

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

Date of decision: 01st FEBRUARY, 2022

IN THE MATTER OF:

+ **W.P.(CRL) 2035/2020**

YAMUNA BANK KISHAN BACHAO MORCHA Petitioner

Through Mr. Rajeev Lochan, Advocate

versus

STATE OF NCT OF DELHI & ORS Respondents

Through Ms. Nandita Rao, ASC for the State
Ms. Prabhsahay Kaur, Standing
Counsel for DDA/ R-4 to R-7

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This writ petition has been filed with the following prayers:-

" (a) issue a writ, order or direction in the nature of mandamus commanding

the Respondent No 2 to take action against the Respondent no.3 to 9 ; and/or;

(b) Issue a writ, order to restrain to respondent no. 4 to 7 to take over the lands of farmers until investigation completed.

(c) Issue a writ, order to Compensation to farmers from the account of DDA to the farmer to damaging their full grown crops.

(d) Any other relief which this Hon'ble Court deems fit and proper may kindly be passed in favour of the Petitioner and against the respondents."

2. It is stated that the petitioner is a society consisting of farmers who are inhabitants on the banks of river Yamuna for over the last 100 years and

cultivating about 15,000 *bighas* of land. The writ petition mentions that the members of the petitioner Society have proof of 'lagaan' being paid by their forefathers since 1932 till 2012. It is stated that the farmers were growing Radish, Brinjal, Potato, Onion, etc., on the said land. It is stated that the members of the Petitioner Society could not be deprived of the land without following the procedure as laid down under law.

3. It is stated that the members of the Petitioner Society have been paying money to the Delhi Peasants Co-Operative Multipurpose Society Limited. It is stated that though the DDA claimed that they have cancelled the lease deed of the Delhi Peasants Co-Operative Multipurpose Society Limited in 1967 but it kept on collecting '*lagaan*' till 2016 which is a criminal and fraudulent act.

4. It is stated that the *Patwari* and other policemen are torturing and harassing the farmers and are extorting money and extending threat to them.

5. It is stated that the farmers have received several letters from the DDA claiming that the members of the petitioner Society are unauthorised occupants and that DDA is the owner of the property.

6. It is stated that on 08.11.2020 the officials of DDA gathered at the Bela Estate with JCB machines accompanied by the Police Force with two Battalions of CRPF and BSF for evicting the members of the petitioner/society with an intent to grab the land.

7. Though notice has not been issued in this petition, counters have been filed by the DDA. It is stated that the National Green Tribunal had held that Yamuna Plains are to be protected and no encroachment of any kind is permitted therein. It is stated that DDA has been entrusted with an affirmative duty to protect the river Yamuna, its morphology and its flood

plains and it was in a bid to fulfil this mandate and keep the Yamuna floodplains encroachment free, the DDA undertakes regular demolition and removal actions.

8. It is stated that in 2013 writs have been filed restraining the authorities from dispossessing the farmers who were occupying the banks at river Yamuna without following the procedures established under law. The land in question in the said writ petition had been leased out to two different Societies namely Jhil Khuranjia Milk Producers Co-operative Society Ltd. and Delhi Peasants Co-operative Multipurpose Society Ltd. Material on record shows that the members of the petitioner Society were paying certain amount to the Delhi Peasants Co-operative Multipurpose Society Ltd. The said writ petitions were dismissed. LPAs were filed against the order of dismissal. This Court *vide* judgment dated 31.01.2018 dismissed the batch of LPAs. While dealing with the land which was allotted to the Delhi Peasants Co-operative Multipurpose Society Ltd, it was found that in 1949 the Delhi Peasants Co-operative Multipurpose Society Ltd. was allotted agricultural land measuring 13,344 bighas on leasehold basis for a period of 5 years by the Delhi Improvement Trust (hereinafter referred to as 'DIT'). The said lease was extended from time to time. It was found that DDA, who is the successor of DIT, sought cancellation of the lease deed and asked the Delhi Peasants Co-operative Multipurpose Society Ltd. to handover the possession of the land. Notices under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the PP Act') were issued by the Estate Officer to the individual cultivators and the eviction orders were passed in the year 1991-1992. After several proceedings, the eviction proceedings were started by the DDA in the year 2004 and eviction orders

were passed on 01.08.2007 for vacation of the land. The matter was remanded back to the Estate Officer and final orders were passed by the Estate Officer. The said orders were unsuccessfully challenged in appeal. The orders dismissing the appeals were challenged before this Court by filing writ petitions. The writ petitions were dismissed by this Court *vide* order dated 21.10.2016.

