burari, Delhi was acquired under the Land Acquisition Act 1894 vide Award No. 40/79-80 and vested in the Irrigation and Flood Control Department (‘IFCD’) of the GNCTD. Paper possession was also handed over to the IFCD.

4. The above W.P. (Crl.) No. 703 of 1998 was filed by Sadhna Tyagi in this Court complaining that Shri Yashpal and Shri Satyapal sons of late Shri Yag Dutt Tyagi and certain others in collusion with the officials of the Revenue Department had started selling parcels of the said acquired land by carving

out plots. An order dated 27th May 1999 was passed by a Division Bench this Court in the said writ petition directing Yashpal and Satyapal to maintain status quo with regard to the land in question. The Division Bench restrained them from selling, alienating or parting with the possession of the land. By a further order dated 25<sup>th</sup> August 1999 the Division Bench directed the IFCD to have the acquired land measured and demarcated. On 2<sup>nd</sup> March 2000 the Court was informed that demarcation had been carried out and a status report to that effect had been filed. The Court was informed that “land which is under unauthorised occupation of the dwellers, belongs to the Flood Department and on behalf of Flood Control Department, they will be approaching for help the District Task Force for removal of unauthorised occupation of that land.” The Court was informed that further time was required for taking possession of the land in accordance with law. The case was then adjourned to 14<sup>th</sup> July 2000.

5. In the meanwhile Yashpal and Satyapal filed Writ Petition (C) No. 4083 of 2000 on 7<sup>th</sup> April 2000 in this Court seeking directions to restrain the authorities from dispossessing them. The challenge in these petitions was to the validity of the demarcation carried out. A further grievance was that despite the land of the Petitioners not forming part of the land that was demarcated, they were still sought to be dispossessed. By an order dated 5<sup>th</sup> October 2004, a learned Single Judge of this Court disposed of both the writ petitions leaving it open to the Petitioners to file appropriate proceedings to challenge the demarcation carried out pursuant to the directions of the Division Bench in Writ Petition (Crl.) No. 703 of 1998. It was further directed that interim orders would continue for a period of one month to

enable the petitioners therein to take recourse to legal proceedings.

6. An appeal was filed by Yashpal and Satyapal against the demarcation before the Deputy Commissioner/Additional Collector (North). The said appeal was dismissed on 14<sup>th</sup> July 2006. The further appeal to the Financial Commissioner was dismissed on 15<sup>th</sup> February 2008. In a Contempt Case (C) No. 747 of 2006 filed by Sadhna Tyagi an order dated 4<sup>th</sup> July 2008 was passed by another learned Single Judge of this Court requiring implementation of the earlier orders. Thereafter the impugned notice dated 17<sup>th</sup> July 2008 was issued.

7. There were certain other developments which were perhaps not brought to the attention of this Court when the aforementioned orders were made. The Petitioner No.1 in Writ Petition (Civil) No. 5200 of 2008 i.e. Harijan Kalyan Samiti (Regd.) was granted registration under the Societies Registration Act, 1860 on 1<sup>st</sup> November 1994. A public notice was issued by the GNCTD inviting applications for regularization of unauthorised colonies. The unauthorised colonies were to be considered for regularization as per the terms and conditions as might be approved by the Competent Authority. The applications could be made by Residents Welfare Associations/ Residents Societies/ Resident Cooperative Societies of unauthorised colonies which were in existence on 31<sup>st</sup> March 2002.

8. Pursuant to the above public notice both the Harijan Kalyan Samiti

(Regd.) [Petitioner No. 1 in W.P. (C) No. 5200 of 2008] and the Hardev Nagar Welfare Association [Petitioner No.1 in W.P. (C) No. 5201 of 2008] made applications for regularisation. Copies of the acknowledgment receipts dated 29<sup>th</sup> December 2004 and 17<sup>th</sup> December 2004 respectively issued by the GNCTD, Department of Urban Development have been placed on record. The colony in question is part of the official list brought out by the Respondents of unauthorised colonies awaiting regularisation. It is stated that there are more than 1430 unauthorised colonies being considered for regularization. It is an admitted position that till date no final decision has been taken on these applications for regularisation.