9. In the LPAs a contention was raised stating that members of the Society were tenants who were in occupation and possession of lands and, therefore, PP Act could not have been initiated against them since they are not unauthorised occupants. The Division Bench of this Court *vide* order dated 31.01.2018 held that the occupants of the land could be evicted by resorting to PP Act. It was found that the members of the Society had become unauthorized occupants of the land belonging to DDA. It is pertinent to mention here that the petitioners in the said writ petition contended that there was collusion between the Society and the DDA. It was stated that the members of the petitioner Society were paying money to the Delhi Peasants Co-operative Multipurpose Society Ltd.

10. The appellants therein preferred an appeal against judgment dated 31.01.2018 before the Hon'ble Supreme Court in SLP(C) Diary No.5253/2018 titled as Shiv Shankar & Ors. v. DDA, and other appeals, wherein the Apex Court dismissed the SLP while upholding the judgment passed by this Court and directed the appellants to vacate the subject land by December, 2019.

11. It is stated that further the appellants therein filed a curative petition before the Apex Court being Curative Petition (C) 38-52/2020 titled as Sunil Kumar & Anr. v. DDA, which was dismissed *vide* order dated 21.05.2020.

It is stated that the members of the petitioner Society herein are attempting to reopen and re-agitate issues that stands settled-up by the Apex Court.

12. It is stated that the National Green Tribunal *vide* judgment dated 13.01.2015 in O.A. NO.6/2012 titled as Manoj Mishra v. UOI & Ors., judgment dated 07.12.2017 in O.A. No.76/2016 and O.A. No.81/2016 titled as Manoj Mishra v. UOI & Ors., judgement dated 11.09.2019 in O.A. No.6/2012 titled as Manoj Mishra v. UOI & Ors., has directed the DDA to ensure that the Yamuna floodplains remain encroachment free. It is stated that the National Green Tribunal in O.A. No.6/2012 titled as Manoj Mishra v. UOI & Ors., has directed the DDA to undertake physical demarcation of the entire floodplains within three months and after taking re-possession, fence the area and convert it into a bio-diversity park. Vide judgment dated 07.12.2017, the NGT reiterated that the floodplains of Yamuna should not be permitted for construction, occupation, habitation etc. and it is the duty of the answering respondent/DDA to maintain the natural features and ecology of the floodplain.

13. It is stated that while dealing with a similar issue a Division Bench of this Court by way of order dated 07.10.2020 in LPA No.276/2020 titled as Shakeel Ahmed & Anr. v. DDA & Ors. has directed the appellants/writ petitioners therein to approach the National Green Tribunal for any relief as demolition and re-possession of Yamuna floodplains carried out by DDA was mandated by the National Green Tribunal.

14. It is also pointed out that besides the judgments of the National Green Tribunal, a Division Bench of this Court *vide* judgment and order dated 03.04.2013 in Haq, through its members Abdul Shakeel v. DDA & Anr. **2013 SCC Online Del 1284**, had held that by removing the encroachment

on the Yamuna floodplains, DDA is only complying with the directions of the Court and no fault can be found with the DDA on this account. Moreover, the Court found that there was no question of providing rehabilitation to those in illegal occupation of land.

15. It is stated that the writ petition is not maintainable in light of the settled law to the effect that even if the grievances of the petitioner were taken at face value (for the sake of argument), the remedy would be to approach the concerned Magistrate under Section 156(3) CrPC in case proper investigation has not been carried out by the Police.

16. Heard Mr. Rajeev Lochan, learned counsel for the petitioner, Ms.Nandita Rao, learned ASC for the State, Ms. Prabhsahay Kaur, learned Standing Counsel appearing on behalf of respondents No.4 to 7.

17. Mr. Rajeev Lochan, learned counsel for the petitioner states that members of the petitioner Society are in occupation of the land for a number of years, even before DDA was constituted. He states that the members of the petitioner Society are the owners of the property and they can be evicted from the property only by authority of law, that is, by valid acquisition. He states that the members of the petitioner Society have been paying tax to the DDA.

18. Mr. Rajeev Lochan, learned counsel for the petitioner raised several questions in the writ petition which are as under:-

" a) When how DDA became the owner of all the above said claimed land at the front of river Bank of Yamuna which belongs to farmers land.

b) Did DDA have paid any consideration money to farmers?

c) Under which rule of law and regulation DDA made claim of the above mention land.

- d) In what capacity DDA has lease out this thirteen thousand bighas of land to Delhi Peseants Co-Operative Multipurpose Society Ltd of Yamuna bank.*
- e) Is DDA had any proof of the above mention all land acquisition paper by paying any compensation to the farmer from the 1949 to till date.*
- f) In what capacity DDA has cancel lease deed of the so called society when DDA was never ever absolute owner of the land.*
- g) In what capacity Delhi Peseants Co-Operative Multipurpose Society Ltd collecting the yearly dues lagaan from farmer and looted them for more than 70 years."*

Learned counsel for the petitioner states that there is no reply from DDA on any of these aspects. He states that the members of the petitioner Society are legitimate and *bona fide* occupants of the land and cannot be removed by using Police force. He states that the authorities are depriving the members of the petitioner/Society of the land and have committed various offences against them for which action ought to be taken against them.

19. *Per contra*, Ms. Prabhsahay Kaur, learned Standing Counsel appearing on behalf of respondents No.4 to 7, contends that the DDA had issued notice under the PP Act and eviction orders were passed. The eviction orders were challenged before the learned Single Judge of this Court in batch of petitions being W.P.(C) 8307/2016 etc. which were dismissed *vide* order dated 21.10.2016. The matter was taken to the Division Bench. The Division Bench held that the Delhi Peasants Co-Operative Multipurpose Society Ltd. are rank trespassers and encroachers and others who are claiming through them are also encroachers. Since they can claim their occupation only through Delhi Peasants Co-Operative Multipurpose Society

Ltd., the Division Bench observed as under:-

"56. Admittedly, the eviction orders of Estate Officers under the PP Act against some of the occupants of public premises claiming their rights through Jheel Khuranja Cooperative Milk Producers Society Limited were upheld by the Coordinate Bench of this Court in Smt. Dhan Kaur (supra). Similarly, the eviction orders passed under the PP Act by Estate Officers against some of the occupants of public premises, claiming their rights through Delhi Peasants Cooperative Multipurpose Society Limited, were upheld by the Coordinate Bench of this Court in Brij Pal (supra) in LPA No.810/2015, decided on 17.11.2015. These two orders of Coordinate Benches of this Court – in respect of property allotted to Jheel Khuranja Cooperative Milk Producers Society Limited and Delhi Peasants Cooperative Multipurpose Society Limited relate to the same properties which were allotted under the same agreements to these Societies, though were in occupation of some other members of these Societies (other than the appellants and the writ petitioners before us), are binding on us on the principles of constructive res judicata and also on the principle that the similarly placed persons should be treated alike. The appellants and the writ petitioners before us are similarly placed persons and the earlier findings given in respect of similarly placed persons are also binding on them."

20. The Division Bench, therefore, directed the members of the Delhi Peasants Co-Operative Multipurpose Society Ltd. and all persons claiming through them to vacate the land. The said judgment was challenged in the Apex Court *vide* **SLP (C) Diary No.5253/2018** titled as Shiv Shankar & Ors. v. DDA. The Apex Court refused to entertain this Special Leave Petition. The Apex Court on 20.03.2018 dismissed the petition and granted

time to the petitioners till December, 2019 to vacate the possession on the undertaking given to the Supreme Court. Against the said order, the petitioners filed curative petitions which have also been dismissed.