9. Another important development was that a policy decision was taken by the Land Acquisition Branch, Land & Building Department GNCTD not to take possession of the awarded land falling within the boundaries of certain unauthorised colonies. This was announced through a decision of the Lt. Governor of Delhi which was communicated by a letter dated 11<sup>th</sup> September 2007 written by the Additional Secretary (L&B) which reads as follows:

“Government of NCT of Delhi  
Land & Building Department  
(Land Acquisition Branch)  
D-Block, Vikas Bhawan: New Delhi-02

No. F11(37)/07/L&B/LA  
To  
1) Pr. Secretary-cum-Commissioner (Rev.)  
5, Sham Nath Marg, Delhi.

(2) Vice Chairman  
Delhi Development Authority,  
Vikas Sadan, New Delhi.

Sub: Taking possession of the awarded land falling within the boundaries of certain unauthorised colonies.

I am directed to convey you the decision of the Hon'ble L.G. of Delhi on the above noted subject which read as under:-

“In view of the policy decision to regularise certain unauthorised colonies, any land falling within the boundaries of such colonies as per the survey which had been carried out by Divisional Commissioner, whether built up or not, will not be now taken over by the Government.”

This is for information and compliance please.

(T.C. Nakh)  
Addl.Secretary (L&B)

No. F11(37)/07/L&B/LA 8559-80 Dated: 11/9/2007.”

10. On 19<sup>th</sup> May 2006 the Parliament enacted the Delhi Laws (Special Provisions) Act, 2006 ('Act'). The Statement of Objects and Reasons noted that it had become necessary in the larger public interest to make special provisions to finalise norms, policy guidelines and feasible strategies in respect of slums and jhuggi jhompris in Delhi, the problems related to the unauthorised developments in respect of the mixed land use, construction beyond the sanctioned plans and encroachment. The object of the enactment was to put a moratorium on demolition of encroachments and slums for a period of one year. In terms of Section 3(2) of the Act, status quo as on 1<sup>st</sup> January 2006 was to be maintained in respect of encroachments and slums. The Act was passed by Parliament to overcome certain decisions by this Court and the Supreme Court in terms of which the encroachments and the

slums were required to be removed. This is evident from Section 3 (2) which reads thus:

“Section 3 - **Enforcement to be kept in abeyance**

(1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall within a period of one year of the coming into effect of this Act, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of unauthorised development with regard to the under-mentioned categories, namely:--

(a) mixed land use not conforming to the Master Plan;

(b) construction beyond sanctioned plans; and

(c) encroachment by slum and Jhuggi-Jhompri dwellers and hawkers and street vendors,

so that the development of Delhi takes place in a sustainable and planned manner.

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo as on the 1st day of January, 2006 shall be maintained in respect of the categories of unauthorised development mentioned in sub section (1).

(3) All notices issued by any local authority for initiating action against the categories of unauthorised development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken during the said period of one year.

11. Under Section 4 of the Act the categories to which the above moratorium would not apply were set out. Section 4 reads as under:

**4. The provisions of this Act not to apply in certain cases.**-During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following categories of unauthorised development, namely:-

(a) any construction unauthorisedly started or continued on or after the 1<sup>st</sup> day of January, 2006;

(b) commencement of any commercial activity in residential areas in violation of the provisions of the Master Plan of Delhi 2001 on or after the 1<sup>st</sup> day of January, 2006;

(c) encroachment on public land except in those cases which are covered under clause (c) of sub-section (1) of section 3;

(d) removal of slums and Jhuggi-Jhonpri dwellers and hawkers and street vendors, in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”

12. Although its validity stands challenged in the Supreme Court, no stay has been granted of its provisions. The Act has continued to operate and has since been extended up to 31<sup>st</sup> December 2010.