21. Ms. Prabhsahay Kaur, learned Standing Counsel appearing on behalf of respondents No.4 to 7, states that there are orders of the National Green Tribunal where directions have been given to evict the encroachers on the Yamuna floodplains. She states that the National Green Tribunal had directed that the agricultural activities also must not be carried out on the floodplains of Yamuna. She states that the entire floodplains of Yamuna is about 52 to 56 kilometres covering an area of 1267 hectares coming over 3130 acres but the petitioner has not given any specific area. The petitioner has only given receipts for an area called as Bela estate. She states that the instant writ petition is only an abuse of the process of law and the members of the petitioner Society, who were claiming land and had given an undertaking to the Supreme Court that they will vacate the premises, cannot be permitted to continue with the present proceedings. She further states that the prayers sought for cannot be granted.

22. At the outset it is to be mentioned that all the questions raised by the petitioner in the instant writ petition have been conclusively answered by this Court while deciding the batch of LPAs which have been dismissed by this Court vide order dated 31.01.2018. The receipts filed by the petitioner shows that the cultivators therein form a part of the land called as the Bela Estate. Material on record indicates that there was an agreement entered into between the Secretary of the State and Delhi Improvement Trust (DIT) on 31.03.1937 by which the Bela Estate, which has been shown as Nazul land, had been given to DIT on lease. DDA is the successor of DIT and on

termination of the lease, the members of the petitioner Society have become encroachers and are, therefore, identically situated to the petitioners in LPA 479/2013, LPA 481/2013, LPA 482/2013, LPA 482/2013, etc., which were filed before this Court in 2013 and are, therefore, fully covered by that judgment. The said judgment states as to how DDA can be the owner of the land and how the members of the Delhi Peasants Co-Operative Multipurpose Society Ltd to which the petitioners are paying money have become encroachers. The petitioner is only seeking to re-agitate the same issues which have been decided by this Court in a batch of LPAs being LPA 479/2013, LPA 481/2013, LPA 482/2013, LPA 482/2013, etc., way back in 2013.

23. The instant petition is a mischievous petition. A perusal of the writ petition shows that the petitioners have cleverly not mentioned the place where they are carrying out their activities. Other than making a bald assertion that they are in possession of the area for the last 100 years, there is no document on record to establish the possession. The petitioners have shown certain receipts which are being given to the Delhi Peasants Co-Operative Multipurpose Society Ltd. This shows that the petitioners are only claiming through the Delhi Peasants Co-Operative Multipurpose Society Ltd and the judgment dated 31.01.2018 of the Division Bench of this Court has already held as to how the petitioners in that batch of LPAs have become encroachers. There is no receipt which has been given by the DDA. At best, the members of the petitioner/society can claim that they were in occupation of the land only through the Delhi Peasants Co-Operative Multipurpose Society Ltd. The petitioners, therefore, are bound by the judgment passed by the Division Bench of this Court in LPA 479/2013 and other connected

matters which has been affirmed by the Apex Court. The petitioner has, therefore, violated the undertaking given to the Apex Court.

24. The petitioners have filed Annexure P-2, which is a notice under Section 4 (2) (b) (i) of the Public Premises (Eviction of Unauthorized Occupants) Act wherein the noticee has been shown as an occupant and had been asked to remove. The Annexure demonstrates that the members of the Delhi Peasants Co-Operative Multipurpose Society Ltd. are purely unauthorized occupants of the area who had been directed to be removed by this Court and the National Green Tribunal. This Court has also gone through the various orders passed by the National Green Tribunal directing the DDA to evict the unauthorized occupants. By order dated 11.09.2019 NGT had directed that a bio-diversity park must be established in that area in order to cleanse river Yamuna. It is also stated that the society has filed a civil suit being Civil Suit No.77/2021 on the file on Additional District Judge, Tis Hazari Courts, wherein the petitioner sought prayer for injunction restraining DDA from evicting its members. The said suit is pending.