13. In the present writ petition this Court on 22<sup>nd</sup> July 2008 passed an order staying the impugned notice after taking note of the provisions of the Act.



Two applications CM Nos. 14469 and 14517 of 2009 have been filed by Sadhna Tyagi seeking impleadment in these writ petitions. The submissions of Shri P.N.Bhardwaj, learned counsel for the Applicant have been heard at length. The submissions of Sri Vikram Nandrajog, learned counsel for the petitioner and Sri V.K.Tandon, learned counsel for the GNCTD have also been heard.

14. It is submitted that the present Petitioners cannot have the benefit of the present Act in view of Section 4 which specifically states that where encroachment is on public land, the benefit of the Act would not be available. The question that arises is as to whether Section 4(c) of the Act covers unauthorised colonies.

15. The scheme of regularization of unauthorized colonies in Delhi is covered by a separate policy pursuant to which a public notice was issued way back in 2002 and pursuant to which individual applications have been made by a large number of unauthorized colonies. A perusal of the Statement of Objects and Reasons of the Delhi Laws (Special Provisions) Act, 2006 reveals that while the intention of the Parliament was to bring the jhuggi jhonpri clusters and encroachments in that form on public land, or constructions in violation of the land use conditions within the ambit of the Act, it was not meant to cover unauthorised colonies. The decision of the Lt.Governor in 2007 to not initiate moves to recover acquired land on which there were unauthorized colonies awaiting regularization appears to be independent of the Act. The scheme of regularization of unauthorized

colonies has been treated as a separate one. A list of over 1400 unauthorised colonies whose applications for regularisation are pending has been brought out by the Respondents. This involves a very large number of residents. If the submission that Section 4(c) of the Act applies to unauthorised colonies on public land were to be accepted, then even before a decision can be taken on their regularization the entire lot of such colonies would face demolition. Such an interpretation of Section 4 (c) is not consistent with the object and purpose of the Act.

16. In the considered view of this Court, this argument of the Applicant in CM Nos. 14469 and 14517 of 2009 deserves rejection.

17. Inasmuch as the application by both these set of Petitioners for regularisation of the unauthorised colonies is still pending consideration before the Government, the impugned notice dated 17<sup>th</sup> July 2008 cannot be given effect to. The attention of the Court that passed the orders aforementioned in *Sadhna Tyagi v. State* [Writ Petition (Crl.) No. 703 of 1998] was not drawn to the fact that in terms of the policy of the Government regarding regularisation of the unauthorised colonies the petitioners were protected till such time a decision was taken on their application for regularization. That they were not parties to those proceedings could also be a reason why these facts were not accounted for. Therefore, the orders passed by this Court in Writ Petition (Crl.) No. 703 of 1998 or Contempt Case No. 747 of 2006 cannot take away the right of these unauthorised colonies for regularisation in terms of the policy of the

Government. Till such time such a decision is not taken, the policy decision of 11<sup>th</sup> September 2007 whereby it was decided that possession of such land would not be taken will also have to be adhered to.

18. Consequently, these writ petitions are disposed of by directing that till the decision is not taken on the applications made by the Petitioners in each of these writ petitions for regularisation of the unauthorised colonies in question, the Respondents are restrained from disturbing the possession of the Petitioners. In other words, the impugned notice dated 17<sup>th</sup> July 2008 will not be given effect to as long as a decision is not taken by the Govt. of India on the applications made by the Petitioners in each of these writ petitions for regularisation of the unauthorised colonies. Thereafter, in the event of the colonies not being regularized, the Respondents will take a decision afresh on displacing the petitioners and give them sufficient advance notice, of not less than three months, to enable them to make alternative arrangements.

19. The petitions and the applications are disposed of accordingly.

**S. MURALIDHAR, J**

**FEBRUARY 24, 2010**  
**dn**