25. The petitioner has not been able to establish any semblance of right on the property. Other than filing few receipts which shows that money has been paid to the Delhi Peasants Co-Operative Multipurpose Society Ltd. in Bela estate, which is a Nazul land, does not confer any right to the petitioner especially when the Delhi Peasants Co-Operative Multipurpose Society Ltd. has already failed in its attempt and the members of the petitioner/Society have been held trespassers by the Division Bench in LPA 479/2013 and other connected matters and the SLP, review and curable petitions arising out of the said order have been dismissed by the Apex Court.

26. The writ petition shows that the petitioners are growing crops of

Radish, Brinjal, Potato, etc. which is clearly prohibited by the order of the National Green Tribunal. The National Green Tribunal by order dated 13.01.2015 has observed as under:-

"51. Unauthorised activities are being carried out on the floodplain and at some places they have even encroached up to the riverbed of Yamuna. Agricultural products raised from these areas have shown to be injurious to human health, primarily for the reasons that the river carries very high pollutants, including heavy-metals and acidic elements. One of the studies brought on record which is even supported by the United Nations, is the first to link river contamination with adverse impacts on human health. According to this study, around 23% of children had lead levels in their blood above 10 micro grams - a widely accepted guideline - whose adverse health effects have been noted. The study said high level of lead in blood was eight times more when exposed to the riverbank after Wazirabad in north Delhi, compared to rural areas upstream in Haryana, where river water contamination was found to be less. Heavy metals such as lead are more readily absorbed by children as compared to adults. The resultant disasters would be impairment of motoring skills, onset and development of hypertension and may even result in slow cognitive development. Water and soil samples were lifted every 2 km, starting, from Wazirabad Barrage and covered 22 km of the river in the capital. The presence of heavy metals increased after Wazirabad even though every drop of water that flows in the river .in Delhi has to be cleaned through Sewage Treatment and Effluent Treatment Plants. Presence of heavy metals was negligible in Haryana. Hexavalent chromium, said to be hazardous was found to be highest at Old Yamuna Bridge and Indraprastha Estate Power Plant. This is the area where maximum vegetables are grown on riverbed. At this point there is also heavy industrial discharge into

the river.

52. Agricultural activities must be carried on as it is essential for our day to day living, but, agriculture produce that will lead to greater harm to human health must be checked and if necessary should also be, stopped. The principle of 'Inter-generational Equity' would require that today' younger' generation should not be exposed' to serious health hazards and thus, it will not only be desirable but essential that such contaminated produce/vegetables are not offered for consumption to the people at large. The Principle of Comparative Hardship would clearly mandate that where the injury is n much; greater in proportion to the benefit that would accrue as a result of such activity, the activity must be stopped in the larger interest of the public and of public health."

27. In the absence of any title, the prayer for *mandamus* commanding the respondents No.2 to take action against the respondents No.3 to 9 is not maintainable. If the petitioner feels that an offence has been committed, then the correct remedy for the petitioner is to approach the competent court by filing an application under Section 156(3) CrPC. The Apex Court in Sakiri Basu vs. State of UP, (2008) 2 SCC 409 and Priyanka Srivastava vs. State of UP, (2015) 6 SCC 287 had directed that the High Court must not entertain writ petitions seeking direction to the Police for registration of an FIR and the complainants must be delegated to approach the competent court by filing the application under Section 156(3) CrPC.

28. Since the records show that the members of the petitioner/society are in unlawful occupation, the relief for compensation on the ground of DDA damaging the crop is not maintainable. This writ petition is nothing but an abuse of the process of law and another attempt by the members of the

petitioner Society to cling on to the land while they have already been held to be unauthorized occupants and encroachers. The members of the petitioner Society have, therefore, violated the undertaking given to the Apex Court. Since the petitioner claims that their members are farmers, this Court is not imposing costs on the petitioner Society.

29. The writ petition is dismissed with the above observations along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 01, 2022

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